



# TAX NEWSLETTER

March 2023

## I. CORPORATE TAXATION

- **Tax consolidation: cross-shareholdings between companies of the same group are considered in assessing the 95% threshold - Decision of the 3<sup>rd</sup> and 8<sup>th</sup> chambers of the the French Administrative Supreme Court ("CE") on March 1<sup>st</sup>, 2023, No.464552, Société anonyme AXA**

The CE rules that in order to assess the 95% ownership threshold for the formation of a French consolidated tax group, cross-shareholdings within the group shall be taken into consideration.

- **Merger's favourable tax regime: companies benefiting from a tax deferral cannot be fined for absence of reporting the technical merger loss - Decision of the 9<sup>th</sup> and 10<sup>th</sup> chambers of the CE on March 22<sup>nd</sup>, 2023, No. 455621, Société Grenoble Logistique Distribution**

The CE considers that as the French Tax Authorities ("FTA") have not provided companies with a tax form allowing the reporting of the statutory required information, the 5% fine provided for in Section 1763 of the French Tax Code ("FTC") cannot be applied for failure to produce a statement of capital gains placed under a tax deferral.

## II. TAX AUDIT

- **Companies' managers liability: the opening of a proceeding for tax liability is not covered by the contradictory procedure - Decision of the Commercial Chamber of the French Civil Supreme Court on February 15<sup>th</sup>, 2023, No. 21-18.395**

The French Civil Supreme Court specifies that the decision to introduce a proceeding provided for in Section L.267 of the French Tax Procedure Code ("LPF"), which aim at allowing, under specific conditions, the FTA to reach the assets of the company's managers is taken by the head of the public finance department, without the need to comply with a prior contradictory procedure within the meaning of Section L.121-1 of the French Code of relations between the public and the Administration.

- **Foreign bank account: the reporting obligation extends to accounts used by the taxpayer - Decision of the 3<sup>rd</sup> and 8<sup>th</sup> chambers of the CE, on March 8<sup>th</sup> 2023, No. 463267**

In a particular case of interposition of a Cypriot trading company and a bank account opened in Latvia, the CE rules, pursuant to Sections 1649 A and 344 A of Annex III to the FTC, that any French taxpayer must report to the FTA the details of any bank account opened, used, or closed abroad, regardless of the account holder, including a bank account held by a trading company.

## III. INTERNATIONAL TAXATION

- **Privileged tax regime: the application of the anti-abuse mechanism cannot consider the favourable merger regime - Decision of the Administrative Court of Appeal ("CAA") of Versailles on January 26<sup>th</sup> 2023, No.20VE02424**

The Versailles CAA points out that, according to Section 238 A of the FTC, the privileged characteristics of a tax regime must be assessed for corporate income tax or individuals' income tax for as if the taxpayer would have been liable in France under ordinary law. However, ordinary law cannot include the favourable merger regime.





- **French source's dividends: *the withholding tax ("RAS") levied on distributions to European life insurance companies is incompatible with the European Union ("EU") law - Decision of the CAA of Versailles on February 9<sup>th</sup>, 2023, No.20VE01438***

The CAA rules that, regarding EU law, there is an unjustified difference between tax treatments of dividends from French sources received by a French life insurance company (which can deduct the technical provisions from its income liable to corporate income tax) and by a company established in an EU Member State, which is subject to a RAS on the dividends' gross amount. Therefore, the RAS unduly applied must be refunded to the life insurance company established in the EU.

- **Inpatriates regime: *the FTA' guidelines concerning Section 155 B of the FTC are amended - BOFIP update on February 16<sup>th</sup> 2023, BOI-RSA-GEO-40-10-30-10***

The FTA, referring expressly to the CE's decision No.442799 on October 21<sup>st</sup>, 2020 cancelling paragraphs 80 and 90 of BOI-RSA-GEO-40-10-30-10, no longer submits the benefit of the partial exemption of foreign income provided in Section 155 B II of the FTC to a condition.

- **Franco-Luxembourg tax treaty: *tax paid in Luxembourg can be offset in France by the taxpayer - Decision of the 9<sup>th</sup> and 10<sup>th</sup> chambers of the CE on March 8<sup>th</sup> 2023, No.456349***

The CE considers that Section 122 of the FTC allowing foreign taxes to be offset depends on two additional conditions, i.e. (i) that such a deduction is not expressly excluded by the tax treaty concluded with the sourcing state and (ii) that the taxpayer has borne the tax burden. In the case at hand, as the Franco-Luxembourg treaty does not contain any stipulation excluding such a deduction and as the taxpayer has borne an RAS in Luxembourg on the dividends received, the taxpayer may deduct it from his taxable income in France.

- **Foreign tax credits: *loss-making companies cannot carry them forward - Decision of the CE on March 8<sup>th</sup> 2023, No.449723***

The CE considers, in the silence of the tax treaty, that since loss-making companies are not subject to legal double taxation, French companies are not entitled to benefit from the carry forward of tax credits that they could not use because of their loss-making situation.

#### **IV. INDIVIDUAL TAXATION**

- **Real estate properties' valuation: *when the comparison method cannot be applied, a property can be valued at its selling price - Decision of the Court of Appeal ("CA") of Paris on December 5<sup>th</sup>, 2022, No. 21/03150***

The CA of Paris ruled, in the case of an exceptional real estate property classified as a historical monument, that the price mentioned in a sale warrant signed 3 years before the taxable event, with an efficient sale occurring at a later stage, can be used by the FTA, for the computation of the wealth tax, in absence of any comparative elements. An appeal in cassation has been filed against this decision.

- **Shares valuation: *an approval clause in the by-laws of a real estate investment company allows to claim by right a decrease of the taxable value for the real estate wealth tax - Decision of the French Civil Supreme Court on February 15<sup>th</sup>, 2023, No. 20-19.45***

The French Civil Supreme Court considers that the existence of an approval clause restricting the free transferability of company's rights is likely to affect their valuation and reduce their value, which justifies, therefore, an automatic allowance for the company's partners.

- **3% tax: *the benefit of the "right to make a mistake" is clarified by the Government - Ministerial answer Masson on March 7<sup>th</sup> 2023, No.4005***

Taxpayers who are eligible for the exemptions provided for in Section 990 E of the FTC, but who have not filed the tax return No.2746-SD or who have not made the required commitment, provided they are in good faith, may benefit from a regularization procedure under conditions.