



TAX NEWSLETTER

October 2025

I. CORPORATE TAXATION

- **Real estate dealers: a real estate company ("SCI") may be reclassified as a real estate dealer - Decision of the Administrative Court of Appeal ("CAA") of Douai on August 28th, 2025, No.24DA01320, SCI Saint Benoît**

The CAA judges that a SCI carrying out repeated purchase and resale transactions involving real estate must be classified as a real estate dealer if its speculative intention exists at the date of acquisition of the property and if the number of transactions carried out (five) over a short period (from four months to five years) demonstrates the habitual nature of its activity.

II. TAX AUDIT

- **Ex Officio Assessment: the taxpayer's impaired mental faculties do not prevent ex officio assessment, but do exclude the application of a 40% surcharge - Decision of the French Supreme administrative Court ("CE") on July 22nd, 2025, No.495374**

The CE rules that the impairment of a taxpayer's mental faculties does not prevent the French Tax Authorities ("FTA") from assessing tax under the ex officio taxation procedure. However, this incapacity does prevent the application of the 40% surcharge for failure to file a return provided for in Section 1728 of the French Tax Code ("FTC") since the failure cannot be attributed to the taxpayer.

- **Abnormal Act of Management: the payment of early termination compensation to a subsidiary does not constitute it - Decision of the CAA of Paris on September 19th, 2025, No.24PA04452**

The CAA judges that the payment of early termination compensation, made as part of a refinancing transaction intended to allow investors to acquire shares of its subsidiary and to improve its financing conditions, is a management decision in line with the company's own interests. Therefore, the indirect benefit to other companies in the group does not call into question the deductibility of these indemnities for the paying company.

- **Deemed distributed income: it is not characterized when securities are purchased and immediately resold at the same price - Decision of the CE on October 8th, 2025, No.496738, Lepesqueux**

The CE considers that a transaction whereby a company's manager acquires its securities and resell them immediately, without capital gain, to another shareholder by means of a vendor loan must be regarded as a single sale financed by a loan, and not as two successive sales. Consequently, the manager's status as a simple lender precludes the characterization of a deemed distribution to him.

III. INTERNATIONAL TAXATION

- **Payments to foreign companies: remuneration for functions performed in France is liable to tax in France - Decision of the CAA of Paris on September 25th, 2025, No.23PA03959**

The CAA judges that sums paid by a French company to a Belgian company in remuneration for the functions of managing director performed in France, within the former, by the manager and sole partner of the latter who is a Belgian tax resident, are taxable as income in France pursuant to Section 155 A of the FTC. No restriction to the freedom of establishment or the freedom to provide services guaranteed by the European Union ("EU") law can be invoked in this regard.

- **Tax treaties: tax does not have to be effectively paid in the state of residence for a company to qualify as a tax resident - Decision of the CE on September 30th, 2025, No.490793**

The CE rules that a Dutch company liable to tax in the Netherlands but not effectively taxed there may benefit from the provisions of the Franco-Dutch tax treaty as a tax resident of the Netherlands.



- **Parent-subsidiary regime: exemption from withholding tax (“WHT”) on dividends does not depend on the submission of tax Form no. 5000 - Decision of the CAA of Nantes on October 7th, 2025, No.24NT02819, SAS Centigon Holdings France**

The CAA judges that the FTA cannot refuse the WHT exemption provided for in Section 119 ter of the FTC solely on the grounds that the 5000-FR residence form failed to be filed with the tax authorities of the other State. According to the Court, Section 119 ter - which transposes the Parent-Subsidiary Directive - introduces a restriction to the principle of exemption for profits distributed by a French subsidiary to its parent company in another Member State by requiring that the beneficial owner of the dividends has its effective place of management in a Member State of the European Community, whereas the only location requirement under the Parent-Subsidiary Directive is for the parent company to be considered, under the legislation of the Member State in question, as having its tax domicile there.

- **Tax heavens: the European blacklist has been updated - Update of the EU Council list on October 10th, 2025**

The European blacklist includes 11 countries: American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Samoa, Russia, Trinidad and Tobago, the US Virgin Islands, and Vanuatu.

- **Permanent Establishment (“PE”): the judges refuse to refer a Priority Constitutionality Question (“QPC”) concerning the “branch tax” - Judgment of the Administrative Tribunal (“TA”) of Montreuil on September 18th, 2025, No.2308755**

Profits made in France by a foreign company's PE are deemed to be distributed, for each fiscal year, to its partners who do not have their tax residence or registered office in France and are therefore liable to a WHT of 25% or 75%, as applicable (the “branch tax”) provided for in Section 115 quinquies of the FTC, subject to international tax treaties. The TA judges that this WHT does not contravene the constitutional principles of equality before the law and public charges.

IV. INDIVIDUAL TAXATION

- **Deferred capital gains taxation: failure to comply with reporting obligations does not invalidate the tax deferral - Decision of the CAA of Toulouse on September 18th, 2025, No.23TL03011**

The CAA judges that reinvesting the proceeds from the sale of securities subject to capital gains tax deferral (Section 150-0 B ter of the FTC) in work intended for running a business is eligible for the maintenance of tax deferral. Therefore, according to the Court, the taxpayer's failure to declare and the company's failure to commit to a reinvestment are irrelevant insofar as the actual reinvestment is established.

- **Trust: the application of gift and inheritance tax (“DMTG”) to assets located in an irrevocable trust does not infringe the right for property's respect - Decision of the Commercial Chamber of the French Supreme Court (“Cour de cassation”) on October 8th, 2025, No.24-16.995**

The Cour de cassation rules that assets placed in a discretionary and irrevocable trust must be included in the settlor's estate declaration and be liable to DMTG, regardless of whether the heirs are beneficiaries of the trust. This taxation does not infringe on the litigant's right to his property's respect, as guaranteed by Section 1 of the First Additional Protocol to the European Convention on Human Rights, since the assets are deemed to have been transferred upon the death.

- **Capital gains on securities: a shareholder whose shares are repurchased by the company realizes a capital gain - Decision of the CE on October 15th, 2025, No.495120, Sercom**

The CE judges that sums received from the repurchase of securities by a company liable to corporate income tax are liable to the capital gains regime provided for in Section 112, 6° of the FTC, and not to the dividends' one. The CE specifies that there is no requirement to consider the reason for the repurchase or its financing, including in the event of a capital reduction followed by the cancellation of securities and a distribution taken from distributable reserves.