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Tax Highlights

March/April 2025

Potential opportunity for French mother companies receiving dividends from their foreign subsidiaries

Under French domestic rules, dividends received by a French parent company from another member of the same consolidated tax group are partially tax-exempt and taxed only on 1% of the gross amount of the dividend. Thanks to ECJ case law (2 September 2015, Case C-386/14, Steria group), this favorable tax regime is also applicable in the context of dividend distributions received from subsidiaries established in other EU Member States (subject to certain conditions, including a 95% shareholding).

With this Supreme Court's decision, the portion of Chilean dividends remaining taxable to the French standard corporate income tax rate is reduced from 5% to 1%, which means an effective taxation of 0.25% (1% x 25%).

This decision applies to dividends paid by Chilean subsidiaries based on Article 22 of the France-Chile tax treaty, which stipulates that dividends distributed by a Chilean company to a French company must benefit from tax treatment equivalent to that applied to intra-French or intra-European dividends.

Depending on the wording of the tax treaty, this solution may also apply when subsidiaries are established in other non-EU countries.

Given the two-year statute of limitation, claims should be filed with the French tax authorities to obtain a refund of the excess tax paid, if any.

- French Supreme Court, February 18th, 2025, n°490792

Real estate transfer tax: a 0.5% increase may apply

The finance bill for 2025 authorizes the "departments" to increase the rate of the tax on land registration or the registration fee ("taxe de publicité foncière" or "droit d'enregistrement"). The overall rate could reach 6.9185% in certain situations.

- Art 116 - Finance Law for 2025

Interest paid to shareholders: France publishes the maximum interest rate

Multiple and complex rules apply to the deductibility of financial charges in France.

In principle, the deduction of interest paid to shareholders is limited to interest paid at a rate not exceeding an average annual interest rate (FTC, Section 39.3). For companies ending their fiscal year on 31 December 2024, the annual market rate limit is **5.75%** (5.57% for the fiscal year ending December 31, 2023).

This limit can be exceeded provided it is "arm's length" (based on supporting documentation).

Member states update EU list of non-cooperative tax jurisdictions

The Council of the EU updates the European list of non-cooperative states and territories (NCCTs). No changes have been made to the European blacklist, which still includes 11 countries: American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Samoa, Russia, Trinidad and Tobago, US Virgin Islands and Vanuatu. As regards the European grey list, two States have been withdrawn (Costa Rica and Curacao) and one State has been added: Brunei. The grey list now includes 8 countries: Antigua and Barbuda, Brunei, Eswatini, Turkey, British Virgin Islands, Vietnam, Belize and Seychelles.

- EU List of non-cooperative jurisdictions

MNE business functions and effective tax rates

The OECD has published a working paper examining how large multinational enterprises (MNEs) allocate their business functions in response to corporate tax. The paper analyzes the relationship between the location of functions and effective corporate tax rates. It determines that higher average effective tax rates are associated with a lower prevalence of financial or holding functions, while more routine functions such as manufacturing and sales appear to be less sensitive to average effective tax rates. Other factors, such as tax incentives, loss carry-forward rules and anti-avoidance measures, also influence the location of these functions.

- OECD working paper - MNE business functions and corporate taxation

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Tax residency

The Finance Bill for 2025 “secures” the link between tax domicile within the meaning of domestic law (Section 4 B of the FTC) and tax residence determined in application of double tax treaties.

Under the “new” Section 4 B of the FTC, an individual who meets at least one of the internal criteria for tax residence in France is not considered to be domiciled in France for tax purposes if he or she is not considered to be resident in France for tax purposes by application of the rules contained in international tax treaties.

This new wording enables France to impose a **withholding tax** on French source income, such as salaries and dividends, paid to persons who are tax residents of France under Section 4 B of the CGI, but who are not tax residents under a treaty between France and a foreign country.

The Finance Bill also extends from 3 to 10 years the period during which the French Tax Authorities can reassess a taxpayer in case of a “fake” foreign tax residency. This new statute of limitations would apply to income tax, wealth tax, inheritance and gift taxes.

DOUBLE TAX TREATIES

France – Luxembourg treaty - Ratification of Protocol to Tax Treaty
The amending protocol signed on 7 November 2022, to the Income and Capital Tax Treaty of 2018, between France and Luxembourg was ratified by France.
(17 February 2025)

France – Moldova: a social security agreement was signed between us on March 10, 2025.

ECJ Advocate General's Opinion on VAT Treatment of Transfer Pricing Adjustments

On 3 April 2025, the Advocate General (AG) of the Court of Justice of the European Union (ECJ) delivered his opinion in the case of S.C. Arcomet Towercranes S.R.L. v. Direcția Generală Regională a Finanțelor Publice București (Case C-726/23). The case addresses whether a transfer price adjustment is subject to VAT and whether tax authorities can require evidence beyond a mere invoice to prove the deductibility of a transaction, provided the principle of proportionality is respected. The AG suggested the following answers for the ECJ's preliminary ruling:

- VAT application on intragroup transfer pricing adjustment calculated on the Transactional Net Margin Method;
- Proofs for VAT deduction: the tax authorities would be grounded to require means of evidence, other than the invoice to justify the use of the services acquired for taxable transactions,

provided those other documents comply with the principle of proportionality and demonstrate the existence and use of the services for taxable transactions of the taxpayer.

It still remains to be seen whether the ECJ's decision is in line with those guidelines. In the meantime, this creates a big turmoil in the realm of VAT and transfer pricing. Our experts remain available to analyze each situation on a case-by-case basis.

- Arcomet Towercranes (Case C-726/23), ECJ Advocate General's Opinion

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