



TAX NEWSLETTER

January 2025

I. CORPORATE TAXATION

- **Intragroup loans: *the lender's minimum taxation and the application of a market rate must be justified - Decision of the Administrative Court of Appeal ("CAA") of Paris on December 10th, 2024, No. 23PA00330, Société Hermitage***
The CAA rules that the lending company must justify, by any means, the rate it could have obtained from independent financial entities for a loan under similar conditions. In the case of renegotiating the loan resulting in a higher interest rate, the company must demonstrate its interest in such a transaction. This company must also justify the minimum taxation of its parent company due to the interest paid.
- **Participation: *the accounting classification is enforceable against the French Tax Authorities ("FTA") - Judgment of the Administrative Tribunal ("TA") of Paris on January 28th, 2025, No. 2306966, Sté TM Judith***
The TA judges that the FTA's guidelines published in BOI-BIC-PVMV-30-10, §140 is enforceable against the FTA, preventing them from challenging the inclusion of eligible securities under the parent-subsidiary regime in the "participation" account.

II. TAX AUDIT

- **Abuse of law: *the apprehension of salaries in the form of dividends is abusive - Decisions of the French Administrative Supreme Court ("CE") on November 24th, 2024, No. 487793, 487706 and 487707***
The CE considers that a structure allowing the apprehension of salaries in the form of dividends - whose tax regime is more favorable - has an exclusively tax-driven purpose and constitutes an abuse of law.
- **Tax ruling: *professionals can submit their requests online - Announcement on impots.gouv.fr on January 16th, 2025***
Since January 16th, 2025 the FTA have made it possible for professionals to submit a request for a tax ruling directly through the secure messaging system of their professional space on impots.gouv.fr website.
- **Distributed income: *salaries paid to a shareholder without justification of actual work performed must be reclassified - Decision of the CAA of Paris on January 22nd, 2025, No. 23PA02695***
The CAA rules, pursuant to sections 109,1, d and 39,5, a of the French Tax Code ("FTC"), that salaries paid by a company to one of its shareholders are deductible only to the extent that they correspond to actual work performed by the shareholder. Otherwise, the amounts paid must be reclassified as distributed income.
- **Trust forms: *in case of non-declaration, the €20,000 fine is due by the trustee even if a spontaneous regularization is initiated - Judgement of the TA of Montreuil on January 23th, 2025, No. 22NC00764***
The TA judges the FTA may impose the €20,000 fine provided for in section 1736, IV bis of the FTC on a trustee who fail to meet its reporting obligations within the prescribed deadlines, even if a spontaneous regularization of this omission is initiated. In the case at hand, the trustee submitted the annual trust forms for the years 2015, 2016, 2017 and 2018 on June 17th, 2019, whereas they were due no later than June 15th of each respective year. As a result, the FTA applied a total fine of €80,000.





- **Tax penalty: the 100% fine on the amounts paid applies in the absence of precise designation of the beneficiary - Decision of the CAA of Nancy on January 30th, 2025, No. 22NC00764**

The CAA rules that a response to a designation request (as provided for in section 117 of the FTC) that is implausible, fanciful, imprecise, unverifiable or devoid of any substance given the nature of the reassessment can be treated as a refusal to designate justifying the application of the 100% fine under section 1759 of the FTC.

III. INTERNATIONAL TAXATION

- **Withholding tax: withholding tax applied at a rate higher than the treaty rate does not entitle the taxpayer to the treaty tax credit - Ruling of the FTA published on December 18th, 2024, BOI-RES-BIC-000105**

The FTA clarifies that in the presence of a tax treaty, when a withholding tax has been levied at a rate higher than the treaty rate, the withholding tax can only be fully deducted from the company's profits, without being eligible for the application of the treaty tax credit.

- **Tax residency: the CAA rules on the criterion of the center of economic interests - Decision of the CAA of Paris on January 17th, 2025, No. 23PA04058**

The CAA rules that a taxpayer who, during a temporary professional secondment, moves her residence from France to Hungary with her spouse (who ceases all professional activity) and their children, retains the center of her economic interests in France as long as (i) the only income of her household is the salary received from her employer, a French company, for the work she performs in Hungary, (ii) she has kept a property in France, for which she pays property tax, and (iii) she has realized capital gains on securities accounts held in France without invoking the France and Hungary tax treaty provisions for their taxation.

IV. INDIVIDUAL TAXATION

- **Inheritance division: one of the undivided bare owners can request the division, even if the surviving spouse has the usufruct of the entire estate - Decision of the Civil Chamber of the French Civil Supreme Court ("Cour de cassation") on January 15th, No. 22-24.672**

The Cour de cassation rules that an heir with reserved rights can claim the division of the deceased's separate assets in which he holds an undivided share, even if the deceased was married under a universal community property regime with a clause for full attribution to the surviving spouse. This heir may also claim for the reporting or reduction of any gifts made by the deceased.

- **Trusts: inheritance and gift tax ("DMTG") is due by heirs who do not justify they are not beneficiaries - Decision of the Commercial Chamber of the Cour de cassation on January 22nd, 2025, No. 24-16.995**

Pursuant to section 750 ter of the FTC, in its version available before the adoption of the Law No. 2011-900 on July 29th, 2011, the Cour de cassation rules that DMTG is only due by the heirs on assets that remained the property of the settlor of the trust (i.e., assets of which the deceased did not irrevocably and effectively divest himself, insofar as he continued to exercise his ownership rights) and were transferred to them upon the settlor's death. It is irrelevant whether the trust continues to produce its effect after the settlor's death or whether the settlor's heirs are not the beneficiaries of the trust.

- **Capital contribution: capital gain tax must be paid during the year of expiration of the two-year reinvestment period - Decision of the CAA of Paris on January 24th, 2025, No. 23PA05337**

The CAA rules that if there is no reinvestment within two years from the sale of the received securities, the deferral of the capital gains tax on the contribution, which the taxpayer benefits from under section 150-0 B ter of the FTC, automatically expires. Therefore, the capital gain tax is due by the taxpayer for that fiscal year, not for the year of the contribution of the securities, regardless of whether a reinvestment commitment was made by the company benefiting from the contribution.