



NEWSLETTER

September 2026

I. CORPORATE TAXATION

- **Debt waivers: the commercial nature must be established by the taxpayer - Judgement of the Administrative Tribunal ("TA") of Montreuil on September 18th, 2026, No.2515317**

The TA judges that debt waivers granted to foreign subsidiaries are not deductible since the company fails to demonstrate their commercial nature, all the more so since these receivables are of a financial origin and there was no established commercial prospect at the date of the waivers.

II. TAX AUDIT

- **"Mini abuse of law": it is set aside insofar as the gift-sale transaction is part of an overall business transfer project - Advice of the Abuse of Tax Law Committee ("CADF") on March 19th, 2026, No.2026-01**

In the case at hand, following a contribution of shares (benefiting from the tax deferral of the capital gain provided for in Section 150-0 B ter of the French Tax Code, "FTC"), a taxpayer had gifted to his children the bare ownership of shares prior to their sale, the sale price reverting to the donor as quasi-usufructuary. The CADF sets aside the application of Section L 64 A of the French Tax Procedure Code ("FTPC") on the grounds that the French Tax Authorities ("FTA"), which challenge the gift made prior to the sale of the shares, do not demonstrate its principally tax-driven purpose, whereas it is part of an overall family transfer project including a Dutreil undertaking. The FTA have nevertheless decided not to follow this advice.

- **3% tax on real estate market value: the absence of notification to the interposed companies does not result in a discharge - Decision of the Commercial Chamber of the Cour de cassation on September 16th, 2026, No.25-11.299**

The Cour de cassation considers that, in the presence of a real estate holding chain including a Jersey trust, the FTA are not required to notify the procedural acts, as soon as they are issued, to the interposed companies, which are jointly and severally liable for the payment of the tax but are not the persons legally liable for the tax.

- **Hidden activity: the error is assessed taking into account the actual level of taxation - Decision of the 9th and 10th chambers of the French Administrative Supreme Court ("CE") on September 30th, 2026, No.509255**

The CE holds that, in order to assess the error invoked by the taxpayer (to set aside the ten-year reassessment period applicable to hidden activities carried out in France), all the circumstances must be taken into account, including the level of taxation abroad and, in particular, any reduction in social security contributions on salaries.

III. INTERNATIONAL TAXATION

- **Withholding Tax: the Spanish tax residence may be established by any means in the absence of a tax certificate - Decision of the Court of Appeal ("CA") of Paris on September 15th, 2026, No.24/06926**

The CA rules that the absence of a Spanish tax residence certificate is not fatal, provided that the taxpayer establishes that it was impossible to obtain such a certificate, since tax residence may then be established by any means.





- **Tax residence: *the taxpayer's home in France must be assessed based on evidence - Judgement of the TA of Pau on September 17th, 2026, No.2400110***

The TA holds, regarding Section 4 B of the FTC in the absence of a tax treaty concluded with the Dominican Republic, that the taxpayers' home is located in France insofar as they "had resided at least half of the year" in a house located in France and their presence in France during the relevant year was further supported by water and electricity consumption, geolocation data, air travel records and payments made by check at a casino.

- **Effective place of management: *it is located in France where the director resides, in the absence of premises and employees in Gibraltar - Decision of the Administrative Court of Appeal ("CAA") of Marseille on September 18th, 2026, No.25MA00635***

The CAA judges that a company registered in Gibraltar is operated and managed from France since it has neither premises nor employees there and its sole director carries out his activity from his French home. Accordingly, this company must be subject to tax in France irrespective of the location of its clients, and the reassessments constitute distributed income taxable in the hands of the director.

- **Trademarks operating from France: *the extent of the tax obligations in Hong Kong is irrelevant to the characterization of a permanent establishment in France - Judgement of the TA of Montreuil on September 18th, 2026, No.2311467***

The TA judges that the extent of the tax obligations in Hong Kong of a taxpayer granting, through his sole personal enterprise, trademark licenses to French companies is irrelevant to appreciate his tax residence in France. It also confirms the existence of a permanent establishment in France, where the management, coordination and supervision functions were carried out.

IV. INDIVIDUAL TAXATION

- **Dutril regime with a deemed undertaking: *the donor must not remain sole president - Judgement of the Judicial Tribunal ("TJ") of Paris on September 14th, 2026, No.25/12216***

The TJ judges that the donor remaining the sole president of the company whose shares are subject to the undertaking is not sufficient to satisfy the requirement laid down in Section 787 B of the FTC, pursuant to which, where a collective undertaking is deemed to be satisfied, the management condition following the gift must be fulfilled by at least one donee. Since none of the children managed the company after the gift, the partial exemption must be withdrawn.

- **Share contribution-sale transaction mechanism: *the reinvestment must finance long-term resources - Decision of the CAA of Bordeaux on September 30th, 2026, No.24BX01234***

The CAA judges that the taxpayers relying on advances granted by the holding company to a subsidiary and on various operating expenses do not establish an eligible reinvestment of at least 50% of the sale proceeds, in light of the provisions of Section 150-0 B ter of the FTC applicable in 2013 and of the objective of ensuring the long-term financing of the economic activity.

- **Furnished rentals: *the qualification may be retained even where the French real estate company ("SCI") does not own the furniture - Decision of the CAA of Marseille on September 18th, 2026, No.25MA00367***

The CAA confirms the qualification of furnished rental in view of the mandates, leases and contemporaneous contractual documents, even though it was not established that the SCI owned the furniture. The SCI must therefore be subject to French Corporate Income Tax. The Court also holds that the rent-free provision of the property constitutes an abnormal act of management.