



TAX NEWSLETTER

November 2025

I. CORPORATE TAXATION

- **Participation shares: *the economic utility of the holding prevails over its accounting qualification - Decision of the Administrative Court of Appeal (“CAA”) of Paris on November 6th, 2025, No. 24PA00389***

The CAA reiterates that shares may be treated as participation shares when the circumstances of their acquisition demonstrate an intention that is economically useful to the company’s business, particularly when the transaction grants governance rights and a significant ownership stake. In such a case, a different accounting entry does not preclude their recharacterization as participation shares.

- **Change in actual business activity: *the termination of several business lines prevents the carryforward of prior tax losses - Decision of the CAA of Nancy on November 13th, 2025, No. 23NC02960***

The CAA rules that a substantial decrease in turnover, operating resources, and workforce reflects a change in the company’s actual business activity rather than a decline in activity. This change results in the loss of the right to carry forward prior tax losses and triggers the taxation of the company’s profits.

- **Tax losses carryforwards: *the oldest losses are deemed to be offset first - Decision of the French Administrative Supreme Court (“CE”) on November 14th, 2025, No.493824, Société Faun Environnement***

The CE confirms that carryforward tax losses must be offset chronologically, with the oldest losses being deemed used first (FIFO rule). The French Tax Authorities (“FTA”) retain the ability to review and adjust tax losses that have not been fully offset, within the limit of the remaining amount not offset against profits from statute-barred fiscal years.

II. TAX AUDIT

- **Withholding Tax (“WHT”) refunds: *a precautionary request filed with the paying agent constitutes a litigation claim - Decision of the CAA of Paris on October 29th, 2025, No. 24PA02107***

The CAA judges that a request for the refund of WHT constitutes an admissible litigation claim within the meaning of Section L. 190 of the French Tax Procedure Code (“FTPC”) when it is filed with the paying agent and made as a precautionary request. As a result, the request interrupts the time limit for filing claims provided for in Section R. 196-1 of the FTPC.

- **Abuse of law: *the absence of taxable partners resulting from cross-shareholdings in real estate companies (“SCI”) is abusive - Decision of the CE on November 24th, 2025, No. 499120***

The CE finds that cross-shareholdings between several SCI may constitute an abuse of law when such crossholdings make it impossible to identify taxable partners and ultimately prevent the effective taxation of the entity’s results. The fact that the structure is allegedly justified by inheritance-planning considerations or by the intention to facilitate financing is irrelevant.

- **Regularization of foreign assets: *the request filed after the issuance of the tax reassessment notice is not spontaneous - Decision of the CE on November 24th, 2025, No. 502696***

The CE judges that a taxpayer cannot benefit from the “Cazeneuve” circular applicable in case of spontaneous disclosure of undeclared foreign assets once a tax reassessment notice has already been notified to a subsidiary of the audited group and the taxpayer’s undeclared foreign assets relate to the activity under audit.





III. INTERNATIONAL TAXATION

- **Reporting of foreign bank accounts: *the obligation of a French tax domiciled applies despite his habitual stays in Spain - Decision of the CAA of Paris on October 20th, 2025, No. 24PA00075***
The CAA judges that a taxpayer whose tax residence is allocated to Spain, where his principal place of stay and family household are located under the France - Spain tax treaty, but who maintains the center of his economic interests in France under French domestic law, remains liable to the obligation to report his bank account held in Spain pursuant to Section 1649 A of the French Tax Code (“FTC”).
- **Undeclared foreign bank accounts: *the France-Switzerland tax treaty does not apply to the fine for failure to declare - Decision of the CAA of Paris on October 30th, 2025, No. 25PA00721***
The CAA reiterates that any taxpayer who is domiciled in France for tax purposes within the meaning of Section 4 B of the FTC shall, on risk of the fine provided for in Section 1736 IV of the FTC, report the bank accounts he holds outside France. In the case at hand, the taxpayer’s professional stays in Switzerland (while maintaining his household in France under domestic law) did not affect this reporting obligation. The Court also confirms that the said fine is not one of the taxes covered by the September 9th, 1966, France - Switzerland tax treaty.
- **Foreign entities: *a U.S. LLC may be treated as a French SAS - Decision of the CE on November 12th, 2025, No. 502894***
The CE rules that a Californian LLC, whose shareholders enjoy limited liability and significant statutory flexibility, shall be regarded as a French SAS.
- **Section 123 bis of the FTC: *the predominant financial nature of an entity must be assessed based on the real value of its assets - Decision of the CE on November 12th, 2025, No. 501567***
The CE confirms that the assessment of the primarily financial nature of a foreign entity must be based on the real value of its assets. In the case at hand, the CE confirms the exclusion of an image right from the scope of “receivables” within the meaning of Section 123 bis of the FTC, on the ground that such a right does not constitute a financial asset.
- **Tax residence: *habitual stay prevails where personal ties diverge - Decision of the CE on November 24th, 2025, No. 502244***
The CE judges that a taxpayer must be taxed in France where his closest personal ties are located, despite having a permanent home in both countries and his family living in Germany. The CE finds that the taxpayer’s regular and extended stays in France, along with his cohabiting relationship, establish France as his habitual stay.

IV. INDIVIDUAL TAXATION

- **Surviving spouse’s *preciput (marital benefit): the transfer duty on partition is not applicable - Decision of the Commercial Chamber of the French Civile Supreme Court (“Cour de cassation”) on November 5th, 2025, No. 23-19.780***
The Cour de cassation holds that a *preciput* levy does not constitute a partition operation and therefore does not fall within the scope of the transfer duty on partition provided for in Section 746 of the FTC.
- **Manual gifts and gifts of cash: *electronic filing is mandatory as from January 1st, 2026 - Decree No. 2025-1082 on November 17th, 2025***
The decree requires the electronic filing and electronic payment of manual gifts and gifts of cash as from January 1st, 2026. Exemptions are provided, however, for individuals without Internet access or those who are materially unable to complete the online procedure.