International Comparative Legal Guides

Corporate Tax 2021

A practical cross-border insight into corporate tax law

17th Edition

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1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in your jurisdiction?

France benefits from an impressive tax treaty network, which applies to corporate tax, but also (depending on each treaty) to individual income tax, wealth taxes (ISF and IFI), gift and/or inheritance tax as well as other French taxes. Approximately 130 bilateral income tax treaties are currently in force.

1.2 Do they generally follow the OECD Model Convention or another model?

Bilateral tax treaties signed by France follow, as a general rule, the OECD model. Variations of this model allow France to apply the specificities of French domestic law. As an example, the concept real estate company (*société à prépondérance immobilière*), i.e. a company of which the assets mainly consist of real estate, is often addressed. The tax treaties (or their amendments) negotiated recently are even more sophisticated and generally allow France to apply its extensive tax scope.

1.3 Has your jurisdiction signed the tax treaty MLI and deposited its instrument of ratification with the OECD?

France has signed, on 7 June 2017, the multilateral instrument ("MLI"), of which the main purposes are to limit base erosion profit shifting ("BEPS") through treaty abuse, improve dispute resolution, prevent the artificial avoidance of permanent establishment status and neutralise the effects of hybrid mismatch arrangements.

On 26 September 2018, France deposited the instrument of ratification with the OECD, after a law authorising the ratification was passed and published on 12 July 2018. The MLI entered into force in France on 1 January 2019.

The MLI affects the interpretation of bilateral tax treaties signed by France and therefore further cross-border transactions.

1.4 Do they generally incorporate anti-abuse rules?

Several bilateral tax treaties signed by France include anti-abuse rules, which may be general or specific, such as beneficial owner clauses.

The most recently negotiated tax treaties or amendments of existing tax treaties state that anti-treaty shopping rules apply, for example, to dividends and interest.

The MLI also incorporates general anti-treaty shopping provisions, which are mandatory for all signatory States. In a nutshell, if a given transaction or situation is implemented for the main purpose of applying the provisions of a given tax treaty, the concerned taxpayer will not benefit from the tax treaty's advantages.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

Bilateral tax treaties override domestic law.

1.6 What is the test in domestic law for determining the residence of a company? Has the application of the test been modified in response to COVID-19?

Under French law, the tax residence of a corporation is determined on the basis of where its effective place of management is located.

However, under the territoriality principle of corporate tax provided by article 209-I of the French Tax Code ("FTC"), only profits made from businesses carried out in France are subject to French corporate income tax ("CIT"), regardless of whether the company has its residence in France or abroad.

The concept of "business carried out in France" is not defined by law. However, Courts have held that a business is deemed carried out in France when there is a routine commercial activity operated in a place of business or through a representative or by operations constituting a "full commercial cycle" there. This concept is very close to the definition of a permanent establishment provided by the OECD model.

This has not been modified in response to COVID-19. However, the French tax authorities indicated that for the purpose of an individual's residence in 2020, the period during which non-resident individuals were obligated to stay in France due to the lock-down and travel bans would not be taken into account for the determination of the principal place of abode.

1.7 Is your jurisdiction's tax authority expected to revisit the status of dual resident companies in cases where the MLI changes the treaty "tiebreaker"?

There cannot be any dual resident companies in France.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

As a general rule, individuals are subject to stamp duties (*droits de timbre*) when performing certain administrative formalities.

In addition, the sale of shares of French companies, as well as French or foreign companies qualifying as real estate companies (*sociétés à prépondérance immobilière*) are subject to transfer duties under certain conditions. Transfers of goodwill are also subject to transfer duties. For more details, see question 2.6 above.

A tax on company cars (*taxe sur les véhicules de sociétés*, TVS) is also due by companies for the passenger cars (*véhicules de tourisme*) they own and which are registered in France and for all passenger cars they use in France. Some exceptions apply depending on the company's business field.

2.2 Do you have Value Added Tax (VAT), or a similar tax? If so, at what rate or rates? Please note any rate reduction in response to COVID-19.

European VAT rules apply in France. The standard VAT rate applicable amounts to 20%. Three other rates may apply depending on the nature of goods or services (10%, 5.5% and 2.1%). No reduction has been applied due to COVID-19.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

All European exclusions apply in France. Some activities are excluded from the VAT scope such as, for example, certain banking and financial activities, as well as insurance and reinsurance activities. The renting out and sale of residential real estate are also excluded from the VAT scope under certain conditions.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

As a general rule, a taxpayer may recover VAT charged on goods and services used to realise its turnover subject to VAT. For the application of this rule, several operations (mainly intra-European operations) are regarded as subject to VAT.

A few exceptions to the rule apply. For instance, VAT charged on passenger cars is never deductible.

Of course, VAT recovery is excluded for all operations or activities which are outside the VAT scope (see question 2.3 above). If a taxpayer realises some operations that are subject to VAT and others that are not, he may deduct VAT charged on goods and services in due proportion to their utilisation for activities within the scope of VAT.

2.5 Does your jurisdiction permit VAT grouping and, if so, is it "establishment only" VAT grouping, such as that applied by Sweden in the *Skandia* case?

The concept of VAT grouping does not exist in France. Under certain conditions, companies in the same group may elect to centralise the payment of VAT. Among other conditions, the "head" company should hold at least 50% of the share capital of its subsidiaries and all companies within the group should have the same tax year period.

2.6 Are there any other transaction taxes payable by companies?

Registration duties are due on the transfer of real estate, goodwill (*fonds de commerce*) or clientele and company shares.

As a general rule, the sale price of commercial property and/or clientele is subject to registration duties at a rate of 5%. Purchases of French real estate are subject to transfer taxes and registration duties at an overall rate which roughly amounts to 7% (including notaries' fees).

The rate of registration duties applicable to the company's shares varies depending on the nature of the shares transferred:

- transfers of shares of a "*société par actions simplifiée*" ("SAS") or a "*société anonyme*" running an industrial or commercial activity are subject to transfer duties at a rate of 0.1%;
- transfers of shares of a "*société à responsabilité limitée*" ("SARL") running an industrial or commercial activity are subject to transfer duties at a rate of 3%; and
- transfers of shares of any unlisted company (French or foreign) that qualifies as a real estate company (*société à prépondérance immobilière*), i.e. whose assets are mainly composed of real estate property located in France (having a market value representing more than 50% of its assets) are subject to transfer duties at a rate of 5%. See also question 4.7.

2.7 Are there any other indirect taxes of which we should be aware?

France is the kingdom of indirect taxes.

Numerous indirect taxes apply to goods such as wines and alcoholic beverages, hydrocarbons, cigarettes, sugar, oils, leather, etc.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

Unless tax treaties state otherwise, dividends are subject to a French withholding tax at the rate of:

- 12.8% when paid to non-resident individuals;
- 28% when paid to non-resident companies; and
- 75% when paid to residents of a non-cooperative state (i.e. a state which has not signed an exchange of information treaty with France).

However, most tax treaties signed by France provide either a reduced rate or a withholding tax exemption.

Under the EU Parent-Subsidiary Directive (90/435/EEC), dividends are exempt from withholding tax if the recipient is a company resident in an EU country and has held at least 5% of the shares of the French subsidiary for at least two years. However, the EU Directive 2015/121 that entered into force on 1 January 2016 added an anti-abuse provision under which the withholding tax exemption only applies if the main purpose of the ownership structure is not to benefit from such an exemption. As a result, ownership structures considered artificial (lack of substance) no longer benefit from the EU Parent-Subsidiary Directive.

In addition, the French Administrative Supreme Court recently held that tax treaty provisions only apply assuming the resident of the other contracting state is effectively taxed in his country of residence. As a consequence, as a general rule, a person exempted in his country of residence by reason of his legal status or activities may no longer benefit from the provisions of a double tax treaty signed with France.

This recent interpretation of the tax treaties by the French Administrative Supreme Court raises many difficulties, in the opinion of the authors. The French tax authorities may systematically refuse to apply tax treaties when the other contracting states allow their residents "tax incentives" in comparison to the French tax treatment suffered by French residents.

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Unless tax treaties state otherwise, royalties are, as a general rule, subject to a 28% withholding tax. When the recipient is resident in a non-cooperative country, royalties are subject to a 75% withholding tax.

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

As a general rule, no withholding tax is levied on interest paid by a French company, except of course when the recipient is resident in a non-cooperative jurisdiction.

3.4 Would relief for interest so paid be restricted by reference to "thin capitalisation" rules?

Like many other countries, France has legislation providing for certain limitations on the deduction of interest expenses, including thin capitalisation rules. However, as these different limitation rules apply altogether, their articulation may be difficult to deal with.

As a general rule, all French companies liable to CIT can only deduct the highest of €3 million and 30% of their "tax EBITDA" (which is the sum of the taxable income, the interest expenses and the net deductible depreciations and provisions). The non-deductible portion of the interests can be reported on future fiscal years without limitation.

Moreover, companies deemed thinly capitalised (i.e. when their related parties' debts exceed 1.5 times the entity's equity) are subject to even stricter interest deduction rules under which:

- Some interest expenses will be allocated to the debt independent from the thin capitalisation, and deductible as exposed on a *pro rata* basis.
- The interest expenses allocated to the debt bound to the thin capitalisation will be deductible on a *pro rata* basis to the extent of the highest of €1 million and 10% of its "tax EBITDA".

The deductible interest rate paid to an affiliate company cannot exceed a certain percentage, which is published every year (1.21% for fiscal years ended between 31 August 2020 and 29 September 2020).

3.5 If so, is there a "safe harbour" by reference to which tax relief is assured?

Assuming the borrowing company demonstrates that its debt-equity ratio does not exceed the debt-equity ratio of its group, the thin capitalisation rules described above do not apply.

3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

As indicated in question 3.4 *supra*, a limitation on the deduction of interest applies to interest paid to affiliate companies. For this purpose, third party debt guaranteed by a parent company is not regarded as owned by an affiliate company.

As for the thin capitalisation rule, such debt is also regarded as mere third-party debt and therefore is not taken into account for the thin capitalisation ratio.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident, for example pursuant to BEPS Action 4?

All general anti-avoidance rules aimed at preventing internal and/or international tax evasion may also apply (see question 9.1).

In addition, the deduction of interest on loans granted by related parties can be limited in accordance with the EU anti-tax avoidance directive ATAD II on hybrid mismatch. Within the scope of this legislation, when a company which is subject to CIT is bonded to another company, wherever it is located (in France or in a foreign country), the loan interest is deductible only if the borrowing company shows that the lending company is subject to income tax on the same interests, in the country of its incorporation.

3.8 Is there any withholding tax on property rental payments made to non-residents?

No withholding tax applies on property rental payments. Non-resident companies owning real estate properties located in France are subject to corporation tax regardless of whether or not they operate in France through a permanent establishment.

3.9 Does your jurisdiction have transfer pricing rules? Is their application expected to be materially affected by COVID-19?

France has developed transfer pricing legislation, which states that the correct transfer price for a particular transaction between related parties must be that which the parties would have agreed at arm's length.

In order to determine the tax owed by companies that depend on or control enterprises outside France, any profits transferred to those enterprises indirectly through increases or decreases in purchase or selling prices or by any other means must be added back into the taxable income shown in the companies' accounts. The same procedure applies to companies that depend on an enterprise or a group that also controls enterprises outside France.

To do so, the French tax authorities must prove that a dependent relationship existed between the parties involved in the transaction under review, and that a transfer of profits occurred.

French legislation also requires certain companies to provide significant documentation to the French tax authorities in relation to transfer pricing.

The application of transfer pricing rules is not expected to change in the context of the COVID-19 pandemic. However, the crisis will impact the analysis of financial intragroup transactions and the determination of the arm's-length price. In any case, companies must adapt their documentation to take into account the change of circumstances. They must also carefully document any changes in their transfer pricing policies.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

As a general rule, the standard corporate tax rate is 28% for the fiscal years 2020 and 2021 (with a few exceptions). For fiscal years starting on or after 1 January 2022, a 25% CIT rate will apply for all companies.

French corporate tax is established on a strict territorial basis; that is, it is assessed on French source income and not on a worldwide basis.

Participation-exemption regimes apply, providing for a reduced taxation of distributed income received by a qualifying parent company from its subsidiaries, and a reduced taxation on capital gains from the sale of its qualifying participations.

French tax law also provides a tax consolidation regime (*intégration fiscale*); see our answer to question 4.4.

Large companies subject to corporate tax may also be liable to an additional contribution at the rate of 3.3%, assessed on the amount of corporation tax due exceeding €763,000. The additional contribution does not apply to companies whose annual turnover does not exceed €7.63 million, provided that at least 75% of the company is owned by individuals or by companies that themselves fulfil these conditions. A consolidated group (see our answer to question 4.4) is liable to pay this additional contribution if its global turnover exceeds €7.63 million.

See also our answer to question 4.6 relating to profits distributed by a French company to its shareholders.

As a general rule, French corporate tax is pre-paid in four instalments (in March, June, September and December), and the debit/credit of corporate tax is due/refunded by 15 May the following year.

In the context of the COVID-19 pandemic, pre-payments occurring during fiscal year 2020 could be delayed.

Losses incurred by a company subject to corporation tax can be carried forward without time limits. However, the offsetting of losses is limited to 50% of the current year's profits insofar as the profits exceed €1 million. Any unused losses remain carried forward to the following years.

4.2 Is the tax base accounting profit subject to adjustments, or something else?

The determination of the taxable income is based on the company's accounting year, corrected to specific tax adjustments.

4.3 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

The major adjustments consist in adding back, in the taxable income, of the corporate tax itself and certain expenses considered unnecessary or extraneous to the purposes of the company, such as grants and subsidies granted to other companies. Some income, however, is subject to special tax provisions (notably, certain long-term capital gains, industrial property and trademarks, and income from subsidiaries).

4.4 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

French tax law provides for a tax consolidation regime, allowing a parent company to be liable for corporate tax (plus an additional contribution) on behalf of its whole group. The consolidated group includes French subsidiaries (foreign subsidiaries are excluded) which are liable to corporate tax and have a share capital 95% of which is held (directly or indirectly) by the parent company. A subsidiary can also be a part of a consolidated group when more than 95% of its share capital is held indirectly by a foreign EU company.

Under the tax consolidation regime, profits and losses incurred by all companies of the group are aggregated to determine a tax-consolidated net result. Intra-group transactions are neutralised.

As explained in our answers to questions 1.6 and 4.2 above, French corporate tax is applied on a strict territorial basis, under which neither losses incurred abroad by a company running a business in France nor losses incurred by its overseas subsidiaries can be offset against profits realised in France.

4.5 Do tax losses survive a change of ownership?

For French tax purposes, a change of ownership does not alter the carrying forward of tax losses, except if the activity of the company is substantially modified.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

The validity of the former additional 3% contribution which applied on profits distributed by French companies was held contrary to EU law by the European Court of Justice, and was repealed by the French Finance Bill for 2018. As a consequence, the same rate applies to profits whether they are distributed or not.

4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

France applies a lot of indirect taxes. Among others, the territorial economic contribution ("TEC"), the annual 3% tax and the tax on salaries should be noted.

The TEC is a local tax levied by the French departments and regions, made up of the following components: a "property-based" contribution, assessed on the rental value of the real property used for the company's business; and an "added value" contribution, assessed on the added value generated by the business on a yearly basis.

The overall amount of TEC due by the company cannot exceed 3% of the annual "added value" produced by the company.

The annual 3% tax is due by French and foreign companies owning (directly or indirectly) one or more real estate properties located in France, the market value of which exceeds that of all other French movable/financial assets owned by the same company. In practice, because there are many legal exemptions, this tax is only due when the real estate located in France is not used for business and the identity of the ultimate owners has not been disclosed to the French tax authorities, or one of the intermediary companies involved in the ownership structure is based in a country which has not signed an exchange of information treaty with France, or reporting obligations have not been completed.

French tax law also provides that companies which are not subject to VAT on less than 10% of their preceding year's turnover are subject to a tax on salaries (*taxe sur les salaires*), based on wages paid on a progressive scale ranging between 4.25% and 20%.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

Capital gains are, as a general rule, included in the corporate tax basis and then subject to corporate tax as explained in our answer to question 4.1.

However, specific provisions allow one to apply a more favourable tax regime to capital gains on certain assets.

Capital gains on the sale of shares qualifying as a "participation exemption" may benefit from a partial exemption (see our answer to question 5.2).

Capital gains on the sale of intellectual property, patents and assimilated assets are, under certain conditions, subject to corporate tax at a reduced rate of 15%.

Capital gains realised on the sale of qualifying shares of real estate listed companies (*sociétés à prépondérance immobilière cotées*) are subject to a 19% reduced corporate tax. Shares of real estate companies which are not listed are still subject to corporate tax at standard rates (see question 4.1).

Finally, capital gains on certain qualifying venture capital, mutual funds and investment companies, may, under certain conditions (they should be owned for more than five years, among other conditions), benefit either from a reduced rate of taxation of 15% or from a full exemption.

5.2 Is there a participation exemption for capital gains?

Sale of companies' shares benefits from a partial exemption (amounting to 88%) if, among other conditions, the shares have been held for more than two years.

5.3 Is there any special relief for reinvestment?

No special relief for reinvestment applies in France at the moment.

5.4 Does your jurisdiction impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

Withholding tax is not levied on all sales of interest in French assets or shares.

However, unless tax treaties provide otherwise, withholding taxes in France apply in the case of the sale of a real estate property located in France by a foreign company or in the case of the sale of company shares (French or foreign), as described below.

First, the sale of a real estate property located in France by a foreign company is subject to a withholding tax amounting to 28%.

Depending on the seller's country of residence, the taxable basis of the withholding tax may vary:

- If the seller is a company resident in a Member State of the EEA, the 28% withholding tax is levied on the difference between the sale price and net book value of the real estate property.
- If the seller is a company resident in a state which is not a member of the EEA, the 28% withholding tax is levied on the difference between the sale price and the purchase price of the real estate, less an amount corresponding to 2% of the purchase value of the real estate per year of ownership of the sold real estate property. We are convinced that this rule restricts the free movement of capital, as does the obligation to appoint a French tax representative.

A withholding tax is also levied in case of sale of shares by a foreign company, which varies depending on the quality of the company sold and on the quality of the seller:

- If the company sold (French or foreign) qualifies as a real estate company (*société à prépondérance immobilière*), the withholding tax is levied at the rate of 28% on the difference between the sale price and the purchase price if the seller is a foreign company. Assuming the seller is subject to CIT, the withholding tax levied at the time of the sale of the French real estate or of the shares of the real estate company is a prepayment of corporate tax, which is computed at the end of the fiscal year during which the real estate is sold. This may therefore give rise to CIT refunds if the 28% withholding tax exceeds the amount of CIT eventually due.
- If the French company sold does not qualify as a real estate company and that more than 25% of its share capital (threshold of "substantial participation") is held by a foreign company at the time of the sale or at any time during the five years preceding the sale, a 28% CIT is withheld. If the shares of the company are owned and sold by an individual a withholding tax of 12.80% is levied and considered as a final payment of income tax.

Assuming the seller is resident in a non-cooperative state or territory, the withholding tax is increased to 75% on the capital gain amount. We are convinced that this rule restricts the free movement of capital.

As a general rule, double tax treaties can disallow France to tax such sales if they comply with the OECD treaty model and only allow the State of residence to tax. Nevertheless, numerous tax treaties signed by France include provisions that allow France to tax the sale of shares of real estate companies or of substantial participations.

In addition, EU companies having a substantial participation in a French company and which meet the conditions to benefit from the participation exemption regime (see question 4.2) can also claim a refund for the difference between the amount of withholding tax paid and the taxed due at the reduced rate.

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

No tax would be imposed upon the formation of a French subsidiary by a foreign company.

Indeed, as a general rule, no tax is levied on contributions to companies, regardless of the nature of the contribution (goods, cash or work). However, the contribution must be real, i.e. without consideration.

Some exclusions apply to real estate contributions, except if the contributor fulfils a commitment to keep his shares for minimum three years.

6.2 Is there a difference between the taxation of a local subsidiary and a local branch of a non-resident company (for example, a branch profits tax)?

As a general rule, there are very few differences between the taxation of a locally formed subsidiary and a local branch set up by a non-resident company.

Because a branch (as opposed to a subsidiary) does not benefit from a legal personality different to that of its head office, interest, as well as royalties paid by a French branch to its foreign head office, is not deductible for French tax purposes.

Unless a treaty applies, corporate tax profits transferred by a French branch to its foreign head office are subject to a 30% withholding tax. A 75% withholding tax applies when the non-resident company is resident in a non-cooperative state or territory. Once again, we are convinced that this rule restricts the free movement of capital.

6.3 How would the taxable profits of a local branch be determined in its jurisdiction?

The French branch would only be subject to French corporate tax on profits realised in France (territorial regime), just as a French subsidiary would have been (see our answer to question 4.1).

6.4 Would a branch benefit from double tax relief in its jurisdiction?

Branches of foreign companies are not considered resident for the application of tax treaties, and therefore cannot benefit from their provisions.

6.5 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch?

Please see our answer to question 6.2.

7 Overseas Profits

7.1 Does your jurisdiction tax profits earned in overseas branches?

As explained above, according to the strict territorial regime of French corporate tax, profits realised by overseas branches of a French company are not taxable in France. As a result, French companies conducting business abroad cannot offset foreign losses against taxable profits.

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

As a general rule, dividends from abroad received by a French company are subject to French corporate tax at a standard rate of 28%.

However, according to the French parent-subsidiary tax regime, assuming the French company owns more than 5% of the shares of the distributing company for more than two years, dividends benefit from a 95% exemption for corporate tax purposes. This favourable regime does not apply when the subsidiary is resident in a non-cooperative state or territory.

7.3 Does your jurisdiction have "controlled foreign company" rules and, if so, when do these apply?

Article 209 B of the FTC provides that when a French company, subject to corporate tax, either realises a business enterprise in a low-tax jurisdiction or controls directly or indirectly (for more than 5% if the company is listed; 50% in other cases) the capital of a company located in a low-tax jurisdiction, profits realised by such a company are subject to corporate tax in France even if they have not been distributed to the French shareholder.

8 Taxation of Commercial Real Estate

8.1 Are non-residents taxed on the disposal of commercial real estate in your jurisdiction?

Foreign companies selling real estate located in France are subject to a 28% withholding tax, as explained in question 5.4 above.

8.2 Does your jurisdiction impose tax on the transfer of an indirect interest in commercial real estate in your jurisdiction?

Unless tax treaties provide otherwise, foreign companies are subject to 28% withholding tax on the sale of shares of companies (French or foreign) owning (directly or indirectly) real estate properties (commercial or not) located in France and having a fair market value exceeding the fair market value of other assets they own, as explained in question 5.4.

8.3 Does your jurisdiction have a special tax regime for Real Estate Investment Trusts (REITs) or their equivalent?

France does not recognise the concept of REITs. However, French tax law provides for a specific optional regime applying, under certain conditions, to listed real estate companies (*sociétés d'investissements cotées*). A French corporate tax exemption is granted provided that the major part of their results are distributed to their shareholders, corresponding to 95% of their rental income, 60% of their capital gains and 100% of dividends received from their subsidiaries.

9 Anti-avoidance and Compliance

9.1 Does your jurisdiction have a general anti-avoidance or anti-abuse rule?

The FTC provides numerous anti-avoidance or anti-abuse of law rules.

Some of them have a very wide scope and may function to prevent internal and international tax avoidance (the theory of *abus de droit* or *acte anormal de gestion*). Others are specifically dedicated to preventing international tax evasion.

As a general rule, the French tax authorities are not entitled to criticise the management of companies. However, the theory of acts of abnormal management (*acte anormal de gestion*) allows them to disregard an operation which has not been realised in the best interest of the company. This theory results from case law, according to which companies must make profits. It is only used when the abnormal acts result in a reduction of the taxable income. In application of the theory, provided that the intention to act against the company's interest is proven, the taxable income will be reinstated.

The French tax authorities may also use the theory of abuse of law (*abus de droit*) provided by article L64 of the Tax Procedure Handbook to challenge an operation (or a series of operations) which allow the taxpayer to avoid, reduce or postpone a French tax.

An abuse of law may be characterised when either the operation or the scheme used is fictitious or the taxpayer researched a literal application of a provision or decision that is contrary to the intention of the lawmaker and was motivated exclusively by the intention of avoiding or reducing its tax burden. A penalty at the rate of either 40% or 80% applies when an abuse of law is deemed to have occurred.

These general provisions may be difficult to apply because the French tax authorities may not conclude that an "*abus de droit*" or "*acte anormal de gestion*" existed if the intention was not evidenced.

This is the reason why specific anti-avoidance provisions were introduced in the FTC, which presume the existence of tax avoidance. This is the case for: article 57 of the FTC (see our answer to question 3.9); article 209 B of the FTC (see our answer to question 7.3); article 238 A of the FTC; and article 155 A of the FTC.

According to article 238 A of the FTC, any payments made by a French company benefiting a company located in a low-tax country are not deductible for French tax purposes.

According to article 155 A of the FTC, payments received by a non-resident (individual or company) corresponding to the remuneration of services rendered by a French taxpayer are, under certain conditions, taxable in France.

As explained before, any dividends, royalties, capital gains or income from a French source are subject to a 75% withholding tax when paid to a resident in a non-cooperative state or territory.

France implemented the ATAD Directive and introduced a general anti-avoidance rule regarding the CIT that entered in force on 1 January 2019. To determine the CIT due, the French tax administration will not take into account the operations and schemes that have been carried out in order to benefit from a tax advantage and without real business motivations.

In addition, since 1 January 2020, a new specific abuse of law procedure applies to transactions of which the main purpose is to avoid taxes, except for CIT as the specific anti-avoidance rule applies (see above).

9.2 Is there a requirement to make special disclosure of avoidance schemes or transactions that meet hallmarks associated with cross-border tax planning?

The EU Directive "DAC 6" entered into force in the EU on 25 June 2018 and was implemented into French law on 2 October 2019. Companies are required to report cross-border tax planning arrangements carried out since 25 June 2018 that meet certain characteristics or hallmarks intended to highlight risks of tax avoidance and enable more effective audits.

The obligation of reporting was supposed to start on 1 July 2020 but due to the COVID-19 pandemic, EU countries have been authorised to postpone the beginning of the obligation by six months.

9.3 Does your jurisdiction have rules which target not only taxpayers engaging in tax avoidance but also anyone who promotes, enables or facilitates the tax avoidance?

Article 1741 of the FTC provides that the voluntary fraudulent avoidance of taxation can give rise to a penalty amounting to €500,000 and an imprisonment sentence of five years. Under certain aggravating circumstances, the fine can be increased to €3 million and the imprisonment sentence to seven years.

Article 1742 of the FTC, in combination with articles 121-6 and 121-7 of the French Criminal Code, provides that anyone facilitating the fraudulent avoidance of taxation by assisting or advising the perpetrators of such offence can also be sentenced.

Moreover, Law 2018-898 on tax fraud that entered into force on 25 October 2018 has strengthened the possible sentences for fraudsters who violate the principles of equality in relation to public burdens and of free consent to taxation. One of the main provisions of the law is the creation of administrative sanctions against third-party professionals facilitating tax and social fraud in order to punish not only the perpetrators of the fraud, but also its "engineers", who spread fraudulent schemes.

9.4 Does your jurisdiction encourage "co-operative compliance" and, if so, does this provide procedural benefits only or result in a reduction of tax?

The sentences provided for by article 1741 of the FTC can be halved if the perpetrator or an accomplice in the abovementioned offences enables the French tax or judicial authorities to identify other participants in the same offences.

As a result of the initiative of the OECD Forum on Tax Administration, promoting cooperative compliance, France implemented in 2018 a law for a new trust relationship, aiming at bolstering transparency and cooperation between volunteering companies and the French tax administration. This cooperation took the form of tax support for small and medium volunteering companies by the French administration since 2019.

10 BEPS and Tax Competition

10.1 Has your jurisdiction implemented the OECD's recommendations that came out of the BEPS project?

France has implemented several measures as a result of the OECD's BEPS actions.

Some measures deal with hybrid mismatch arrangements (Action 2) and interest deductibility and thin capitalisation rules (Action 4), in accordance with the EU anti-tax avoidance directives ATAD I and ATAD II (see also questions 3.7 and 9.1).

Others deal with country-by-country reporting (Action 13).

Besides, France has signed and ratified the Multilateral Instrument, i.e. the MLI (Action 15) – see also question 1.3, and agreed to amend its tax treaties in line with several OECD issues, such as treaty shopping (Action 6), definition of a permanent establishment (Action 7), or transfer pricing documentation (Actions 8, 10 and 13).

France has not yet planned to add changes to its existing CFC rules (Action 3). However, it may do so depending on the results of the G20/OECD's II pillars as to global work on tax challenges arising from the digitalisation of the economy.

10.2 Has your jurisdiction adopted any legislation to tackle BEPS which goes beyond the OECD's recommendations?

France largely follows the recommendations of the OECD's BEPS reports, of which it has been a significant contributor. Sometimes, it requires more transparency in regard to transfer pricing. Companies, when they are controlled by tax authorities, have to provide the French tax authorities with a copy of the rulings from which they benefit in other countries, in addition to other reporting obligations provided by the OECD's transfer pricing recommendations.

10.3 Does your jurisdiction support information obtained under Country-by-Country Reporting (CBCR) being made available to the public?

At the beginning of 2016, the European Commission published a draft directive to fight against fiscal fraud, including a country-by-country reporting mechanism. This draft was adopted on 25 May 2016, amending Directive 2011/16/EU as regards the mandatory automatic exchange of information in the field of taxation. EU Member States had to apply these rules no later than 5 June 2017.

However, the French Parliament took the lead and from 1 January 2016 imposed an obligation to report accounting and taxable results country by country. Companies which hold foreign subsidiaries or branches, establish consolidated accountings and realise a consolidated turnover of over €750 million, are subject to this specific reporting obligation.

10.4 Does your jurisdiction maintain any preferential tax regimes such as a patent box?

French legislation provides for multiple grants and tax incentives to attract new investors. They take the form of tax credits and exemptions at both a national and regional level. Investors must meet strict criteria to apply for these.

The main incentive provided by French tax legislation is the "R&D tax credit" (*credit d'impôt recherche*), which is a corporate tax incentive based on the research and development expenditure incurred by any trading company located in France, regardless of sector and size. This mechanism allows all companies to benefit from a 30% (under €100 million) or 5% (exceeding €100 million) partial refund (either by way of tax reduction or tax reimbursement). This mechanism was extended to innovation expenditures incurred by SMEs, offering a yearly tax credit of 20% for up to €400,000 of expenses (that is, a yearly tax credit of €80,000).

France also has a patent box regime. It enables businesses to benefit from a reduced taxation rate of 10% on the royalties perceived or on the sale of the intellectual property if several conditions are met.

The patent box has been recently reformed following the new EU and OECD "nexus" approach, to correlate the benefits from the regime with the level of research expenses.

11 Taxing the Digital Economy

11.1 Has your jurisdiction taken any unilateral action to tax digital activities or to expand the tax base to capture digital presence?

France introduced a digital services tax in July 2019 (article 1 of Law 2019-759 of 24 July 2019), codified in the FTC (article 299 *et seq.*), with retroactive effect from 1 January 2019.

This so-called GAFA tax is meant to be a temporary tax, since France is waiting for either the OECD global project for a harmonised taxation of digital services (initially expected by the end of 2020, but which might be frozen by the United States) or for a European GAFA tax.

11.2 Does your jurisdiction favour any of the G20/OECD's "Pillar One" options (user participation, marketing intangibles or significant economic presence)?

France favours the Pillar One options aiming at reallocating the rights to impose based on a significant economic presence criterion, i.e. based on a strong link with the consumer's market (i.e. taxing the consumption).

Maryse Naudin began her career in the tax department of one of the major accounting firms, where she was in charge of the real estate practice and the South East Asia region, prior to co-founding Tirard, Naudin. She now has more than 35 years' experience in advising and defending varied clientele, from multinational corporations to high-net-worth individuals, in relation to cross-border tax issues. She has a particular expertise in advising foreign investors investing in Europe or acquiring French real estate property. Ms. Naudin also has a wealth of expertise in matters relating to European taxation and, in particular, tax litigation with respect to community freedoms.

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Tirard, Naudin is a highly reputed boutique law firm co-founded in 1989 by Jean-Marc Tirard and Maryse Naudin, which specialises in all aspects of French taxation, including tax litigation, with a particular emphasis on international tax issues. The firm is managed by Ouri Belmin.
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