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A practical cross-border resource to inform legal minds

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Q&A Chapters

1 **Argentina**
Walter Keiniger, Marval O'Farrell Mairal

8 **Austria**
Clemens Philipp Schindler & Mohamed Hemdan, Schindler Attorneys

18 **Brazil**
Luciana Rosanova Galhardo & Gustavo Melo Alcântara, Pinheiro Neto Advogados

27 **Colombia**
Mónica Reyes Rodríguez, Reyes Abogados Asociados

37 **Finland**
Niklas Thibblin & Onni Viljanen, Waselius

44 **France**
Maryse Naudin & Ouri Belmin, Tirard Naudin A.A.R.P.I.

53 **Germany**
Dr. Gunnar Knorr & Marc Krischer, Oppenhoff

59 **Ireland**
Eleanor MacDonagh, Deirdre Barnicle, Alan Heuston & James Quirke, McCann FitzGerald LLP

68 **Mauritius**
Assadullah Durbarry, Durbarry Chambers

76 **Netherlands**
IJsbrand Uljée & Walter Honing, BUREN

83 **Portugal**
João G. Gil Figueira, Beatriz Valério Pimenta & Carolina Mateus Monteiro, GFDL Advogados

90 **Singapore**
Eugene Lim, Benedict Teow & Philip John Duggan, Taxise Asia LLC

97 **Sweden**
Niclas Söderlund, Michel Weimer & Christoffer Dahl, XR Legal Advokat

104 **Switzerland**
Maurus Winzap, Fabienne Limacher & Janine Corti, Walder Wyss Ltd.

113 **Thailand**
Paul Papon Charoenpao & Pop Supagorn Jittimaporn, PDLegal Thailand

119 **United Kingdom**
James Ross, Freddie Knottenbelt & Melissa Hale, Taylor Wessing LLP

129 **USA**
Devon M. Bodoh, Joseph M. Pari, Greg W. Featherman & Blake D. Bitter, Weil, Gotshal & Manges LLP

137 **Zambia**
Joseph Alexander Jalasi, Jr., Mailesi Undi & Wana Chinyemba, Dentons Eric Silwamba, Jalasi & Linyama Legal Practitioners

France

Maryse Naudin

Ouri Belmin

Tirard Naudin A.A.R.P.I.

1 Tax Treaties and Residence

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

France benefits from an extensive 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 of a 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?

On 7 June 2017, France signed 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, 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.

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.

Companies are also subject to a specific taxation that applies to the passenger vehicles (registered in France) they own and use in France. Since 1 January 2022, the former "tax on company cars" has been repealed and replaced by two new similar taxes on CO_2 emissions and air pollutants.

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 all goods and services that are used to generate its turnover subject to VAT.

A few exceptions to this rule may apply (for instance, a company cannot deduct the VAT charged on the acquisition or rental of passenger cars).

In addition, VAT recovery is, of course, excluded for all transactions or activities that are outside the VAT scope (see question 2.3).

Finally, if a taxpayer carries out some operations subject to VAT and others that are not, he may only 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? If so, how does this apply where a company in one jurisdiction has an establishment in another?

In accordance with the option offered by the VAT Directive, France, like most EU Member States, has implemented a VAT grouping regime.

Since 1 January 2023, persons or entities that are legally distinct but related to each other have been authorised to form a VAT group (or single taxable person) that will act, with respect to third parties, as a single taxable person.

Among other conditions, only VAT taxpayers who have established their business or have a fixed establishment in France will be able to apply to form a VAT group: permanent establishments of foreign companies located in France will therefore be able to join the group; however, this will not be the case for permanent establishments that are not located in France.

2.6 Are there any other noteworthy transaction taxes or indirect taxes that are 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 that 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 a rate of:

- 12.8% when paid to non-resident individuals;
- 25% when paid to non-resident companies; and
- 75% when paid to residents of a non-cooperative state (i.e., a state that 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, EU Directive 2015/12, which 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 recent years, the French administrative jurisdictions (the Supreme Court and Appeal Courts) held in several decisions that tax treaty provisions may only apply assuming the resident of the other contracting state is effectively taxed in his country of residence. Consequently, 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 jurisdictions 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 25% 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 a 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 or 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 (e.g., 5.16% for fiscal years ending between 30 June 2024 and 30 July 2025).

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, 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 is therefore 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?

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 on hybrid mismatch ("ATAD II"). Within the scope of this legislation, when a company that 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?

France has developed transfer pricing legislation, which states that the correct transfer price for a particular transaction between related parties must be that on 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.

3.10 Can companies in your jurisdiction obtain unilateral, bilateral or multilateral advance pricing agreements?

French and foreign companies that carry out cross-border transactions with related companies may request the French tax authorities to reach an agreement on the method for determining their future transfer prices during a given period. This procedure is also applicable to internal flows between a company's headquarters and its permanent establishments. These agreements can be concluded either unilaterally, bilaterally or multilaterally with states that have signed a tax treaty with France.

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 25%.

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 question 4.4.

An additional contribution of 3.3% is due on the part of the CIT that exceeds €763,000. This only applies to large companies, i.e., whose turnover exceeds €7.63 million and of which at least 75% of the capital is owned by natural persons or by companies that are themselves at least 75% owned by natural persons and meet the turnover criteria. A consolidated group (see question 4.4) is liable to pay this additional contribution if its global turnover exceeds €7.63 million.

See also 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 of the following year.

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 profit, corrected with specific tax adjustments.

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

The major adjustments consist of 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 given 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).

Finally, the deductibility of certain provisions or depreciations may be limited for French corporate tax purposes.

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) that are liable to corporate tax and have a share capital of which 95% 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 questions 1.6 and 4.2, 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 same rate applies to profits whether they are distributed or not.

In 2012, France implemented an additional 3% contribution that applied on profits distributed by French companies. This contribution was held contrary to EU law by the European Court of Justice and was eventually repealed by the French Finance Act 2018.

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

Many other direct or indirect taxes apply to businesses in France. 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 on all companies or individuals carrying out a self-employed professional activity in France (unless exempted by law). This tax is made up of two components: a "property-based" contribution, assessed on the rental value of the real property used for the business; and an "added value" contribution, assessed on the added value generated by the business on a yearly basis. The overall amount of TEC cannot exceed 2% of the annual "added value" produced by a company.

The repeal of the "added value contribution" is scheduled for 2030.

In addition, 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 that has not signed an exchange of information treaty with France, or reporting obligations have not been completed.

French tax law also provides that companies established in France that are 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 13.60%.

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 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" may benefit from a partial exemption (see question 5.2).

Capital gains on the sale of intellectual property, patents and assimilated assets are optionally subject to corporate tax at a reduced rate of 10%. In accordance with the OECD "nexus" approach, the tax benefit is conditional on the existence of a link between such income and the corresponding expenses. Thus, patent sales and grants only benefit from the reduced rate of CIT if the research expenses related to the patent are incurred on French territory.

Capital gains realised on the sale of qualifying shares of listed real estate companies ("*sociétés à prépondérance immobilière cotées*") held for at least two years are subject to a reduced corporate tax rate of 19%. Sales of shares of non-listed real estate companies are 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 (notably being held for more than five years), benefit from either a reduced tax rate of 15% or a full exemption.

5.2 Is there a participation exemption for capital gains?

Sale of companies' shares benefits from a significant exemption if, among other conditions, the shares have been held for more than two years. In such case, only a 12% fixed fraction of the gain is subject to corporate tax.

5.3 Is there any special relief for reinvestment?

No special relief for reinvestment currently applies in France.

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 25%. 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 European Economic Area ("EEA"), the 25% 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 that is not a member of the EEA, the 25% 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 of the opinion 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 a rate of 25% 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 25% withholding tax exceeds the amount of CIT eventually due.
- If the French company sold does not qualify as a real estate company but 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 25% 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 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 of the opinion 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 5.2), can also claim a refund for the difference between the amount of withholding tax paid and the taxes 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 a minimum of 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. These payments are considered part of a profit made in France by the foreign company.

Subject to double tax treaties, France applies a "branch tax": profits made in France by foreign companies are deemed to be distributed to shareholders who do not have their tax residence or registered office in France and are therefore subject to a withholding tax of 25%. However, this withholding tax does not apply when the foreign company has its place of effective management in an EEA Member State and is liable for CIT there without the possibility of an option, without being exempted or benefitting from a specific exemption on profits made in France. Since 1 January 2020, in order to comply with EU law (in particular, freedom of establishment), the withholding tax may be reassessed (with a possible refund) when the foreign company is established in the EEA and can prove that its French profits subject to the withholding tax were not actually disinvested outside France. Finally, a 75% withholding tax applies when the non-resident company is resident in a non-cooperative state or territory.

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 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.

Specific provisions in the tax treaties relating to permanent establishments may, however, apply.

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 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 25%.

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 25% withholding tax, as explained in question 5.4.

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 25% 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 a major part of their results is distributed to their shareholders, corresponding to 95% of their rental income, 70% 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 and anti-abuse of law rules, some of which have a very wide scope and may function to prevent internal and international tax avoidance (the theories of "abuse of law" or "acts of abnormal management"), while 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 that has not been realised in the best interest of the company. Under this theory, derived from case law, companies must make profits. It is only used when the abnormal acts result in a reduction of the taxable income. In such a case, 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 Code to challenge an operation (or a series of operations) that allows 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 a 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 abuse of law or act of abnormal management existed if the intention was not evidenced, which is why specific anti-avoidance provisions were introduced in the FTC that presume the existence of tax avoidance. This is the case for: article 57 of the FTC (see question 3.9); article 209 B of the FTC (see 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 benefitting 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 above, 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 ATAD 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.

There has been an obligation of reporting in place since 1 March 2021.

9.3 Does your jurisdiction have rules that 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, which 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.

The Finance Act 2024 introduced a new offence of making instruments available with a view to facilitating tax fraud (article 1744 of the FTC). The act of making available "free of charge or against payment, one or more means, services, acts or legal, fiscal, accounting or financial instruments with the aim of enabling one or more third parties to fraudulently evade

the assessment or payment of all or part of taxes" will now be punishable by three years' imprisonment and a €250,000 fine.

The offences include "opening accounts or taking out contracts with organizations established abroad", "interposing natural or legal persons or comparable institutions established abroad", "providing a false identity or false documents or any other falsification", "providing or justifying a fictitious or artificial tax domicile abroad" and "carrying out any other manoeuvre intended to mislead the administration".

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 above-mentioned offences enables the French tax or judicial authorities to identify other participants in the same offences.

In 2018, as a result of the initiative of the OECD Forum on Tax Administration, promoting cooperative compliance, France implemented a law for a new trust relationship, aimed at bolstering transparency and cooperation between volunteering companies and the French tax administration. This cooperation has taken the form of tax support from the French administration for small and medium volunteering companies since 2019.

9.5 Are there rules requiring special disclosure where a company is taking a position on a tax issue that is uncertain (open to dispute from a technical perspective)?

There is no provision in domestic law requiring companies to disclose their uncertain tax positions. However, it should be noted that, at the European level, in this context aimed at reinforcing tax transparency in the EU, DAC 6 requires intermediaries and, in some cases, taxpayers themselves, to declare to the tax authorities their international transactions that are potentially aggressive from a tax point of view.

10 BEPS, Tax Competition and the Digital Economy

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 ATAD I and ATAD II (see also questions 3.7 and 9.1). Others deal with country-by-country reporting (Action 13).

Furthermore, France has signed and ratified 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), and transfer pricing documentation (Actions 8, 10 and 13).

France has not yet planned to make changes to its existing controlled foreign company rules (Action 3) and is, of course, a signatory of the two-pillar solution that was agreed at the G20/OECD level to address the tax challenges arising from the digitalisation of economy (see also question 10.5).

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

France largely follows the recommendations of the OECD's BEPS reports, to which it has been a significant contributor. Sometimes, it requires more transparency in regard to transfer pricing. Companies, when audited by the 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 that 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 small and medium-sized enterprises, 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, which enables businesses to benefit from a reduced taxation rate of 10% on the royalties perceived or on the sale of intellectual property if several conditions are met (see also question 5.1).

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

France introduced a 3% digital services tax in July 2019.

This so-called GAFA tax is meant to be a temporary tax and will be abolished as soon as the first pillar of the OECD agreement is effectively implemented (the details of this reform are still to be negotiated within the OECD).

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