



TAX NEWSLETTER

March 2024

I. CORPORATE TAXATION

- **Useless expenses: the qualification of leisure or pleasant residence is specified - Decision of the French Administrative Supreme Court (« CE ») on January 16th, 2024, n° 474374, Sté Batmat**

The CE judges that expenses incurred for the rental of a prestigious real estate used for commercial or advertising purposes constitute useless expenses within the meaning of Section 39, paragraph 4 of the French Tax Code ("FTC"), non-deductible for the computation of the taxable income of a company even if the apartment is subject to a commercial lease.

- **Depreciation: the time-limit for the election of exceptional deductions is no longer limited - BOI-BIC-BASE-100-10 on February 21st, 2024**

The French Tax Authorities (« FTA »), taking into account the case law of the CE, remove their comments stating that a company choosing not to book an exceptional deduction at the closing of the fiscal year in which the assets are acquired makes a definitive management decision.

II. TAX AUDIT

- **Whistleblowers: only alert launcher can be compensated - Response Leduc, National Assembly, on January 9th, 2024 n°11579**

The compensation provided for in Section L.10-0 AC of the French Tax Procedure Code (« LPF ») only applies to alert launcher, unlike whistleblowers who cannot receive any direct financial compensation. Therefore, the statuses of alert launcher and whistleblowers are exclusive.

- **Abuse of law: the requalification of a debt assignment as a debt waiver does not constitute an abuse of law - Decision of the 3rd chamber of the CE on January 18th, 2024, n° 475000**

The CE judges that when the FTA reject a debt assignment and requalify it as a debt waiver, they do not necessarily consider that the taxpayer has committed an implicit abuse of law characterized by the fictitious nature of the transaction.

- **Reasonable time-limit: this rule is not applicable to judicial litigation - Decisions of the Plenary Assembly of the French Civil Supreme Court ("Cour de cassation") on March 8th, 2024, n° 2121230 BR and 2112560 BR**

In judicial matters, the Cour de cassation considers that when the notification of an administrative decision does not accurately mention the time-limit and ways for appeal, the debtor may challenge the enforceable title without being bound by either the statutory appeal time-limit or the reasonable time-limit offered by the administrative jurisdiction.

- **Accounting mistake: the deliberate mistake on a creditor's identity makes it enforceable against the taxpayer - Decision of the Plenary Assembly of the CE on March 22nd, 2024, n° 471089**

The CE judges that the 40% penalty provided for in Section 1729 of the FTC is rightly applied against a company which deliberately booked a debt in the name of a creditor other than its actual creditor as this error cannot be considered as being made in good faith.





III. INTERNATIONAL TAXATION

- **Foreign bank accounts: *the reporting obligation is extended to accounts used through foreign foundations - Decision of the 3rd chamber of the CE on January 18th, 2024, n° 474285***

The CE considers that a taxpayer who has reported income from movable assets derived from assets held within foundations established in Liechtenstein (and whose bank balances experienced significant fluctuations) must report the accounts held within these foundations, even if they are neither owners nor beneficiaries of a power of attorney or economic beneficiaries of the income.

- **European Union (« EU ») law: *the proposal for the Faster And Safer Tax Excess Relief Directive ('FASTER') is submitted to the European Parliament - Advisory Opinion of the European Parliament of February 28th, 2024***

This Directive proposes a single digital tax residence certificate for investors holding a diversified portfolio in the EU, the establishment of two accelerated procedures for withholding tax relief and fast reimbursement, as well as the implementation of a standardized reporting obligation for certified financial intermediaries.

- **Franco-Swiss Tax Treaty: *the non-discrimination clause does not allow for setting up a tax consolidation between entities of these two states - Decision of the Administrative Court of Appeal ("CAA") of Paris on March 1st, 2024, n°22PA00055***

The CAA judges that the incapacity for a French company to elect for being the head of a tax consolidation with a Swiss company does not represent any discrimination prohibited by the Franco-Swiss convention.

IV. INDIVIDUAL TAXATION

- **Dutheil Pact: *the conditions to benefit for the exemption in the case of a deemed collective commitment are specified - Decision of the Commercial chamber of the Cour de cassation on January 24th, 2024, n° 22-10.413***

The Cour de cassation considers that in the case of a deemed collectively commitment, the partial exemption from inheritance tax applies only when, during the three years following the date of transfer, one of the heirs, donees, or legatees effectively carries out his main professional activity within the company (look-through entities referred to in Sections 8 and 8 ter of the FTC) or one of the functions listed in Section 885 O bis, paragraph 1, of the FTC (company subject to corporate income tax)

- **Real estate capital gain: *double accounting for construction expenses is impossible - Decision of the CAA of Douai on February 8th, 2024, n°22DA02648***

The CAA considers that, for the computation of the taxable capital gain, the increase in the acquisition price of the property for renovation expenses is not permitted when these expenses had already been taken into account for the computation of the personal income tax.

- **Founder Stock Warrants ("BSPCE"): *the terms for determining the subscription price of current BSPCE are specified - BOI-RSA-ES-20-40-20 of March 27th, 2024***

The FTA specifies that the illiquidity resulting from the periods of non-transferability imposed on bondholders may constitute a difference in rights justifying a discount on the exercise price of the bonds.