



TAX NEWSLETTER

June 2025

I. CORPORATE TAXATION

- **Tax losses: a substantial change in the branch's actual activity prevents carryforward - Judgment of the Administrative Tribunal ("TA") of Paris on June 5th 2025, No. 2306251**
The TA judges that the French branch of an Italian bank, which ceased its banking activities (while retaining its banking license) to now carry out an activity that involves no offering of banking products but only the re-invoicing of intra-group services (accounting for 95% of its revenue), had undergone a real change in activity. Consequently, pursuant to Section 221,5 of the French Tax Code ("FTC"), the branch loses the right to carry forward its previous tax losses.
- **Capital reduction not motivated by losses: Section 112,1 of the FTC is not unconstitutional - Decision of the Administrative Court of Appeal ("CAA") of Bordeaux on June 25th 2025 No. 23BX03078**
The CAA judges that the difference in tax treatment between shareholders is justified by their different situations, insofar as a capital reduction through share buy-back is equivalent to a disposal of shares by the shareholder to the company, whereas a capital reduction by decreasing the nominal value of shares does not involve any transfer of ownership. The fact that the reduced-nominal shares were received by way of inheritance is irrelevant, as inheritance tax and income tax have different basis. Accordingly, Section 112, 1° of the FTC does not infringe the principles of equality before the law and public burdens.
- **Family-owned SARL: multiple non-commercial activities exclude option for tax transparency - Decision of the CAA of Versailles dated June 26th 2025, No. 22VE02176**
The CAA judges that a family-owned SARL which elects for the look-through regime while carrying out multiple civil (non-commercial) activities - including house and office renting and consultancy services - which do not constitute an inseparable complement to a principal commercial activity, is liable to Corporate Income Tax ("CIT"). Thus, its losses are not deductible from the partners' personal income.

II. TAX AUDIT

- **Remuneration paid to directors: effective work must be demonstrated - Decision of the CAA of Paris on May 21st 2025, Nos. 23PA03556 and 23PA04799**
The CAA judges that remuneration and professional expense reimbursements paid to a director are not deductible where the company's operational management (having a real estate trading business, and, according to the taxpayer, justifies hospitality expenses for real estate promotion and efforts to find potential buyers and partners in the real estate sector) is carried out by a subsidiary, and only 9 sales were completed during the period in question.
- **Abuse of law: sale of temporary usufruct rights in SCI shares to a company does not constitute an artificial scheme - Decision of the CAA of Paris on May 28th 2025, Nos. 24PA01225, 24PA01226, 24PA01227, and 24PA01228**
The CAA judges, contrary to the French Tax Authorities ("FTA") and despite the favorable advice of the Anti-Abuse Tax Committee, that the acquisition of temporary usufruct rights in shares of various French real estate companies ("SCI") by another company does not constitute an artificial arrangement. These transactions contribute to financing the acquisition of real estate assets and ultimately allow taxpayers to own real estate without bearing the full financing burden upfront.





- **Joint sale of dismembered shares: capital gain must account for changes in value of bare ownership - Decision of the CAA of Toulouse on June 5th 2025, No. 23TL00572**

The CAA judges that in the case of a joint sale of shares where bare ownership was gifted with a reserved usufruct, the bare owner is taxable on the capital gain computed based on the full ownership acquisition price increased by the variation in the value of the bare ownership - based on the valuation grid provided for in Section 669 of the FTC (as at the date of the gift, not the sale) - between the acquisition date and the date of the gift.

III. INTERNATIONAL TAXATION

- **France-Belgium tax treaty: gains from sale of SCI shares liable to CIT by Belgian residents are taxable in France - Judgement of the TA of Montreuil on May 22nd 2025, No.2311384**

The TA judges that under the 10 March 1964 France-Belgium tax treaty - which refers to the domestic law of the situs country to define real estate (Section 3 §4) - the capital gains on the sale of shares in SCI owning real estate in France and liable to CIT are taxable in France, as Sections 244 bis A and 164 B of the FTC consider such shares as real estate.

- **Permanent Establishment ("PE"): use of client or partner premises in France can give rise to a PE - Decision of the CAA of Paris on June 4th 2025, No.24PA00821**

The CAA judges that a Hong Kong-incorporated company has a PE in France under Section 209 of the FTC where a tax raid (under Section L 16 B of the French Tax Procedures Code) conducted in its French client and business partner's premises (having the same parent-company) revealed that the company operated its business there, using the premises, equipment, and staff of the French company, under the effective control of managers domiciled in France.

- **France-Madagascar tax treaty: taxpayers are French residents despite working in Madagascar - Decision of the CAA of Toulouse on June 5th 2025, No.23TL01068**

The CAA judges that spouses married under the separate property regime and living apart due to the husband's professional obligations in Madagascar are French tax residents - where the spouse and child live there - because their family ties and main home are located in France and the husband's length of stay in Madagascar is irrelevant.

- **U.S. trusts: no treaty benefits if it is not exclusively set up for retirement or employee benefits - Judgement of the TA of Montreuil on June 19th 2025, No.2309178**

The TA judges that the FTA may apply a 30% withholding tax (pursuant to Sections 119 bis and 187 of the FTC) on dividends received by a foreign trust that has not its registered office in France. In the case at hand, the trust does not qualify as a "resident" under Section 4 §2 of the France-U.S. treaty and cannot claim treaty benefits, as it failed to demonstrate that it was exclusively established to manage retirement or employee benefit funds (a requirement introduced by the January 13th 2009 Protocol), nor that it is effectively taxed in the U.S. on its income.

- **France-Monaco tax treaty: taxpayer who resided in France between 1978 and 1982 remains a French resident - Decision of the CAA of Marseille on June 19th 2025, No.23MA02170**

The CAA judges that a taxpayer domiciled in Monaco but who lived in France from age 2 to 6 - despite attending school in Monaco - is submitted to Personal Income Tax ("PIT") on its worldwide income.

IV. INDIVIDUAL TAXATION

- **Real estate leasing: leased assets are excluded for the determination of predominant real estate company - Decision of the CAA of Paris on May 26th 2025, No.22/10251**

The CAA judges that, during the duration of a real estate leasing agreement, the lessee does not hold sufficient real property rights for the leased assets to be considered in assessing whether the entity qualifies as predominantly real estate-based.