TAX NEWSLETTER

October 2024

I. CORPORATE TAXATION

- **VAT:** ***management fees (fictives invoices) - Decision of the Administrative Court of Appeal ("CAA") of Paris on October 23rd 2024, Sté Bistro de l'Arc, n° 23PA01999***
  The CAA judges that the French Tax Authorities ("**FTA**") did not provide sufficient evidence that the management fees invoiced were not performed. The CAA judged that the manager was able to perform the services (administrative, commercial and technical) and that the lack of details on the invoices was not such as to give rise to a presumption that the services were not performed.

- **Long-term capital gains and equity interests:** ***reject of the exemption regime - Decision of the CAA of Paris on October 28th 2024, Sté Theta Participations, n° 21PA06092***
  The CAA confirms the reject of the long-term capital gains tax exemption applied to the disposal of a 19.44% participatin in a company managing investment securities, pursuant to the exclusion stipulated in the second paragraph of a ter of I of Section 219 of the French Tax Code ("**FTC**").

II. TAX AUDIT

- **Appeal to the Head of Brigade:** ***request for an appeal to the Head of Brigade sent too late to the FTA - Judgment of the Administrative Tribunal ("TA") of Paris on October 15th 2024, n° 2206050***
  The TA judged that "*in view of the steps taken by the FTA to ensure that the meeting with the French tax inspector's head of Brigade could take place, the applicant is not entitled to claim that he was deprived of a substantial procedural guarantee prior to the recovery of the taxes in dispute"*. The TA points out that, although the claimant did not elect domicile with his counsel, the latter is presumed to have forwarded the meeting proposals to him, and that it was his responsibility to forward them to him. In addition, the investigation showed that the letters sent by his counsel were received after the deadline to confirm the taxpayer's intention to meet the Head of Brigade.

- **Proposition of reassessment*****: regularity of a proposition of reassessment despite an error - Decision of the 9th chamber of the French Administrative Supreme Court ("CE"), on October 31st 2024, n° 492732***
  The CE dismissed the appeal against the decision of the CAA of Versailles on February 8th 2024 (n° 21VE02024) in a case where the taxpayer requested the benefit of the tax deferral provided for in Section 150-0 D bis of the FTC, despite it exceeds the reinvestment deadline by nine days and the absence of this deferral in his tax return.

III. INTERNATIONAL TAXATION

- **Withholding tax:** ***distributed income does not always benefit from the tax Treaty's tax rate limitation - Decision of the CAA of Bordeaux on October 23rd 2024, n° 22BX02116, Sté Ecocert***
  The CAA confirmed the TA's judgement that debt waivers granted to subsidiaries (Ecuadorian and German) constituted hidden benefits (distributed income) subject to withholding tax. The CAA judges that the tax treaty limitation on the withholding tax rate for dividends *(i)* applies to the German subsidiary, by application of the Franco-German tax treaty of 21 July 1959, which qualifies distributed income as dividends, but *(ii)* does not apply to the Ecuadorian subsidiary, by application of the Franco-Ecuadorian tax treaty of 16 March 1989, which does not consider deemed distributions as dividends.

- **Non-resident representative:** ***taxation of the representative according to his presence in France - Decision of the CAA of Paris on October 28th 2024, n° 23PA00492***
  In this case, the claimant, a non-tax resident of France, argued that he performed part of his management activity from Belgium and part from the company's registered office in France, and requested that his income be taxed in proportion to the time spent in France. The CAA ruled that for the years 2015 and 2016, the claimant did not provide sufficient evidences that these services were rendered abroad, and taxed his income in France, but that for the year 2017, the FTA did not provide any evidence to suggest that the paid services had indeed been rendered in France.

- **Transfer of the head office outside France:** ***no transfer of head office before its removal from the Trade and Companies Register ("RCS") - Decision of the CAA of Paris on October 17th 2024, n° 22PA02556, Sté N.G.I.***
  In this case, the TA judged that the transfer of a French holding company's head office outside France was not enforceable against the FTA, resulting in the taxation of the unrealized capital gain. The CAA confirmed this judgement, stating that although the company had filed its last income tax return for the year ended on September 30th 2012 and had stated that it had transferred its head office to Luxembourg on December 20th 2012, in the CAA's view the FTA could consider that the last taxable financial year in France ended on April 30th 2013, i.e. the last day of the month in which the deletion was published in the RCS (in the absence of any specific formalities carried out by the company). As a result, the capital gain on the sale is taxable in France because the sale took place before the company was deregistered with the RCS.

- **Date of transfer of shares in a US company:** ***application of US law - Judgment of the TA of Cergy-Pontoise on October 14th 2024, n° 2205374***
  The date of the transfer of shares in a US company acquired by another US company is governed by US law and not by French law. Under US law, the transfer took effect on November 30th 2015. It is therefore irrelevant that, under French law, the transfer of shares took effect when the shares were registered in the purchaser's account in accordance with the French Monetary and Financial Code or when the price was paid in 2016.

IV. INDIVIDUAL TAXATION

- **Hidden advantage:** ***no undervalued rent in the absence of significant terms of comparison - Decision of the CAA of Paris on October 23rd 2024, n°23PA01887***
  The CAA judget that the FTA did not demonstrate that the rent was undervalued or that a hidden advantage had been granted because *"the FTA referred [...] to an assessment of rental rates in 2019, which the applicants maintain without being seriously challenged that it corresponds to exceptional properties that are not comparable to the rented property and which is subsequent to the tax years in dispute. Furthermore, the FTA's reference to an article dated 13 November 2019 from a property website reporting on the buoyancy of the rental market in the city in 2019, without however distinguishing between seasonal and annual lets, does not make it possible to establish that the rental value would have been higher either*". Thus, the absence of any terms of comparison did not enable the FTA to establish that the rental value exceeded the amount invoiced, which would have constituted a hidden advantage.

- **Reporting of accounts held abroad:** ***obligation to declare an account held abroad in the event of simple use of the account - Decision of the 8th and 3rd chambers of the CE on October 14th 2024, n° 489580***
  According to the CE, the obligation to declare accounts (section 1649 A of the CGI) in 2012 "*extends not only to the accounts which the taxpayer is the holder of or for which he holds a power of attorney, but also to all the accounts which he used*". In the particular case, the use was demonstrated by "*the instruction given to the company to exercise the options and transfer the corresponding securities*".