



TAX NEWSLETTER

September 2024

I. CORPORATE TAXATION

- **Unjustified liability (accounting error): correction of the taxable income and taxation of the amounts booked in the shareholder's current account - Decision of the Administrative Court of Appeal ("CAA") of Toulouse on September 12th 2024, n°23TL01795, M. A and n° 23TL01866, sté Espace et Eau**

A company had booked the rent it owed to an SCI in a shareholder's current account. The CAA confirmed the lower court's decision, ruling that the claimant had failed to demonstrate that he did not have access to the amounts booked in his shareholder's current account, nor that this was due to an accounting error. As a result, these amounts were deemed distributed income.

- **Electing for corporate income tax: a company has 60 days to elect for deferred taxation of unrealized capital gains in case of election for corporate income tax - Decision of the CAA of Lyon on September 19th 2024 n°24LY00740**

The CAA judges that if a SCI elects for corporate income tax, it has 60 days from the date of the change in tax regime to elect for deferred taxation of unrealized capital gains. The CAA judges that a tax option not performed within the legal timeframe does not allow to defer taxation of unrealized capital gains, and that the revaluation difference on the real estate property must be subject to income tax in the hands of the applicant, as income from movable assets.

II. TAX AUDIT

- **Reassessment notice: the reassessment notice can be notified by e-mail - Decision of the CAA of Paris on June 28th 2024, n°22PA05281**

The French Administrative Supreme Court ("CE"), in a decision dated May 25th 2018 n° 408443, recognized that the French Tax Authorities ("FTA") could validly notify a reassessment notice by means other than a registered letter with acknowledgement of receipt, provided that these means offer equivalent guarantees of proof. In accordance with this principle, the CAA judges that notification of a reassessment notice by sending a link, by email, to the taxpayer's email address, to the FTA's secure file exchange application, Escale, is valid.

- **Procedure: application rejected for absence of answer to an invitation to produce a summary statement - Decision of the CAA of Versailles on September 19th 2024, n°24VE01270**

The CAA confirmed the dismissal of the claim on the grounds that the claimant had failed to answer to the invitation to produce a summary statement, thereby confirming his withdrawal. The claimant maintained that he had not received a formal notice, that the investigation was closed and that the FTA had not replied to his last statement, so that he was waiting for the hearing of the case.

III. INTERNATIONAL TAXATION

- **Fines for failure to declare foreign bank accounts: no illegality or incompatibility with European Union (EU) law - Decision of the CAA of Lyon on September 19th 2024, n°23LY02008 and n°23LY02010**

The CAA confirmed the first instance judgment, judging that the fine for failing to declare bank accounts held abroad was proportionate and that the tax provisions did indeed apply to individuals. It should be noted that in this case, the applicant challenged the compliance of Section 1649 A and 1736 of the French Tax Code ('FTC') with EU law, arguing that they imposed a disproportionate restriction on the free movement of capital and an inappropriate application of the fines to individuals.





- **Tax residency: confirmation of tax residency in France within the meaning of domestic tax law and the tax treaty - Decision of the CAA of Nantes on September 24th 2024, n° 23NT002980**
The CAA confirmed that the taxpayer was resident in France for tax purposes within the meaning of domestic tax law and the tax treaty, on the grounds that his son attended school in France, was habitually resident there and received most of his income from French sources.
- **Dividends: no Exceptional Contribution on High Incomes (CEHR) on dividends paid to an Italian tax resident - Judgment of the Administrative Tribunal ("TA") of Montreuil on September 19th 2024, no. 2215513**
The TA judged that according to Article 10 of the Franco-Italian tax treaty of October 5th 1989, French-source dividends paid to an Italian tax resident cannot be subject to the CEHR. This article provides that, if the dividends are taxable in the taxpayer's State of residence, the source State retains the right to tax this income to a tax levied by way of a withholding tax, which is not the case with the CEHR, which is collected by way of a tax assessment in the year following the income's receipt. The CE already ruled in this sense concerning life insurance products paid to a Belgian tax resident (CE 10-7-2019 n° 425148).
- **Inheritance tax law: double taxation in the event of international inheritance, Priority Question of Constitutionality ("QPC") not transmitted - Judgment of the Court of First Instance ('TJ') of Bobigny, Chamber 9, Section 1, on September 4th 2024, N°24/00433**
In this case, an heir who was resident in France for tax purposes paid inheritance taxes in Switzerland and France on French assets, following the death of the deceased who was resident in Switzerland for tax purposes, without being able to offset the Swiss inheritance tax in France.
The claimant raised a QPC concerning Section 784 A of the FTC, which limits the deduction of foreign inheritance tax on assets located outside France, arguing that it is contrary to the principles of equality before public burdens and the right to property. The TJ concluded that the arguments put forward were not serious, in particular because there was no deprivation of property and the tax measures were legitimate for reasons of general interest. Consequently, the TJ refused to refer the QPC to the French supreme civil Cour of cassation.

IV. INDIVIDUAL TAXATION

- **Inheritance tax basis: non-deductibility of certain quasi-usufruct debts - The BOI-ENR-DMTG-10-40-20-20 is updated on September 26th 2024**
The Finance Act ("LF") for 2024 introduced an article 774 bis of the FTC, which prohibits the deduction of inheritance tax relating to certain restitution debts payable in respect of a sum of money of which the deceased had reserved the usufruct. The BOFIP has been updated.
- **Dismemberment: dividends from the sale of all the real estate assets of an SCI go to the bare owner - Decision of the 3rd Civil Chamber of the French civil court on September 19th 2024, n°22-18.687 et 22-18.733**
Unless there is a different agreement between the bare owner and the beneficial owner (usufructuary) of the shares, the proceeds of the sale of all the real estate assets of a SCI, distributed in the form of dividends, accrue to the bare owner, and the beneficial owner's right is then exercised in the form of a quasi-usufruct over the sum distributed. As a result, the decision by the beneficial owner to distribute the dividends - taken from the proceeds of the sale of all the real estate assets of a SCI - over which he benefits from a quasi-usufruct, cannot constitute an abuse of usufruct.