NEWSLETTER

October 2026

I. CORPORATE TAXATION

- **Tax losses carried forward**: ***the capping applies regardless of the composition of the profit - Decision of the Administrative Court of Appeal ("CAA") of Marseille on October 1st, 2026, No.25MA02720***
  The CAA judges that the capping provided for in Section 209, I-para. 3 of the French Tax Code ("**FTC**") applies irrespective of the items making up the profit or of the available cash, in particular in the event of a recapture of a provision and therefore does not infringe the principle of equality before the law and before public charges.

- **Carry-back of tax losses:** ***the closure of the only French permanent establishment of a foreign company excludes the benefit thereof - Decision of the French Administrative Supreme Court ("CE") on October 23rd, 2026, No.509327***
  The CE considers that a foreign company which closes its only permanent establishment in France cannot benefit from the carry-back of tax losses provided for in Section 220 quinquies of the FTC for the financial year of the closure, since it constitutes a total termination of business in France, even where the company continues its activity abroad. According to the CE, this exclusion does not infringe the freedom of establishment.

II. TAX AUDIT

- **Abnormal act of management ("AAG")**: ***the insufficiency of the declared rents constitutes a waiver of revenue characterizing an AAG - Decision of the CAA of Marseille on October 1st, 2026, No.25MA01111***
  A British company, owner of a villa in Villefranche-sur-Mer, had declared €28,800 in rents for 2018 and no income for 2017. The CAA confirms the existence of a waiver of revenue constituting an AAG and the 4% rate of return applied by the French Tax Authorities ("**FTA**") to the fair market value of the property (approximately €3M), regarding the characteristics of the property and the higher return of seasonal rental.

- **Reassessment period:** ***it is of 10 years where a permanent establishment in France has committed AAGs - Judgement of the Administrative Tribunal ("TA") of Paris on October 6th, 2026, No.2525548***
  The TA judges that the French branch of a Swiss Société Anonyme constitutes a permanent establishment in France and confirms the application of the ten-year reassessment period provided for in Section L. 188 C of the French Tax Procedure Code ("**FTPC**"). In the case at hand, the TA confirms the reassessments based on AAGs (mansion rented to the director's family at a below-market price, booking of personal expenses) but reduces the reassessed rental income by lowering the rate of return from 6% to 4.5% and by retaining a fair market value lower than the one of the FTA.

- **Taxable gratuitous advantage:** ***it arises in the event of an undervaluation of the fair market value of the distributed shares - non-admission decision of the CE on October 13th, 2026, No.512177***
  The CE refuses the appeal lodged against the CAA's decision which had judged that there was a taxable gratuitous advantage arising from the distribution in kind to a SARL of shares in 19 SCIs, valued at €3.13M whereas their market value was estimated at €6.1M.

III. INTERNATIONAL TAXATION

- **Taxpayers subject to the Swiss lump-sum regime**: ***the recognition of a Swiss tax residence is not sufficient to set aside the tax residence in France - Decision of the CE on October 9th, 2026, No.509372***
  The CE confirms that two spouses who retained management functions in France and the center of their economic interests (in particular through the ownership of luxury vehicles and a private jet) remain tax resident in France within the meaning of Section 4 B of the FTC, even though their Swiss residence was recognized by the Swiss tax authorities, where they are taxed on the basis of their expenses.

- **France-US tax treaty:** ***tax residence is assessed at the date on which the capital gain is realized - Decision of the CAA of Paris on October 14th, 2026, No.25PA00429***
  The CAA judges that, for the application of a tax treaty, the taxpayer's residence is assessed at the date on which the income is realized, irrespective of any tax deferral. It thus confirms the taxation in France of a capital gain on the sale of shares realized by a taxpayer unable to demonstrate her status of US tax resident within the meaning of the Franco-US tax treaty at the date of the sale.

- **Section 123 bis of the FTC:** ***it applies to the sole beneficial owner of the Swiss account opened in the name of a Panamanian company - Decision of the CAA of Paris on October 23rd, 2026, No.25PA01561***
  The CAA judges that the designation of the taxpayer as "sole beneficial owner" of the account characterizes the control required under Section 123 bis 1 of the FTC, the taxpayer being unable to usefully invoke the absence of evidence of a transfer of assets or rights within the meaning of paragraph 4 ter. The CAA confirms the application of the 40% penalty due to the concealment of the assets behind a Panamanian structure.

IV. INDIVIDUAL TAXATION

- **Exemption of certain wages*****: the prospecting assignments carried out must be demonstrated in order to benefit from the exemption provided for in Section 81 A of the FTC - Judgement of the TA of Paris on October 5th, 2026, No.2424944***
  The TA judges that, in order to benefit from the exemption provided for in Section 81 A of the FTC, the two certificates issued by the employer and the statement of 128 days of presence abroad produced by a French tax resident employee in support of his tax claim are insufficient, for lack of details on the prospecting assignments actually carried out.

- **Impatriate regime (Section 155 B of the FTC)**: ***the impatriation bonus is not exempt where it is linked to the position - Judgement of the TA of Paris on October 13th, 2026, No.2408298***
  The TA judges that the €50,000 bonus received by a trader hired from the United Kingdom by a French bank cannot be exempt from personal income tax as it was granted to him on account of his job and not because of the location of his position. The TA also sets aside the 30% flat rate on the grounds that the remuneration after exemption must remain at least equal to the reference remuneration, the comparison being made year by year and not with a general category of employees.

- **Levy on trusts (Section 990 J of the FTC):** ***the adversarial proceedings must be complied with in respect of the persons jointly and severally liable for the payment - Decision of the Court of Appeal ("CA") of Paris on October 22nd, 2026, No.23/01123***
  The CA confirms the discharge of the levy provided for in Section 990 J of the FTC imposed on a beneficiary deemed to be the settlor of US trusts. It holds that the FTA, which had initiated separate procedures against her and against the trustee, had to notify her of the procedural acts addressed to the latter. Failure to notify the reply to the trustee's observations renders the procedure irregular.