



# TAX NEWSLETTER

January 2024

## I. CORPORATE TAXATION

- **Tax consolidation: *the taxable share of costs and expenses ("QPFC") on received dividends is reduced to 1% - Law No. 2023-1322 of December 29<sup>th</sup>, 2023, Finance law for 2024 ("LF for 2024"), Section 52***

The LF for 2024 provides for a taxable 1% QPFC on dividends paid by a European subsidiary to its French parent company provided that both companies have met, for more than one fiscal year, all the conditions required to set up a consolidated tax group in France if this subsidiary was established there (Section 216 of the French Tax Code "FTC").

- **Local taxes: *the abolition of the Contribution on Added Value of Enterprises ("CVAE") is postponed to 2027 - LF for 2024, Section 79***

The LF for 2024 provides for CVAE's abolition to be spread over 4 years (i.e., the final abolition will occur in 2027).

## II. TAX AUDIT

- **Tax fraud: *new anti-fraud measures are adopted - LF for 2024, Sections 113 and 114***

The LF for 2024 introduces several measures including a new autonomous offense of providing instruments facilitating tax fraud and an additional penalty of deprivation of rights to reductions and tax credits for Personal Income Tax ("PIT") and French Real Estate Wealth Tax ("IFI").

- **Penalties: *PIT's payments already made by taxpayers who failed to fulfill their reporting obligations are not taken into account – Decisions of the 9<sup>th</sup> and 10<sup>th</sup> chambers of the French Administrative Supreme Court ("CE") on January 4<sup>th</sup>, 2024, No. 488915 and 488916***

The CE considers that the amount of taxes assessed against taxpayers who have failed to fulfill their reporting obligations, as mentioned in the assessment notice, constitutes the basis for the penalties provided by Sections 1728 and 1758 A of the FTC, without deduction of any installments and withholdings already made, notably the tax withheld by the employer.

## III. INTERNATIONAL TAXATION

- **Multinational groups: *Directive (EU) 2022/2523 of December 14<sup>th</sup>, 2022 ("Pillar 2") is transposed - LF for 2024, Section 33***

The LF for 2024 transposes in France the Pillar 2 Directive aiming to ensure a minimum level of worldwide taxation at the rate of 15%, in the form of an additional tax, applicable notably to multinational groups of companies with consolidated turnover equal to or exceeding 750 million euros. A qualified domestic minimum top-up tax based on the excess profit realized by the group is also adopted.

- **Withholding Tax ("WHT"): *payments for clinical trials conducted in Thailand may be subject to WHT in France - Decision of the Administrative Court of Appeal ("CAA") of Paris on January 24<sup>th</sup>, 2024, No. 22PA02528, Company Abivax***

The CAA judges that a French company specialized in clinical development, which pays sums to a company established in Bermuda for conducting clinical trials in Thailand for a product intended for future commercialization in emerging countries, fails to establish that the outcome of this research was not





actually useful to its activity in France, where its sole establishment was located. Therefore, this French company is liable for the WHT provided for in Section 182 B of the FTC.

#### IV. INDIVIDUAL TAXATION

- **Exit Tax: *the rules are amended - LF for 2024, Section 11***

The LF for 2024 strengthens sanctions for non-compliance with reporting obligations related to exit tax and allows taxpayers who transferred their tax residence out of France in 2013 to request the refund of social security levies.

- **Dutrel Regime: *furnished residential rental activity is excluded - LF for 2024, Section 23***

The LF for 2024 specifies that commercial activities eligible for partial exemption from Gift and Inheritance Tax ("DMTG") under Sections 34 and 35 of the FTC do not include activities "*related to the management of one's own movable or immovable property*", such as the rental of furnished residential premises.

- **Furnished rentals: *the taxation rules for tourist furnished rental activities and other furnished rental activities are aligned - LF for 2024, Section 45***

The micro-BIC regime applicable to tourist furnished rental activities is now aligned with the regime applicable to other furnished rental activities, provided that the turnover threshold does not exceed €77,700, with the application of an allowance of 50% of the turnover. An additional allowance of 21% is allowed for companies carrying a tourist furnished rental activity, subject to conditions.

- **Dutrel Regime: *management functions cannot be exclusively carried out by the donor after the donation of shares - Decision of the French Civil Supreme Court ("Cour de cassation") on January 24<sup>th</sup>, 2024, No. 22-10.413***

The Cour de cassation holds that, pursuant to Section 787 B of the FTC, the exemption from DMTG in the presence of a deemed collective commitment applies only if, within three years following the transfer, at least one of the heirs, donees, or legatees effectively carries out their main activity within the company (which is subject to Sections 8 and 8 ter of the FTC), or holds one of the eligible functions to benefit from the IFI exemption for professional assets (for companies subject to corporate income tax).

- **Capital Gains: *the conditions for the application of the enhanced allowance are assessed on the scale of all companies - Decision of the CAA of Nancy on January 25<sup>th</sup>, 2024, No. 22NC02061***

The CAA judges that to benefit from the enhanced allowance provided for in Section 150-0 D 1 quarter of the FTC, the taxpayer selling shares of a holding company must demonstrate that the required conditions are met by both the holding and all its subsidiaries, even if the holding is a mixed company.

- **Real estate capital gains: *a short occupancy of the real estate property by the seller does not qualify for the exemption on the main residence - Judgment of the Administrative Tribunal (TA) of Dijon on January 25<sup>th</sup>, 2024, No. 2300473***

The TA judges that the seller of a house who had it built and put it up for sale immediately after the completion of construction cannot benefit from the exemption of the capital gain on the sale of the main residence (Section 150 U, II-1° of the FTC), even if the seller occupied it for two months as his main residence, as this occupancy does not demonstrate his intention to settle there permanently.