



TAX NEWSLETTER

April & May 2025

I. CORPORATE TAXATION

- **Tax losses: change of activity prevents carryforward - Judgment of the Administrative Tribunal ("TA") of Marseille on April 24th 2025, No.2204534**

The TA recalls that, pursuant to Sections 209 and 221,5° of the French Tax Code ("FTC"), tax losses' carried forward are subject, in particular, to the condition that the company has not undergone, in its actual activity, transformations such that it can no longer be regarded as doing the same activity. In the case at hand, a company engaged in both commercial activity and the rental of professional premises is deemed to have changed its actual activity in a way constituting a termination of business, where, following the termination of its commercial activity, its turnover, fixed assets, and workforce declined by more than 50%.

II. TAX AUDIT

- **Misappropriation of funds: the statute of limitations in case of hidden activities applies - Decision of the 9th chamber of the French Administrative Supreme Court ("CE") on April 2nd 2025, No.498921**

The CE judges that a French tax resident (appointed by a Swiss holding company to represent it before its Moroccan subsidiary) who collects dividends without declaring them, on his personal bank account in Switzerland, commits misappropriation of funds constituting an illicit activity subject to the 10-year statute of limitations.

- **Abnormal Act of Management ("AAG"): remuneration indirectly paid to a company's director may be deductible - Decision of the Administrative Court of Appeal ("CAA") of Nancy on April 24th 2025, No.22NC02867**

The CAA judges that the payment of fees to a third-party company for services performed by the company's director does not, in itself, constitute an unjustified reduction of the company's assets nor qualify as an AAG, provided that the payment is intended to indirectly remunerate him and is made in exchange for actual consideration.

- **Disguised gift: the capital gain on the sale of the business cannot benefit from the exemption in the event of requalification - Judgment of the TA of Nice on April 24th 2025, No.2301139**

The TA rules that the requalification of the sale of a business as a gift excludes the benefit of the capital gains exemption provided for in Section 238 quinquies of the FTC when the artificial increase in the sale price was intended to unduly benefit from the exemption.

- **Online tax filing: the burden of proof lies with the taxpayer - Decision of the 9th and 10th chambers of the CE on May 9th 2025, No.496935**

The CE considers that any online amendment of an income tax return made after the legal deadline constitutes a litigious claim, for which the burden of proof relies on the taxpayer.

III. INTERNATIONAL TAXATION

- **France-Luxembourg tax treaty: the French Wealth Tax ("ISF") applies to shares in a French real estate companies ("SCI") held in France by Luxembourg residents - Decision of the Commercial chamber of the French Civil Supreme Court ("Cour de cassation") on April 2nd 2025, No.23-14.568**

The Cour de cassation considers that Luxembourg tax residents must include their shares in SCIs owning real estate in France in the ISF base, and that this requirement is not prohibited by Section 20 of the 1958 France-Luxembourg tax treaty, since incomes from such companies are taxable in France pursuant to Section 3 of the treaty.

- **List of Non-Cooperative States and Territories ("ETNC"): the French list has been updated - Order on April 18th 2025 published in the Journal Officiel on May 7th 2025**

The Seychelles, the Bahamas, and Belize have been removed from the list, effective as of the publication date, while Antigua and Barbuda and the Turks and Caicos Islands remain on the list.





- **Anglo-Saxon trusts: foreign companies' profits may be taxable in France - Decision of the 8th chamber of the CE on May 13th 2025, No.496281**
The CE judges that, pursuant to Section 123 bis of the FTC, the profits of a company incorporated in Hong Kong as an Anglo-Saxon trust are taxable in France when all of its shares are held, directly or indirectly, by a French tax resident.
- **Social security contributions for non-residents: no residency is required to benefit from the 7.5% rate - Decision of the 9th and 10th chambers of the CE on May 19th 2025, No.491958**
The CE recalls that affiliation with the social security system of an EU or EEA member state, or Switzerland, is sufficient to exempt individuals from French social contributions on real estate capital gains, regardless of their place of residence.

IV. INDIVIDUAL TAXATION

- **Dutrel regime: the active role of the holding company must be demonstrated - Decision of the Court of Appeal ("CA") of Saint-Denis de la Réunion on March 28th 2025, No.23/0168**
The CA rules that the Dutrel exemption cannot apply to the shares of a holding company whose role as an active manager within the group is not established, due to the absence of a management agreement, minutes, or any documentation proving its effective involvement in the group's strategic decision.
- **Professional assets exempt from ISF: the exemption does not apply to shares in an SCI engaged in furnished rental activity - Decision of the Commercial chamber of the Cour de cassation on April 2nd, 2025, No.24-11.202**
The Cour de cassation judges that, regarding Section 885 R of the FTC, the professional assets exemption for ISF does not apply to shares in an SCI renting furnished properties, insofar as its rental income is subject to Corporate Income Tax ("CIT") rather than Personal Income Tax ("PIT").
- **Manual Gift: the value to be taken into account is that of the date of disclosure - Decision of the Commercial chamber of the Cour de cassation on April 2nd 2025, No.23-15.834**
The Cour de cassation recalls that the value of an undeclared manual gift must be determined as of the date of its disclosure, and not the date of the gift, in accordance with Section 757 of the FTC.
- **Gift and Inheritance tax ("DMTG"): in the presence of a "dismemberment", the apportionment of inheritance liabilities is subject to the provisions of Section 669 of the FTC - Decision of the Commercial chamber of the Cour de cassation on April 2nd 2025, No.23-22.537**
The Cour de cassation rules that the apportionment of inheritance liabilities in the presence of a "dismemberment" must follow the rules of Section 669 of the FTC, and not those of Section 612 of the Civil Code. It emphasizes that this provision of the FTC establishes a specific tax rule for determining the inheritance shares of the usufructuary and the bare owner, used for the DMTG taxation.
- **Tax deferral: failure to comply with reinvestment deadlines renders tax due - Judgment of the TA of Grenoble on April 11th 2025, No.220544**
The TA rules that, in the absence of reinvestments made within the required deadlines, the tax deferral provided for in Section 150-0 B ter of the FTC expires, and the 40% surcharge for deliberate non-compliance is applicable.
- **Real estate gain: the exemption applies to a primary residence occupied seven months before the sale - Judgment of the TA of Bordeaux on April 17th 2025, No.2304359**
The TA judges that taxpayers may benefit from the real estate gain exemption under Section 150 U of the FTC, provided that utility bills, tax returns, and supporting attestations demonstrate the actual and habitual use of the property as their main residence.
- **International gifts: DMTG paid abroad must be fully deducted in France - Decision of the CA of Paris on May 26th 2025, No.22/17216**
The CA judges, pursuant to Section 784 of the FTC, that gift duties paid in Switzerland - on the transfer of the bare ownership of shares in a Luxembourg company - by French tax-resident beneficiaries must be fully credited against the DMTG due in France for the same transaction, even if the tax base used in Switzerland is higher.