



TAX NEWSLETTER

February 2024

I. CORPORATE TAXATION

- **Shareholders 'current accounts: *the maximum deductible rate is published - Notice of the Official Journal ("JO") on December 26th, 2023, ECOT2335703V***

The maximum deductible rate for interest paid on shareholders' current accounts is of 5.57% for companies closing their fiscal year on December 31st, 2023.

- **Election for Corporate Income Tax ("CIT"): *the election modalities for certain Limited Liability Companies ("SARL") are simplified - Decision of the 9th and 10th chambers of the French Administrative Supreme Court ("CE") on February 5th, 2024, No. 470324***

The CE rules that a SARL, whose sole shareholder is a natural person, which states in its constitutive by laws that it is subject to CIT and fills, as from its first fiscal year, CIT returns, is deemed to have regularly elected for CIT.

II. TAX AUDIT

- **Tax audits: *the French Court of Auditors (i.e. "Cour des comptes") targets the French Real Estate Wealth Tax - Report of the Cour des comptes published on January 25th, 2024***

The *Cour des comptes* recommends increasing tax audits related to real estate assets indirectly held or held by non-French tax residents, and foreign real estate assets held by French tax residents.

- **Tax audits: *the prohibition of renewal is specified - Decision of the 9th and 10th chambers of the CE on February 5th, 2024, No. 470616, Société Cella Informatique***

The CE rules that if Section L. 51 of the French tax procedure code prohibits the French Tax Authorities ("FTA") from renewing a tax audit for the same taxes and for the same period, the FTA may, after a tax audit, reassess within the statute barred period and within the framework of a document-based audit (off site tax audit), any mistakes or errors discovered for the same tax and the same period.

- **Tax and criminal penalties: *the administrative judge must ensure compliance with the rules of non-accumulation - Decision of the 3rd and 8th chambers of the CE on February 5th, 2024, No. 472284***

Without disregarding the principle of proportionality of penalties, the CE recalls that when the same facts are subject to tax penalty for failure to declare and a final criminal conviction for tax fraud, the judge must ensure, if necessary *ex officio*, that the total amount of penalties charged under these two procedures does not exceed the highest amount of either of the penalties incurred. Otherwise, the judge must reduce or discharge the tax penalty.

- **Hidden gift: *characterized when an asset registered in the company's assets is sold at a reduced price its two shareholders, even if an usufruct reserve is provided for - Decision of the Administrative Court of Appeal ("CAA") of Lyon on February 15th, 2024, No. 23LY02460***

The CAA rules that a hidden gift is characterized when a company sells - at a reduced price to its shareholders - the undivided bare ownership of an industrial land on which works are carried out, while reserving the usufruct for 21 years.





III. INTERNATIONAL TAXATION

- **Franco-Swiss Tax Treaty: the Withholding Tax ("RAS") provided for in Section 182 A of the French Tax Code ("FTC") applies only to salaries paid for functions performed outside of France - Decision of the 3rd and 8th chambers of the CE on February 5th, 2024, No. 469771**

The CE considers that the RAS provided for in Section 182 A of the FTC on salaries paid to a taxpayer who is not a French tax resident within the meaning of the treaty applies to the portion of these salaries computed *pro rata temporis* for the periods during which the taxpayer performs his functions in France. Indeed, for the CE, salaries paid by an employer to a person carrying out a professional activity in France on a non-accessory basis and who is tax resident in France within the meaning of Section 4 B of the FTC cannot be subject to the RAS.

- **Tracfin: a cooperation agreement is signed with the United Arab Emirates on February 1st, 2024 - Press release from the Ministry of Economy and Finance of February 7th, 2024**

This agreement aims to "facilitate the exchange of information of interest related to suspicious financial transactions" concerning in particular the financing of terrorism and the laundering of drug trafficking.

- **Non-Cooperative States and Territories ("ETNCs"): the French list is updated - Ruling of the Minister of Economy, Finance and Recovery published in the JO on February 17th, 2024**

The French list of ETNCs, aligning with the European blacklist, now includes Antigua and Barbuda, Belize, and Russia, while the British Virgin Islands are removed.

IV. INDIVIDUAL TAXATION

- **Inheritance: there is no forced heirship rules for assets placed in a California family trust - Decision of the European Court of Human Rights ("CEDH") on February 15th, 2024**

The CEDH rules that, although it is impossible to disinherit one's children under French law, the transfer of assets through a California family trust does not take into account the existence of forced heirship rules.

- **Spouse's joint taxation: the election exercised within the statute barred period of personal income tax returns or within the time limit for filing a claim is irrevocable - Decision of the CAA of Lyon on February 1st, 2024, No. 22LY01577**

The CAA rules that the choice made by spouses between separate taxation or joint taxation for the year of marriage or civil solidarity pact is irrevocable and cannot be changed after the expiration of the personal income tax return's filing deadline for the relevant year.

- **Vacant real estate property: proof of the involuntary nature of the vacancy of a property leased furnished must be provided - Decision of the CAA of Versailles on February 8th, 2024, No. 22VE00193**

The CAA rules that providing only a screenshot of two advertisements posted on a real estate listing website, without specifying their publication dates or their contents, does not demonstrate that the vacancy of the taxpayer's real estate property is beyond their control.