



TAX NEWSLETTER

May 2022

I. CORPORATE TAXATION

- **Venture Capital Fund ("FCPR"):** *French tax authorities' guidelines relating to the capital gains regime applicable to asset distributions is partially censured - Decision of the 8th and 3^d chambers of the French Administrative Supreme Court ("CE") on March 31th, 2022, No. 461406, SAS financière investissement Azur*

The CE rules that the French tax authorities' guidelines which granted the benefit of the long-term capital gains regime conditional, for a holder of units in a venture capital fund who was not an initial subscriber, on holding the securities for at least two years on the date of allocation, must be repealed.

- **Partnerships:** *a free revaluation of assets has no tax consequences for the partners - Decision of the 8th and 3^d chambers of the CE on April 14th, 2022, No. 454264*

The CE rules that the booking of the difference in net asset values (generated by a free revaluation of the assets of a look-through company) to the credit of the shareholders accounts does not make the latent character of these gains disappear, and consequently should not generate any taxation for the partners.

- **Transformation of a Limited Liability Company ("LLC") into a Private Limited Liability Company under one shareholder ("EURL"):** *no corporate income tax ("CIT") liability without election in the bylaws - Decision of the 2nd chamber of the Administrative Court of Appeal ("CAA") of Lyon on May 18th, 2022, No. 20LY03131*

The CAA mentions that in the event of the transformation of a LLC into an EURL, following the holding of all the shares of the pre-existing LLC in the hands of one shareholder, the EURL cannot be liable to CIT - even if it has continued to file CIT returns - because it has not amended its bylaws in this sense.

II. TAX AUDIT

- **Accumulation of criminal and tax penalties:** *the Court of Justice of the European Union ("CJEU") condemns the French system - Decision of CJEU on May 5th, 2022, case 570/20, BV c/ DDFiP de la Haute-Savoie*

In response to two preliminary questions filed by the Criminal chamber of the French Civil Supreme Court, the CJEU rules against a national legislation which does not ensure, in cases where a financial penalty is combined with a custodial sentence, by means of clear and precise rules, that the totality of the penalties applied does not exceed the gravity of the established infringement.

- **Right to follow:** *the right to follow on property tax is unconstitutional - Decision of the French Constitutional Court ("CC") on May 13th, 2022, No. 2022-992 QPC*

The CC rules that the provisions of section 1920, 2-2° of the French tax code ("FTC") disproportionately infringe the new owner's right of ownership. A constant case law admitted, on the basis of these provisions, that in case of transfer of the real estate's ownership, the public Treasury could recover the property tax liability from the former owner, from the rents due to the new owner.





- **Declaring third-party: the CC is seized about the constitutionality of the fine for non-compliance with reporting obligations - Decision of the CE on April 25th, No. 458429**

The CC is seized of a Priority Question of Constitutionality ("QPC") relating to the compliance with the principle of proportionality of offences and penalties of the 50% fine provided for in section 1736, I-1 of the FTC for non-compliance with the reporting obligations for a Declaring third-party.

III. INTERNATIONAL TAXATION

- **Exemption for employees sent abroad: end of income tax exemption for expatriate employees under British contracts - Government answer to question No. 25103 by Mrs Renaud-Garabedian, published in the Official Journal of the Senate on April 21st, 2022**

As of January 1st, 2021, the United Kingdom is a third country to the European Union ("EU") and to the European Economic Area ("EEA"). Consequently, the government reminds that employees of British employers, who are French tax residents and sent abroad, are no longer eligible for the income tax exemption provided for in section 81 A, I of the FTC. It is not intended to modify the current system.

- **Tax residence: the tax residence of a divorced taxpayer is the place where he usually lives and has the center of his personal life - Decision of the 9th chamber of the CE on May 11th, 2022, No. 450692**

The CE mentions that for the application of the provisions of sections 4 A and 4 B of the FTC, the household of a single taxpayer refers to the place where he or she usually lives and has the center of his or her personal life, without taking into account stays made temporarily elsewhere due to the needs of his or her profession or exceptional circumstances.

- **Anti-abuse provision: section 123 bis of the FTC applies in the event of control, even shared control, of a financial intermediary established in a state or territory with privileged taxation - Decision of the 3rd and 8th chambers of CE on May 12th, 2022, No. 444994**

According to the CE, the legislator intended to tax French tax residents on profits made abroad by certain entities established in States or territories in which they are subject to a privileged tax regime, over which those residents exercise control, even shared, regardless of their legal form and, in the case where such control is appreciable, over than 10%.

IV. INDIVIDUAL TAXATION

- **Transfer of temporary usufruct: a lifetime usufruct that is contributed to a company for 30 years constitutes a temporary usufruct - Decision of the 8th and 3rd chambers of the CE on March 31st, 2022, No. 458518**

The CE rules that the contribution to a company for thirty years of a lifetime usufruct, consisting of company shares, had be to qualified as a temporary usufruct and therefore taxed according to the regime provided for in section 13-5 of the FTC. Indeed, according to the CE, the period of this usufruct was not exclusively determined by the time of human life.

- **Alimony: the conditions for deductibility are specified by the CE - Decision of the 3rd and 8th chambers of the CE on April 14th, 2022, No. 436589 and No. 436590**

The CE specifies that it is up to the taxpayer, who intends to deduct an alimony from his or her income, to justify the amount corresponding to this obligation, either by referring to a court decision fixing this amount, or by establishing its proportionate amount with regard to his or her resources, those of the other parent, and the needs of the child, considering in particular his or her age.