

France - Tax Highlights

International tax – Non-resident withholding taxes contrary to EU law?

The French Supreme Court has issued an interesting ruling concerning withholding taxes applied in France on certain sums paid in consideration for services under article 182 B of the French Tax Code (FTC) (e.g. royalties, sports services, etc.).

When the foreign service provider can't offset such French withholding tax due to tax losses, it infringes the freedom of services guaranteed by EU law and is thus challengeable. Even if this ruling is not definitive, foreign companies established in an EU or EEA country that has concluded an agreement with France (tax treaty) that provides for administrative assistance against tax evasion and fraud and that is not a non-cooperative state, as defined in [FTC article 238-0 A](#), may lodge a claim to challenge such withholding taxes.

[CE, 8 th and 3rd ch. Réunies, 16 Feb. 2024, n° 468673, Sté Palomata](#)

International tax – Withholding taxes on salary paid to a non-resident...domiciled in France

An individual who carries on a professional activity in France on a non-incidental basis (this is the case of a senior executive) is therefore domiciled for tax purposes in France within the meaning of article 4 B of the FTC and the salaries paid to him in this respect cannot, as a result, give rise to the application of the withholding tax provided for in article 182 A of the FTC.

The fact that the person concerned may be considered, under the applicable double tax treaty, as a resident of that other State and not as a resident of France is irrelevant.

Companies should review their tax position in view of this new ruling and, if need be, levy a withholding tax as a foreign employer (DSN or PASRU schemes).

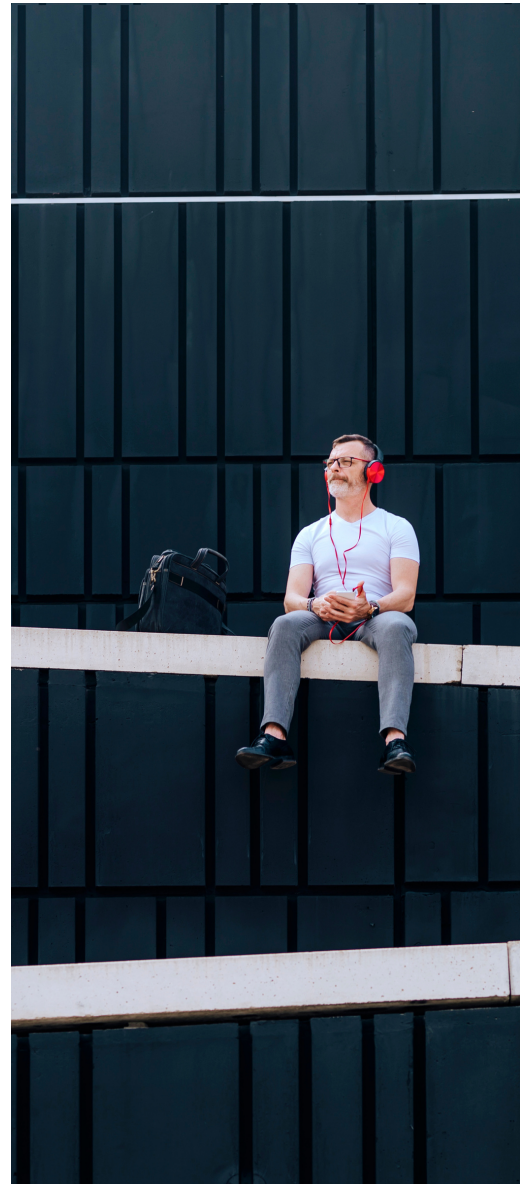
[CE, 8 th and 3rd ch., 5 Feb. 2024, n° 469771](#)

International tax: Non-Cooperative States and Territories

The French list of Non-Cooperative States and Territories (NCCTs) has been updated.

Antigua and Barbuda, Belize, Russia and Seychelles become ETNCs within the meaning of 2 bis of Article 238-0 A of the FTC (European blacklist) as from 1 May 2024.

[Decree of 12 February 2024](#)



New OECD report on international taxation

This new report, intended for G20 finance ministers, provides an update on the actions of the OECD and the OECD/G20 Inclusive Framework (BEPS, two pillars, reports on wealth taxation at a time of increasing calls for action to use taxation to combat growing global inequality, and efforts to take account of developing countries). The Philippines and Kuwait joined the Inclusive Framework at the end of 2023 (which now includes 171 countries or territories).

[oecd.org](https://www.oecd.org)

Tax losses incurred abroad by the foreign subsidiary of a French tax consolidated group and considered as “definitive” may be set off against the tax consolidated group’s taxable result

The Court confirms the right, in principle, to set off in France “definitive” losses recognized in another European Union country against the taxable results of a French tax consolidation group.

The Court held that the French company, which had notably unsuccessfully attempted to sell its foreign sub-subsidiary before its liquidation, had sufficiently demonstrated the impossibility to use these tax-losses, qualified as “definitive”.

[CAA Paris, 9th ch., 15 Dec. 2023 n°21PA01850](#)

VAT on NFT sales: the underlying determines the applicable regime

Taking a position for the first time, the French tax authorities consider that the ordinary VAT rules apply to non-fungible tokens (commonly known as “NFTs”) when they are used as certificates of ownership. By way of example, the French Administrative Guidelines detail certain transactions carried out using NFTs.

[BOI-TVA-RES-000140 du 14 Feb. 2024](#)

VAT and virtual delivery

The Finance Act for 2024 transposed Directive EU/2022/542, which modifies the territoriality rules applicable to cultural, artistic, sporting, educational, entertainment or similar activities broadcast virtually. As of January 1, 2025, these virtual services will be taxed at the place where the customer is established.

[Finance Act for 2024, art 83](#)

VAT Group: clarifications

An entity that has not been created or constituted on the date the VAT Group was created, may join the VAT Group during the mandatory 3-year period if it meets the other required conditions.

[BOI-TVA-AU-20 § 20 et 40](#)



Founders' share subscription warrants ("BSPCE")'s contributions are eligible for a tax deferral regime

In the event of a contribution to a company -not controlled by the contributor- of shares subscribed in exercise of BSPCEs, the gain resulting from this contribution is not immediately taxable. It benefits from a tax deferral (French Tax Code, art. 150-0 B). The French Supreme Court has overturned the French administrative guidelines which excluded the contribution of these specific shares from this deferral tax regime.
CE, 8th and 3rd Ch., 5 Feb. 2024, n° 476309

Renting out furnished tourist accommodation: new tax rules may not apply to 2023 income

The Finance Act for 2024 has modified the regime for the rental of furnished tourist accommodation. Published on February 14, 2024, an administrative tolerance allows taxpayers to continue to apply the pre-Finance Act provisions to 2023 income.
BOI-BIC-CHAMP-40-20 § 55

CONTRIBUTORS



Benoît DAMBRE
Partner
International Tax
+33 1 44 05 21 17
benoit.dambre@pdgb.com



Odile COURJON
Of Counsel
Indirect Tax
+33 1 44 05 21 01
odile.courjon@pdgb.com



Charlotte VENIARD
Counsel
Corporate Tax
+33 1 44 05 21 15
charlotte.veniard@pdgb.com



Arnaud GOULET
Trainee Lawyer

THE TAX TEAM

Benoît DAMBRE
Partner

Vincent GARCIA
Partner

Thierry JESTIN
Partner

François MORAZIN
Partner

Odile COURJON
Of Counsel

Arnaud GIROIRE
Counsel

Charlotte VENIARD
Counsel

Sanissa GUIORGUEFF
Associate

Raphaël SARFATI
Associate

Thibault SORIA
Associate

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