



# TAX NEWSLETTER

June 2024

## I. CORPORATE TAXATION

- **Horizontal Tax Consolidation: rejection under the Franco-Swiss Tax Treaty - Decision of the Administrative Court of Appeal ("CAA") of Paris on March 1<sup>st</sup>, 2024, No. 22PA00055, SAS Liebherr-Aerospace et Transportation**

The CAA applied the principle of subsidiarity of international tax treaties. It ruled that the inability to set up a horizontal tax consolidation between French companies held by Swiss companies does not violate the non-discrimination clause in the Franco-Swiss tax treaty

- **Deductibility of loan interest: no evidence of "dependence links", even with convertible bonds and chairmanship of the supervisory board - Decision of the CAA of Nancy on June 20<sup>th</sup>, 2024, no. 22NC01300, SAS Vipico**

The CAA provides clarity on the conditions for assessing dependency within the meaning of Section 39-12° of the French General Tax Code (FTC). This clarification is relevant for the application of the provisions of Article 212, I, a of the FTC, which limits the tax deduction of interest paid to related companies. According to the CAA, these two companies are not considered as related because (i) the fact of being a principal shareholder, even with convertible bond holdings, is not sufficient to characterize a majority shareholding and (ii) the chairmanship of a supervisory board does not necessarily constitute the exercise of de facto decision-making power.

## II. TAX AUDIT

- **Enhanced due diligence requirements for trusts: publication of the Decree - Decree no. 2024-600 on June 26<sup>th</sup>, 2024 implementing Section L. 102 AH of the French Tax Procedures Code ("FTPC")**

In accordance with Sections R. 102 AH-1 and R. 102 AH-2 of the FTPC, to ensure the accuracy of information in the registers of trusts and fiduciaries, the supervisory authorities and entities subject to anti-money laundering and anti-terrorism financing obligations are required to report any discrepancies between the information contained in the registers of trusts and fiduciaries and the information available to them. This reporting ensures the accuracy and consistency of the data provided to the French Tax Authorities (FTA).

- **Requests received by the Administrative Court ("CA") after the deadline: they are no longer necessarily inadmissible - Ruling of the Litigation Section of the French Administrative Supreme ("CE") on May 13<sup>th</sup>, 2024, no 466541**

Until now, requests sent by post had to physically reach the CA before the end of the appeal period. However, in this ruling, the CE reverses its position by considering that the date to be taken into consideration is that of the sending of the request, the postmark being proof.

- **Reporting to the public prosecutor's office: a rejected amending tax declaration does not prevent the offence from being reported to the public prosecutor's office - Judgment of the Criminal Division of the Court of Cassation ("CC") on May 23<sup>th</sup>, 2024, no. 23-80.025 FS-B**

Under Section L. 228 of the FTPC, the FTA is required to report to the public prosecutor any facts discovered during a tax audit that have led to tax reassessments exceeding €100,000, as well as the application of tax penalties equal to 100% or 80%, or even 40% in the event of repetition (section L. 228





of the LPF). However, there is an exception for taxpayers who voluntarily submit an amended tax return. (section L. 228, 8 of the FTFC). The CC judges that this exception must be assessed strictly and does not apply if the amending tax declaration has been rejected by the FTA. It specifies that the validity of the rejection has to be appreciated by the tax judge, and not the criminal judge.

### III. INTERNATIONAL TAXATION

- **Tax treaty between France and Moldova: *publication of the Tax treaty - Decree 2024-481, published in JO 29, on May 27<sup>th</sup>, 2024***

The tax treaty for the avoidance of double taxation and the prevention of fiscal evasion and fraud regarding income taxes, signed between France and Moldova on June 15<sup>th</sup>, 2022, was published on May 27<sup>th</sup>, 2024. This Tax treaty, ratified by France on March 21<sup>st</sup>, 2024, came into force on April 23<sup>rd</sup>, 2024.

- **Free movement of capital: *the levy provided for in Section 244 bis B of the FTC fails to respect this principle, since a non-resident cannot, unlike a tax resident, benefit from allowances for holding periods - Decision of the CE on May 31<sup>st</sup>, 2024, no. 489370***

The CE has ruled that the provisions of Section 244 bis B of the FTC violate the freedom of movement of capital as these provisions may entail in higher taxation for non-resident individuals compared to what tax residents are subject to.

- **Franco-Swiss treaty: *there are no plans to conclude a new inheritance tax treaty - Question no. 12188 submitted by Marc Ferracci to the Minister for the Economy on October 17<sup>th</sup>, 2023, answered on June 4<sup>th</sup>, 2024***

In this answer, France reiterates its intention not to conclude a new inheritance tax treaty with Switzerland, and points out that France, like many other countries, no longer wishes to conclude this type of treaty. Ministerial question no. 2235, raised in similar terms on October 18<sup>th</sup>, 2022, had already been answered in the same way (published on February 7<sup>th</sup>, 2023).

### IV. INDIVIDUAL TAXATION

- **Law on patrimonial justice within the family: *several tax measures aim to reduce the joint and several liability of spouses - Law 2024-494 on May 31<sup>th</sup>, 2024, Sections 4, 5 and 6***

In the context of divorce, this law permits an *ex-gratia* appeal to relieve joint and several liability of spouses under Section 1691 bis, II of the FTC.

- **Transfer duties and usufruct: *the transfer duties borne by donors who have reserved the usufruct of the securities sold do not constitute costs and taxes paid for the acquisition of the bare ownership or usufruct thereof - Decision of the 8<sup>th</sup> and 3<sup>rd</sup> chambers of the CE on June 17<sup>th</sup>, 2024, no. 488488***

In the case of a joint sale of shares with reinvestment of the price and deferral of the dismemberment, the bare owner, who is the only person liable to tax on the capital gain, cannot deduct from the capital gain, the gift tax on the bare ownership of the shares paid by the donor usufructuary.