



TAX NEWSLETTER

December 2024

I. CORPORATE TAXATION

- **Advance on a shareholder's current account: no gift - Decision of the 9th and 10th chambers of the French Administrative Supreme Court ("CE"), on November 8th 2024, n° 470887, société ADG IMMO**
An amount credited to the shareholder's current account of a parent company with its subsidiary and debited from the subsidiary's current account with its parent company is, in the absence of a gift, an advance from the parent company to its subsidiary.
- **Change of corporate form: date of formalities for conversion not taken into consideration - Decision of the Commercial chamber of the Court of Cassation ("CC") on December 18th, 2024, n° 23-21.435**
The CC points out that the registration duties applicable to a transfer of company rights are computed according to the legal nature of these rights at the date of the event giving rise to the registration duties. In this particular case, it is irrelevant that the company's transformation had not been published in the Trade and Companies Register ("RCS") by the date on which the transfer deed was submitted for registration.
- **Interest on shareholders' current accounts: maximum rate set at 5.75% for financial years of 12 months ending on December 31st 2024 - Notice of December 23rd 2024 relating to the application of Sections L. 314-6 of the Consumer Code and L. 313-5-1 of the Monetary and Financial Code concerning usury**
Interest paid to members or shareholders in respect of sums they leave or make available to the company (in addition to their share in the equity) is deductible, regardless of the form of the company, only up to a certain limit for the computation of the taxable income. The maximum tax rate for a 12-month financial year ending on December 31st 2024 is 5.75%.

II. TAX AUDIT

- **Hierarchical appeal: only the legislative provisions invoked during the initial phase may be invoked against the French Tax Authorities ("FTA") at the hierarchical appeal stage - Decision of the 8th and 3rd chambers of the CE, on October 23rd 2024, n° 469431, min. c/ EURL Laguerre Chimie**
The CE reminds that a taxpayer cannot validly request, at the stage of hierarchical appeals, to benefit from a legislative provision different than the one discussed before the tax inspector. This position of the CE is in line with its previous case law, according to which the FTA cannot substitute a legal basis in the context of such appeals.

III. INTERNATIONAL TAXATION

- **Distribution of dividends: definition of beneficial owner - Decision of the 9th and 10th chambers of the CE of November 8th 2024, n°471147, Sté Foncière Vélizy Rose**
The CE reminds that, under Section 119 ter of the French Tax Code ("FTC"), dividends paid by a French company to a European parent company are exempt from withholding tax, provided that the parent company is the beneficial owner. In this decision, the CE refused to recognize an intermediate holding company as the beneficial owner for purposes of withholding tax exemption and the application of the tax treaty with the state of residence of the beneficial owner (in the absence of evidence of their tax residence). The CE also held that these provisions are not contrary to the freedom of establishment provided by Sections 49 and 54 of the EU Treaty.





- **Payment of a fractional Swiss-source retirement capital: no lump-sum taxation of 7.5% - Decision of the Administrative Court of Appeal (“CAA”) of Lyon on November 28th 2024, n° 22LY01728**

The CAA confirms the judgment of the Administrative Tribunal (‘TA’) of Lyon on April 5th 2022, which consider that the payment of a Swiss-source retirement capital in two instalments cannot benefit from the application of the flat withholding tax rate of 7.5% provided for in Section 163 bis of the FTC. This section does not apply to retirement benefits paid in instalments. The CAA points out that the law does not provide for any exception to this principle and that, in any event, there was no ‘external cause’ in the choice made by the applicants.

- **Image rights: inapplicability of Section 123 bis of the FTC - Decision of the CAA of Paris on December 13th 2024, n° 22PA04160**

The case concerned an Argentinian footballer playing for PSG who sold his image rights to a Panamanian company, which received advertising fees of €2.8 million. The FTA reassessed the claimant on the basis of Section 123 bis of the FTC.

At first instance, in a judgement of the TA of Paris on June 23rd 2022 (n° 2102778), the TA ruled that the safeguard clause applied, as the player had spontaneously declared the income in question within the legal timeframe, which had been subject to personal income tax in proportion to his tax residency in France. The Panamanian holding company was not considered to be an artificial arrangement designed to circumvent French tax legislation, even though Section 123 bis of the FTC applies to all income for the year, even in the event of a transfer of tax residence during the year.

In its decision, the CAA confirmed the tax discharge, but without relying on the safeguard clause, ruling that the Panamanian company was not financially preponderant and specifying that *‘the market value of the image rights [booked in the balance sheet of the Panamanian company, for 55% of the total value of the assets], must be taken into account to assess whether the assets of the Panamanian company were mainly made up of transferable securities, receivables, deposits or current accounts within the meaning of the provisions of Section 123 bis of the FTC’*.

IV. INDIVIDUAL TAXATION

- **Allocation of profits: need to provide evidence - Decision of the CAA of Paris on December 13th 2024, n° 23PA00778**

In this decision, the CAA remind that an agreement entered into before the end of the fiscal year of a company not subject to corporation income tax (“CIT”) may allocate to the partners rights in the company’s profits that differ from those provided for in the articles of association, as long as the partners are able to provide sufficient evidence for this derogatory allocation.

- **Free transfers of individual company under management leases - French tax authorities’ Guidelines (“BOFIP”) updated on December 11th 2024**

Section 41 of the FTC allows, at the beneficiary’s option, the deferral of taxation on business capital gains arising from the free transfer of an individual company as part of an inheritance or gift. In an update version of their guidelines on December 11th, 2024 (BOI-BIC-PVMV-40-20-10), the FTA clarify that *‘the fact that the individual company was leased out prior to the transfer does not prevent it from benefiting from this scheme, provided all other conditions are met.’* The previous BOFIP excluding business leaser from the benefit of this scheme is therefore withdrawn.