



TAX NEWSLETTER

February 2023

I. CORPORATE TAXATION

- **Deductibility of depreciations: dismissal of the appeal filed by the French Tax Authorities ("FTA") - Decision of the French Administrative Supreme Court ("CE") on February 20th, 2023, No.464467**

The CE has dismissed the appeal filed by the FTA against the decision of the Administrative Court of Appeal ("CAA") of Lyon which ruled that a depreciation for the risk of loss on a receivable (corresponding to interest-bearing cash advances granted to a subsidiary) does not constitute a non-deductible financial assistance within the meaning of Section 39,13 of the French Tax Code ("FTC").

- **Waivers of debts: waivers of debts are excluded from deductible expenses in the absence of significant commercial relationships - Decision of the CAA of Nantes on January 13th, 2023, No.21NT01223, SAS Stécile**

The CAA of Nantes rules that a waiver of debts granted by a company to one of its subsidiaries, which it does not hold directly and with which it has only weak commercial relationships, must be considered as essentially intended to indirectly save its shareholding in its subsidiary. Consequently, this financial assistance is not deductible for the determination of its taxable income.

II. TAX AUDIT

- **Tax Raids: the judge's authorization is not subject to the condition to prove a breach of tax obligations - Decision of the Commercial Chamber of the French Civil Supreme Court on February 15th, 2023, No.20-20.599 FS-B, DGFIP v. Sté LVMH finance Belgium and No.20-20.600 FS-B, DGFIP v. Sté LVMH-Louis Vuitton Moët Hennessy et a.**

According to Section L.16 B of the French Tax Procedures Code ("LPF"), Tax Raids and seizures may be authorized by the judicial authority if the FTA establish that it can be presumed that a taxpayer avoid the assessment or the payment of income tax, corporate income tax ("CIT") or taxes on turnover. The French Civil Supreme Court confirms that the FTA do not need to provide conclusive evidence to initiate a tax raid against a taxpayer and that only presumptions are sufficient.

- **Partial declaration of foreign assets: the FTA have three years to reassess - Decision of the CAA of Nantes on December 23rd, 2022, No.20NT03961, min. c/ A**

The CAA of Nantes rules that the ten-year time limit can only be applied if the FTA do not have evidence that allow them to initiate an investigation within the ordinary time limit. The CAA rules that reporting information, even partial and relating to different taxes, may constitute sufficient evidence.

- **Tax notice of a foreign company: the de facto manager prevails over the designated agent - Decision of the 9th and 10th chambers of the CE on February 3rd, 2023, No.456212, Sté Garovito construções**

The CE rules that, when the FTA send an tax audit notice on the Value Added Tax ("VAT") to the representative designated by a foreign company, they can only draw the consequences of the audit about this tax. However, the CE rules that, as the representative was also, in fact, the manager of the company (he was the partner and had the power to bind the company to third parties), the FTA were able to send





to him the tax audit notice and, without disregarding the provisions of the Section L 47 of the LPF, reassess on both VAT and CIT.

III. INTERNATIONAL TAXATION

- **International inheritance: *introduction of a maximum tax rate for international inheritance in the absence of a bilateral inheritance tax treaty between France and a third country - Draft Law registered at the National Assembly on February 14th, 2023, No.828***

This draft law provides that in the absence of a bilateral inheritance tax treaty concluded between France and a third country, the amount of inheritance tax paid both in France and abroad may not exceed 70% of the total amount of the inheritance, based on the assets located in France and abroad.

- **Non-Cooperative States and Territories ("ETNCs"): *France and the Council of the European Union ("EU") update the list of ETNCs - Ruling No.ECOE2301091A on February 3rd, 2023 and EU Council press release of February 14th, 2023***

The Bahamas and the Turks and Caicos Islands have been added to the French list of ETNCs within the meaning of Section 238-0 A of the FTC.

The British Virgin Islands, Costa Rica, the Marshall Islands and Russia have been added to the EU list of non-cooperative States and territories for tax purposes.

IV. INDIVIDUAL TAXATION

- **Dutrel Exemption and joint activities: *the concept of a body of corroborating evidences must be used to determine the eligibility - Decision of the Commercial Chamber of the French Civil Supreme Court on January 25th, 2023, No.20-23.137***

The French Civil Supreme Court rules that the eligibility of a joint holding company to the favorable regime is determined by a body of corroborating evidences, based on the nature of its activity and the conditions of its performance.

- **Fist sale of a housing located in France by non-residents: *no exemption when the seller is a look-through Real Estate Company ("SCI") - Ministerial reply No.00328, published in the Official Journal of the French Senate on February 2nd, 2023***

The French government confirms that the exemption for capital gains generated on the first sale of a housing located in France (provided by Section 150 U, II, 2° of the FTC) does not apply if the seller is a look-through SCI under Section 8 of the FTC, even if the partners are non-residents who satisfy the other conditions provided by the law.

- **Sale of a housing other than the main residence: *possible exemption by claim - Decision of the CAA of Marseille on February 3rd, 2023, No.20MA01299***

The CAA of Marseille rules that the exemption of the capital gain generated at the time of the sale of a housing other than the main residence is not subject to the fact that this benefit is claimed at the date of the sale of the housing. Taxpayers who meet the conditions to benefit from this exemption but have not requested it in the deed of sale may therefore request this benefit by the way of a claim, within the time limit provided for in Section R 196-1 of the LPF.