



TAX NEWSLETTER

July and August 2024

I. CORPORATE TAXATION

- **Share of costs and charges (“QPFC”): *it cannot be neutralized when the subsidiary is not established in a European Union (“EU”) member State - Decision of the Administrative Court of Appeal (“CAA”) of Paris on July 5th, 2024, No. 23PA03857, Axa SA***

The CAA judges that Section 216 of the French Tax Code (“FTC”) and the case law of the European Court of Justice (“CJEU”) prohibit the neutralization of the QPFC for dividends paid by a Swiss subsidiary (not consolidated for tax purposes) to its French parent company.

- **Reduced Corporate Income Tax (“CIT”) rate: *self-held shares are excluded when determining the ownership percentage of the share capital for Small and Medium-Sized Enterprises (“SMEs”) - Decision of the 9th and 10th chambers of the French Administrative Supreme Court (“CE”) on July 30th, 2024, No. 471055***

The CE considers that the condition that at least 75% of the share capital must be owned by individuals (or by companies that are at least 75% directly owned by individuals) for the application of the reduced CIT rate is assessed without taking into account the portion of the capital held by the company itself seeking to benefit from the reduced rate.

II. TAX AUDIT

- **Management fees: *a holding company cannot deduct payments performed to its manager for management services rendered to its subsidiaries - Decision of the 8th chamber of the CE on July 8th, 2024, No. 474055***

The CE judges that a managing holding company which outsources its management services to a company - where its manager is the sole shareholder - cannot deduct these fees from its taxable income. According to the CE, since these services fall within the duties of the holding company and its manager, there is no actual consideration for the payments.

- **Litigation claims time-limit: *the conclusion of a settlement does not reopen it with respect to prior tax assessments - Decision of the 9th chamber of the CE on July 16th, 2024, No. 469477***

The CE considers that a company subject to tax reassessments which enters into a settlement with the French Tax Authorities (“FTA”) cannot subsequently file a claim seeking the regularization of taxes assessed prior to the period covered by the settlement.

- **Tax reassessment notice: *the notification to a liquidated company no longer having a legal representative is not regular - Decision of the 3rd and 8th chambers of the CE on July 19th, 2024, No. 488164***

The CE considers that following the publication of a company’s liquidation closure, the FTA must request the judicial appointment of an *ad hoc* representative. Otherwise, a liquidated company, which is not listed anymore on the commercial register and no longer has a legal representative, cannot be validly notified of a tax reassessment.

- **Abuse of law: *reclassifying dividends and capital gains (benefiting from the parent-subsidiary regime) as interest income is not sufficient to establish an abuse of law - Decision of the 3rd and 8th chambers of the CE on July 23rd, 2024, No. 481894, BNP Paribas***

The CE considers that the FTA cannot submit to tax under Section L 64 of the French Tax Procedures Code (“FTPC”) interest income that a company recorded as dividends or capital gains, unless they demonstrate that these booking were part of an artificial scheme involving the presentation of the transaction as a capital investment when it was actually a loan secured by shares with interest-like returns.





- **Tax fraud: the FTA publish new comments on the offense of providing instruments facilitating fraud - Update of the FTA guidelines (BOFIP) on August 28th, 2024, BOI-CF-INF-40-40**
This new offense is established by Section 1744 of the FTC introduced by the Finance Bill for 2024 and which specifies that prosecutions can be initiated by the public prosecutor without a FTA's prior action and the maximum penalty for individuals is 5 years of imprisonment and a fine of €500,000 (if the facilitation occurs via the Internet).

III. INTERNATIONAL TAXATION

- **Main place of management: the CAA rules on elements of characterization - Decision of the CAA of Toulouse on July 4th, 2024, No. 22TL22039, Bios Analytique Limited**
The CAA judges that a British company has in France its main place of management if, notably, its registered office in the UK is merely a domiciliation address and its binding actions are performed by its French managers who travel to the UK 10 days per year, on dates not corresponding to those of the aforementioned actions. As a result, the CAA judges that the company should have filed tax returns in France and may be subject to tax assessment by default without prior issuance of a formal notice.
- **Tax expatriation to Italy: the amount of the annual lump-sum tax is increased to €200,000 - Decision by the Italian Council of Ministers (Decree) on August 7th, 2024**
The Italian government decided, by Decree dated August 7th, 2024, to double the annual lump-sum tax on foreign income and gains owed by new Italian tax residents from €100,000 to €200,000 per year. This increase will apply exclusively to individuals who newly transfer their tax residence to Italy after the reform enters into effect, following the conversion of this Decree into law by the Italian Parliament within 60 days.

IV. INDIVIDUAL TAXATION

- **Non-residents capital gains on real estate: registration with a foreign mutual insurance company is insufficient to establish affiliation with the mandatory foreign social security regime - Judgment of the Administrative Tribunal ("TA") of Montreuil on July 4th, 2024, No. 2212241**
The TA judges that providing a certificate from a Belgian private mutual insurance company assessing the taxpayers' registration is not sufficient to demonstrate their affiliation with the Belgian mandatory social security regime. Therefore, the taxpayers do not qualify for the 7.5% social contributions rate on real estate capital gains in France.
- **Wealth tax (« ISF »): real estate properties booked on the balance sheet are presumed to be professional assets - Decision of the Commercial Chamber of the Court of Cassation on July 10th, 2024, No. 23-14.179**
The Court of Cassation rules that only the portion of a company's shares or equity corresponding to the main assets for the taxpayer's professional activity can qualify as exempt professional assets for ISF (see Section 885 O ter of the FTC). In the case at hand, although the holding company, whose purpose was the management of healthcare establishments (aligned with the taxpayer's professional activities), had extended its corporate purpose to include real estate management, this extension was deemed "insufficient to assimilate property rental activities with the managing director's professional activity".
- **Online correction of personal income tax returns: the service is available - Announcement on impots.gouv.fr on July 31st, 2024**
The correction service is available from July 31st, 2024, to December 4th, 2024, included. The FTA may request additional information and may reject the correction request, especially if this adjustment lead to a tax reduction or the creation or increase of a tax credit.