

France - Tax Highlights

International tax – capital gain tax for non-French tax residents: potential claims

The French Supreme Court has overturned the guidelines issued by the French tax authorities, according to which capital gains derived from the sale of shares by a non-French resident were not eligible for progressive taxation and may therefore give rise to higher taxation for non-residents than for residents.

This can be an opportunity to bring claims accordingly.

CE, May 31, 2024, n°489370

International tax – Branch's final losses: deduction from the French taxable result not allowed

The French Supreme Court refused to allow a French company to deduct the definitive losses incurred by its Luxembourg permanent establishment due to its liquidation, pursuant to article 4 (business profits) of the France-Luxembourg tax treaty which states that the Luxembourg PE was exempt from tax in France.

CE, April 26, 2024 n° 466062

International tax – The burden of proof regarding an indirect transfer of benefits between affiliated companies is on the tax authorities

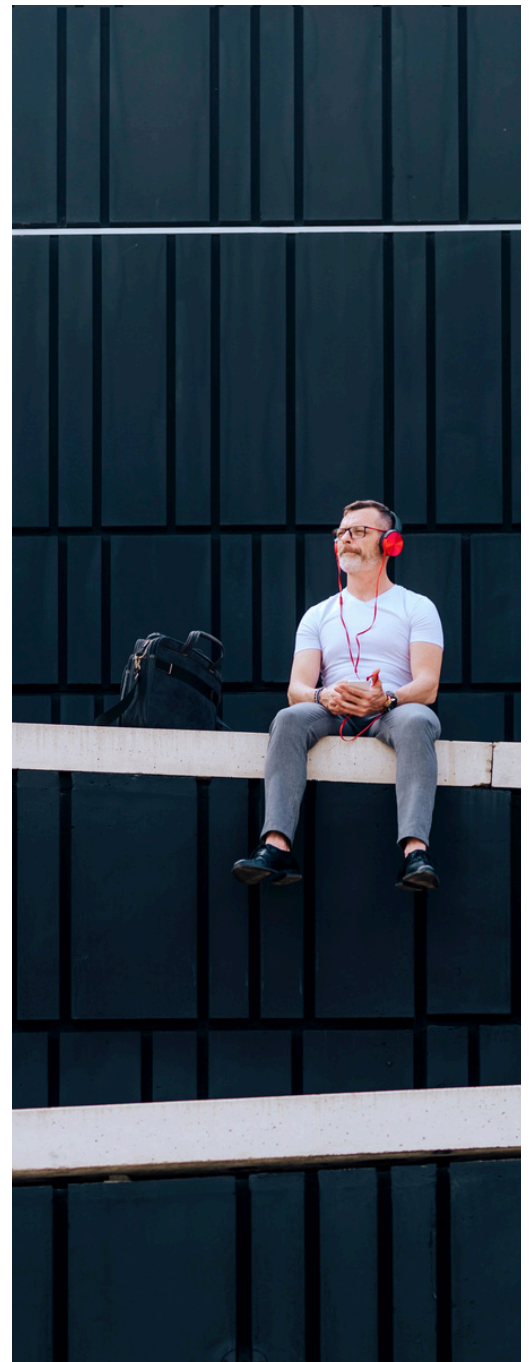
In the context of a concession granted by a French company to its foreign parent, the absence of invoicing for patent maintenance and protection costs does not necessarily qualify as an abnormal act of management, even if the company makes recurring losses.

CAA Lyon, January 11, 2024, n°22LY00272

International tax – absence of remuneration in the context of a cash pool agreement

The non-remuneration of cash surpluses under an EONIA-based cash pool agreement may qualify an abnormal management act. The following factors were taken into account: (i) the absence of any contractual obligation to remain within the framework of the cash pool agreement, and (ii) the possibility - not exercised - of renegotiating the fixed rate.

CAA Versailles, March 28, 2024, n°22VE02242



National tax – service agreement and manager’s functions

The conclusion of a service agreement with another company for the performance, by the director of the first company, of tasks relating to the functions inherent in those normally assigned to him "does not constitute abnormal commercial management" if the corporate bodies intended to remunerate him indirectly.

TA Versailles, March 21, 2024, n°2105846, on this topic also CE, April 26, 2024, n°458958

National tax – Distinction between a commercial debt waiver and a financial debt waiver

A French company had granted a debt waiver to a foreign subsidiary. The Nantes Administrative Court of Appeal ruled that the waiver was not deductible, since it had not been shown that the waiver was necessary for the French company or its subsidiary to maintain commercial relations with suppliers.

CAA Nantes, March 19, 2024, n°23NT00421

TAX TREATIES UPDATE

- **International tax - Cambodia / France Tax Treaty**

A second round of negotiations was held in Paris from 23 to 25 April 2024.

- **International tax - Ministerial responses to denunciation of some tax treaties**

Mali, Niger and Burkina Faso have denounced their respective double tax treaty with France. Further details to secure the situation of the taxpayers will be published by the French authorities.

Ministerial reply of March 14, 2024 (Mali and Niger)

Ministerial reply of May 28, 2024 (Burkina Faso)

- **Dissolution of the French National Assembly**

This dissolution will delay examination of the law adopting the France-Luxembourg tax treaty.



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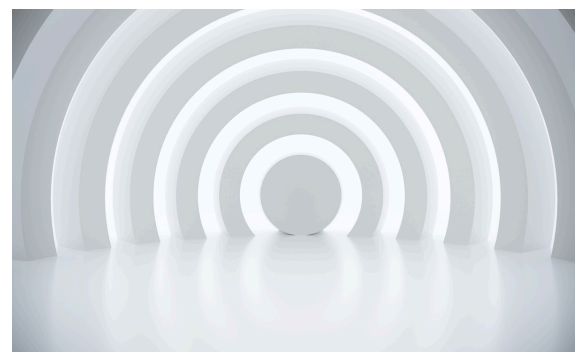
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