



NEWSLETTER

May 2026

I. CORPORATE TAXATION

- **Tax consolidation: no prior closing of a first financial year is required for the consolidation of newly incorporated companies - Decision of the Administrative Court of Appeal ("CAA") of Marseille on April 16th, 2026, No.25MA02058**

The CAA holds that Section 223 A of the French General Tax Code ("FTC") does not require newly incorporated companies to close a first financial year prior to joining a consolidated tax group. The Court thereby sets aside the French Tax Authorities' ("FTA") guidelines providing for such an obligation, on the grounds that it does not merely interpret tax law but adds thereto a condition not provided for by the legislator.

- **Participation shares: the qualification cannot be set aside without examining the contractual clauses likely to reveal an accounting error - Decision of the 9th chamber of the French Administrative Supreme Court ("CE") on April 17th, 2026, No.500136, Sté Theta Participations**

The CE overturns the decision of the CAA of Paris. In order to set aside the application of the long-term capital gains regime, the CAA had relied on the fact that the assets of the divested company consisted primarily, up to 84%, of marketable securities. However, it failed to take into account an accounting error invoked by the company (which would have brought the share of marketable securities in the company's assets to below 6%) and did not examine the scope of the clauses of the prime brokerage agreements entered into with two companies of the Barclays group.

II. TAX AUDIT

- **Payment deferral: the pledging of the shares in a real estate look through company ("SCI") may constitute sufficient guarantee - Decision of the CAA of Paris on May 19th, 2026, No.26PA02534**

The CAA holds that the pledging of shares in a SCI may constitute sufficient guarantee to ensure the recovery of a tax claim within the meaning of Section R. 277-1 of the French Tax Procedure Code ("LPF"), even though this type of guarantee is not expressly referred to therein. The CAA specifies, however, that such guarantee may only be regarded as sufficient if the articles of association of the SCIs concerned do not deprive it of any practical value. The CAA further notes that the value of the shares must be assessed by reference to the fair market value of the real estate assets held, and not on the basis of the nominal amount of the share capital.

- **Declaration of foreign accounts: holdings in foreign funds managed through individual numbered accounts constitute accounts subject to reporting obligations under Section 1649 A of the FTC - Judgement of the Administrative Tribunal ("TA") of Paris on May 19th, 2026, No.2407844**

The TA holds that holdings in investment funds managed by a company established in the Cayman Islands, which habitually receives marketable securities or individually identified instruments on deposit in numbered accounts, constitute foreign accounts subject to the reporting obligation provided for under Section 1649 A of the FTC.

- **Power of attorney over a foreign account: the reporting obligation applies to accounts that are used, even in the absence of a formal power of attorney - Decision of the CAA of Paris on May 20th, 2026, No.25PA01490**

The CAA holds that the reporting obligation provided for under Section 1649 A of the FTC applies to foreign bank accounts used by the taxpayer, without it being necessary for the latter to hold a formal power of attorney. In the case at hand, the Court judges that the numerous withdrawals made between 2006 and 2013 from an account held with a Swiss bank in the name of a foreign company are sufficient to establish that the account was used by the taxpayer, who was the beneficial owner of that company.





III. INTERNATIONAL TAXATION

- **Trust reporting obligations: a foreign trustee is subject to the penalty for failure to file even where it has no establishment in France - Decision of the CAA of Paris on May 5th, 2026, No.24PA01910**
The CAA holds that the reporting obligation under Section 1649 AB of the FTC rests solely on the status of trustee of a trust set up by a French tax resident, irrespective of any establishment of the trustee in France, and without Jersey law being able to override the application of French domestic law.
- **Section 123 bis of the FTC: the income of a UAE holding company is taxable in the hands of its French tax resident shareholder - Judgement of the TA of Paris on May 6th, 2026, No.2503546**
The TA holds that the income of a UAE holding company falls within the scope of Section 123 bis of the FTC and is taxable in the hands of its French tax resident shareholder.

IV. INDIVIDUAL TAXATION

- **Dutrel regime: majority ownership in subsidiaries, common management, and cash pooling agreements are not sufficient to establish the effective management activity of the holding company - Judgement of the Judicial Tribunal (“TJ”) of Tours on April 28th, 2026, No.24/02056**
The TJ holds that majority ownership in subsidiaries, common management, and cash pooling agreements are insufficient to establish effective management activity within the group, in the absence of any group management agreement, minutes, or strategic document evidencing the holding company's actual involvement in the management of the group.
- **French real estate wealth tax (“IFI”): shares in predominantly real estate companies (“SPI”) held by Dutch residents are taxable in France - Judgement of the TJ of Paris on May 5th, 2026, No.24/13163**
The TJ holds that the referral clause to domestic law provided for under the 1973 France-Netherlands tax treaty is sufficient to support the assimilation of SPI shares to real estate assets and therefore their liability to IFI, even though the France-Netherlands tax treaty does not contain any express provision to that effect.
- **Gift with reserved usufruct: the presumption of fictitious transfer may be rebutted - Judgement of the TJ of Paris on May 12th, 2026, No.24/12502**
The TJ holds that the presumption of fictitious transfer provided for under Section 751 of the FTC is rebutted where the sincerity of the donative intent predating the deterioration of the donor's health and the sudden nature of the death are both established in an incontestable manner. In the case at hand, the TJ finds that the gift had been documented since November 2020 and that nothing made it possible to anticipate the death occurring two months after the gift, a pre-existing chronic illness alone not being sufficient to establish the foreseeability of death.
- **Distributed income: a credit booked at the shareholder current account of the manager of a limited company (“SARL”) in repayment of a debt owed to a SCI does not constitute distributed income - Decision of the CAA of Paris on May 20th, 2026, No.25PA01454**
The CAA holds that a credit booked at the current account of a shareholder who is also the manager of a SARL does not constitute taxable distributed income where such credit corresponds to rent owed by the SARL to an SCI in which the same shareholder holds 99% of the share capital. In the Court's view, the shareholder established that the entry in the current account merely reflects the repayment of a debt owed by the SARL to the SCI, which had, moreover, recorded the said rent as income in its accounts.