



TAX NEWSLETTER

April 2023

I. CORPORATE TAXATION

- **Tax consolidation: neither the parent company nor the subsidiary can claim the reinstatement of the latter's profit in the case where the increase of this profit has led to a reduction of the group tax loss - Decision of the Administrative Court of Appeal ("CAA") of Versailles on February 25th, 2023, No. 20VE00572, SA Lafarge**

The CAA of Versailles rules that when the subsidiary of a consolidated tax group has suffered an increase of its taxable income which had led to the reduction of the group tax loss, neither the provisions of Section L.190 of the French tax procedure code (providing for a right to claim compensation for errors made by the French tax authorities in the computation of a loss), nor any other provision allow the subsidiary or the parent company of the group to request the reinstatement of the subsidiary's profit.

- **Sale of securities: a significant difference between the market value of the securities and their sale price characterizes an abnormal act of management - Decision of the 9th and 10th chambers of the French Administrative Supreme Court ("CE") on April 7th, 2023, No. 466247, min. vs Société Cr dit Agricole**

The CE rules that a difference of 14.1% between the market value of unlisted securities and their sale price must be considered as significant, characterizing an abnormal act of management, taking into account the gradual termination of the transferred company's activity and its net assets mainly composed of a portfolio of cash investments.

II. TAX AUDIT

- **Tax raids: French tax authorities (FTA) can audit permanent establishments of foreign companies - Decision of the Commercial Chamber of the French Civil Supreme Court on February 15th, 2023, FS-B No.21-13.288**

The French Civil Supreme Court reminds that a foreign company is required, when it carries out an activity in France through a permanent establishment, to comply with accounting obligations in order to justify taxable transactions in France. Failing this, the French Civil Supreme Court rules that this foreign company should be deemed to have intentionally failed to book accounting entries or to have intentionally booked inaccurate or fictitious entries in the accounting documents required by the French Tax Code (FTC).

- **Late payment interest: the payment of omitted taxes before the notification of a tax reassessment leads to the interruption of late interest's computation - Decision of the CE on April 14th, 2023, No.467622**

The CE rules that in case of insufficient declaration, when the taxpayer proceeds to the payment of the omitted taxes before the notification of the tax reassessment, the computation of the late interest is interrupted on the last day of the month of payment. Failing that, the CE rules that it would lead to an unjust enrichment of the State.





III. INTERNATIONAL TAXATION

- **“DAC 6” and professional secrecy: *the lawyer has the obligation to make the declaration when he has the agreement of his client - Decision of the 8th and 3rd chambers of the CE on April 14th, 2023, No.448486***

The CE rules that the provisions which allow the client to authorize his lawyer to proceed to the declaration of cross-border transactions on his behalf are not contrary to European law. On the other hand, the CE rules that the obligation on a lawyer who has not been released from his professional secrecy by his client to notify any other intermediary without delay his reporting obligations (Section 1649, AE, I, 4°, paragraph 2 of the FTC) is contrary to Section 7 of the Charter of Fundamental Rights of the European Union.

- **France-Luxembourg tax treaty: *extension of the former tax treaty provisions for fiscal year 2022 - BOI-INT-CVB-30 of April 20th, 2023***

The FTA specify that income received by French tax residents, previously exempted in France in accordance with the treaty signed by France and Luxembourg on April 1st, 1958 (and which, pursuant to the tax treaty signed by the two States on March 20th, 2018, in its wording resulting from the amendment signed on October 10th, 2019, entitles to a tax credit equal to the French tax) will continue to benefit from the exemption method for those received between January 1st, 2020 and December 31st, 2022.

IV. INDIVIDUAL TAXATION

- **Foreign bank account: *Sections 755 of the FTC, L. 23 C and L. 71 of the LPF do not constitute restrictions on the free movement of capital guaranteed by Section 63 of the Treaty on the Functioning of the European Union (TFEU) - Decision of the 1st chamber, 1st section of the Court of Appeals (CA) of Versailles of February 7th, 2023, n° 20/03678***

The CA of Versailles rules that the legislator has granted the tax authorities the power to amend the taxation of undeclared assets (right of recovery or automatic taxation) within an identical period of time (ten years), regardless of whether these assets are held in a bank account in France or in a bank account abroad (Section 1649 A of the FTC).

- **Exit Tax: *concerning departures from France between March 3rd, 2011 and December 31st, 2013, in case of a return in France after 8 years, only the income tax can be relieved - Decision of the CAA of Versailles on April 5th, 2023, No.21PA00433***

The CAA rules that the fact that the social security contributions to which the taxpayer has been subject would not be automatically relieved at the end of the eight-year period does not infringe the freedom of establishment.

- **Declaration of residential premises: *the frequently asked questions (FAQ) is updated and the application decree is published - FAQ of April 6th, 2023 and decree 2023-324 of April 28th 2023***

The decree implementing the provisions of Section 1418 of the FTC is codified in Section 322 A of Annex III of the FTC. The obligation to declare concerns the taxpayer who owns the property on January 1st of the year of the declaration. In the event of a transfer of a property, the tax authorities specify that if the property was already sold on January 1st, 2023, the new owner has to make the declaration. If the property was sold after January 1st, 2023, the former owner has to make the declaration.

- **Trusts: *capital transfers in the context of an inheritance distribution are not considered as distributed income - Decision of the 5th chamber of the CAA of Paris on April 21st, 2023, No.20PA02868***

The CAA rules that the FTA can not consider as distributed income taxable in the category of income from movable assets the capital transfers made between a testamentary trust under American law and a second trust, within the framework of the inheritance division of the deceased.