



TAX NEWSLETTER

November 2024

I. CORPORATE TAXATION

- **Abuse of law: acquisition of a company without any substance but held for the legal two-year period to benefit from the parent-subsidiary tax regime - Decision of the French Administrative Supreme Court ("CE") on November 29th 2024, n°469012**

The CE judges that the parent company cannot benefit from the tax regime for parent companies simply by holding, for the period required under section c of 1 of article 145 of the French Tax Code ("FTC"), the shares in a subsidiary that has no assets, without any involvement from the parent in the economic development of its subsidiary.

- **Tax losses carry forward of losses: no carry forward in case of change in business activity - Decision of the Administrative Court of Appeal ("CAA") of Toulouse, on November 14th 2024, n°23tI00012, SARL Immofaq**

The CAA confirmed the judgment of the Administrative Tribunal ("TA"), which concluded that the company did not meet the conditions under article 220 quinquies of the FTC due to a substantial change in its business activity. The CAA underlined that the transformation of the company's activity prevented it from being considered the same entity before and after the change.

II. TAX AUDIT

- **Taxation of foreign assets: interest generated are excluded from the taxable basis for transfer taxes - Decision of the Commercial division of the Court of Cassation ("CC") on November 6th 2024, n°23-15.183 f-b**

The CC states that, regarding Section 755 of the FTC, assets held abroad, whose origin and acquisition methods have not been justified in the procedure provided by Section L. 23 C of the French Tax Procedure Code ("LPF"), are considered as a gratuitous acquisition subject to transfer taxes at the highest rate. The CC judges that, for the computation of transfer taxes, the interest generated by the financial assets on the account must be deducted.

III. INTERNATIONAL TAXATION

- **Manual donation: taxation of a manual donation revealed during a period of French residency - Written question n°00845 - 17th legislature - Answer from the ministry of the economy, finance, and industry published on November 7th 2024**

The triggering event for the taxation of a manual donation is the date of its disclosure. Thus, when a manual gift made abroad is disclosed later by the beneficiary who became a French tax resident, the manual gift falls within the scope of French taxation under the provisions of paragraph 3 of Section 750 ter of the FTC, regardless of the actual transfer date of the property or sum subject to the gift.

- **Transfer of the head office outside France: retention of premises and a bank account are not sufficient to establish the continuation of business activity in France - Decision of the CE, 8th-3rd chambers, on November 2024 29th, n°473237, company Fg Investissements**

The CE reversed the challenged decision, considering that the elements retained by the CAA were insufficient to establish the continuity of the business activity in France. To conclude that the company continued its business activity in France until April 30th 2013, and had ceased to be liable to corporate income tax only on that date, the CAA had relied on the fact that the company had only returned the keys of the Paris office it had rented on April 11th 2013 (following the end of the termination notice sent on January 11th) and only closed its French bank account on October 13th 2015.



- **Inheritance between France and Spain: *the French tax authorities' Guidelines ("BOFIP") are updated on the Inheritance tax treaty concluded on November 28th 2024***

Amendments have been made to the BOI-INT-CVB-ESP-20 on the tax treaty concluded between France and Spain aimed at avoiding double taxation and establishing reciprocal administrative assistance rules in matters of income tax and inheritance tax, signed on 8th January 1963.

IV. **INDIVIDUAL TAXATION**

- **Capital gain on sale and exemption: *sale of shares in a company without any substance does not constitute abuse of law - Decision of the CE on November 29th 2024, n°470958***

The sale of assets necessary for the operational activity of a company does not, by itself, confer an artificial character to the subsequent sale of the company's shares, hiding the liquidation of the company (and justifying consequently the taxation of a liquidation surplus in the hands of the seller). This sale may only, if applicable, call into question the application of the exemption provided under Section 150 0 D ter of the FTC.

- **Inheritance declaration: *deduction of a claim for restitution related to legal usufruct on a portfolio of securities and return to the deceased estate of work financed by the usufructuary - Decision of the Commercial chamber of the CC, on November 27th 2024, n° 23-12.151 f-b***

The CC judges that to deduct, at the second death, the claim for restitution concerning securities over which the surviving spouse had legal usufruct, the inheritance declaration identifying and accurately reporting the value of the securities on the date of death is insufficient to establish the certainty of the restitution debt, and a notarial or registered quasi-usufruct agreement must have been formalized. Furthermore, in this case, the heir challenged the decision of the Court of Appeal ("CA") of Dijon on June 30th 2022 (n°21/00527), which required her to return to her mother's estate the amount of the works financed by the latter. The CA ruled that both significant works (which are the responsibility of the bare owner) and improvements (which are the responsibility of the usufructuary) are considered gifts. The CC confirms the decision of the CA, considering that even improvements for which the usufructuary is liable may result in impoverishment with a gift intent.

- **Abuse of law: *reduction of share capital by repurchase of shares - Judgments of the TA of Montreuil (n°2215137) and TA of Dijon (n°2300708) on November 7th 2024***

The TA of Montreuil and Dijon ruled in two judgments issued on the same day, in line with the position of the Tax Abuse of Law Committee, that reductions of share capital through the repurchase of shares do not constitute an abuse of law. These judgments are contradictories with other TA, which have recently qualified such transactions as abusive (e.g., the TA of Montpellier on February 12th 2024 n°2201983, and the TA of Bordeaux on October 17th 2024 n°2205287).