



# TAX NEWSLETTER

July and August 2025

## I. CORPORATE TAXATION

- **Parent-subsidiary regime: foreign exchange loss (or gain) resulting from a dividend distribution does not benefit from the favorable regime - Decision of the 9<sup>th</sup> and 10<sup>th</sup> Chambers of the Conseil d'État ("CE") on July 25<sup>th</sup>, 2025, No.487722, SA Etablissement J. Soufflet**

The CE recalls that the parent-subsidiary regime applies to dividends for the fiscal year in which the dividend distribution was decided in its principle and amount. When the dividend is in foreign currency, the exchange rate fluctuation between the decision and the payment constitutes either a loss (fully deductible) or a gain (fully taxable), allocated to the fiscal year of payment, regardless of the parent-subsidiary regime.

## II. TAX AUDIT

- **Abnormal Act of Management ("AAG"): CE clarifies the date for assessing the justification of an undervalued sale - Decision of the 3<sup>rd</sup> and 8<sup>th</sup> Chambers of the CE on July 2<sup>nd</sup>, 2025, No.497011**

The CE rules that a sale at undervalue constitutes an AAG unless the taxpayer demonstrates that the transaction was justified by the company's interest. Where the undervaluation results from a prior contractual commitment, the company's interest must be assessed at the date of the commitment, and the taxpayer must demonstrate that the agreed price was then reasonable or offset by sufficient consideration for the company.

- **Deemed distributed income: 25% and 80% penalties may be combined - Decision of the 3<sup>rd</sup> and 8<sup>th</sup> Chambers of the CE on July 2<sup>nd</sup>, 2025, No.497945**

The CE holds that the 25% surcharge provided by Section 158, 7 of the French Tax Code ("FTC"), aimed at fighting tax evasion, may be combined with the 80% penalty applicable in the event of *ex officio* taxation, without this combination constituting a disproportionate financial burden prohibited by the European Convention on Human Rights.

- **Value Added Tax ("VAT"): deduction is allowed upon change of use of real estate held by a taxable person acting as such - Decision of the Paris Administrative Court of Appeal ("CAA") on July 3<sup>rd</sup>, 2025, No.23PA04344, Sté LVR Capital**

The CAA judges, pursuant to Section 207, III-1, 4° of Annex II to the FTC, that a holding company subject to VAT may deduct VAT incurred on renovation works carried out on its chalet, previously under bare rental (VAT-exempt activity) and subsequently allocated to its new para-hotel activity, provided that this activity was added to its purpose in its by-laws.

## III. INTERNATIONAL TAXATION

- **Tax residence: CAA rules on the center of vital interests' criteria in a Franco-Spanish context - Decision of the Bordeaux CAA on July 9<sup>th</sup>, 2025, No.23BX02454**

The CAA judges that a retiree claiming Spanish tax residence had his household and principal place of stay in France under Section 4B of the FTC, and his center of vital interests in France under the France-Spain tax treaty, based on evidence such as his electricity and water consumption, his sports coaching activities, and his frequent association and medical activities in France.

- **Swiss-source dividends: neutralization of the 1% reduced rate of the "Quote-Part de Frais et Charges" ("QPFC") is not applicable - Decision of the 8<sup>th</sup> Chamber of the CE on July 21<sup>st</sup>, 2025, No.497551, Sté Axa SA**

The CE rules that the neutralization of the 1% QPFC applies only to dividends from European Union ("EU") subsidiaries eligible for tax consolidation as if established in France. Dividends paid by a Swiss





subsidiary do not qualify; the difference in treatment being justified by a legitimate public interest objective of fighting tax evasion.

- **Foreign companies: a single-member Private company limited by shares is not comparable to a French SASU - Decision of the 9<sup>th</sup> and 10<sup>th</sup> Chambers of the CE on July 25<sup>th</sup>, 2025, No.489925**

The CE holds that, based in particular on its certificate of incorporation, a UK Private company limited by shares - partially lead by standard by-laws - does not enjoy the statutory flexibility of French SAS companies. Therefore, it cannot be assimilated to a SASU subject to Corporate Income Tax ("CIT").

- **Dividend taxation: combination of CIT and additional levies must be capped at 5% - Decisions of the Court of Justice of the EU ("CJEU") on August 1<sup>st</sup>, 2025, C-92/24 (and C-93/24, C-94/24), Banca Mediolanum**

The CJEU rules that the combined effect of CIT and additional levies on dividends is contrary to the parent-subsidiary directive if the effective rate exceeds 5%. The Directive covers all taxes - even if not expressly listed - that are wholly or partly levied on dividends.

#### IV. INDIVIDUAL TAXATION

- **Trusts: placing a life insurance policy in an irrevocable and discretionary trust may constitute an indirect gift - Decisions of the Paris Court of Appeal ("CA") on June 30<sup>th</sup>, 2025, No.21/12282 and 22/05103**

The CA rules that a French tax resident who, one year before death, set up an irrevocable and discretionary trust benefiting his children and grandchildren and subscribed to a life insurance policy (on which he was the insured, and the trust was the policyholder and beneficiary) realises indirect gifts subject to gift and inheritance tax. The interposition of the trust and the settlor's irrevocable dispossession prevent treating the death benefits as life insurance proceeds under the favorable life insurance tax regime.

- **Tax deferral: CE clarifies computation of capital repayment in a share capital reduction following a contribution under Section 150-0 B of the FTC regime - Decision of the 3<sup>rd</sup> and 8<sup>th</sup> Chambers of the CE on July 1<sup>st</sup>, 2025, No.491706**

The CE rules that where a capital reduction by lowering nominal value occurs after a contribution of shares under the tax deferral regime (Section 150-0 B of the FTC), the capital repayment exempted under Section 120, 3° of the FTC is limited to the actual acquisition cost of the contributed shares, compared with their contribution value. The repayment must be computed "in proportion to the ratio, with the numerator being the acquisition cost paid by the shareholder for the contributed shares, and the denominator being the value at which the contribution was recorded in the accounts of the receiving company".

- **Capital gains on securities: conditions for the enhanced allowance clarified in case of disposal of shares in a managing holding company - Decision of the 8<sup>th</sup> Chamber of the CE on July 21<sup>st</sup>, 2025, No.500469**

The CE rules that the 85% enhanced allowance applies only if all conditions are met by the holding company whose shares are disposed of, and by all its subsidiaries. In the case at hand, the allowance did not apply because one subsidiary did not meet the definition of an SME.

- **High-Income Surcharge ("CDHR"): advance payment is due by taxpayers concerned on December 15<sup>th</sup>, 2025**

The French tax authorities specify that the CDHR advance must be exclusively declared and paid online, in the taxpayer's personal account (under "manage my withholding tax"), between December 1<sup>st</sup> and 15<sup>th</sup>, 2025, without possibility of early payment or extension.