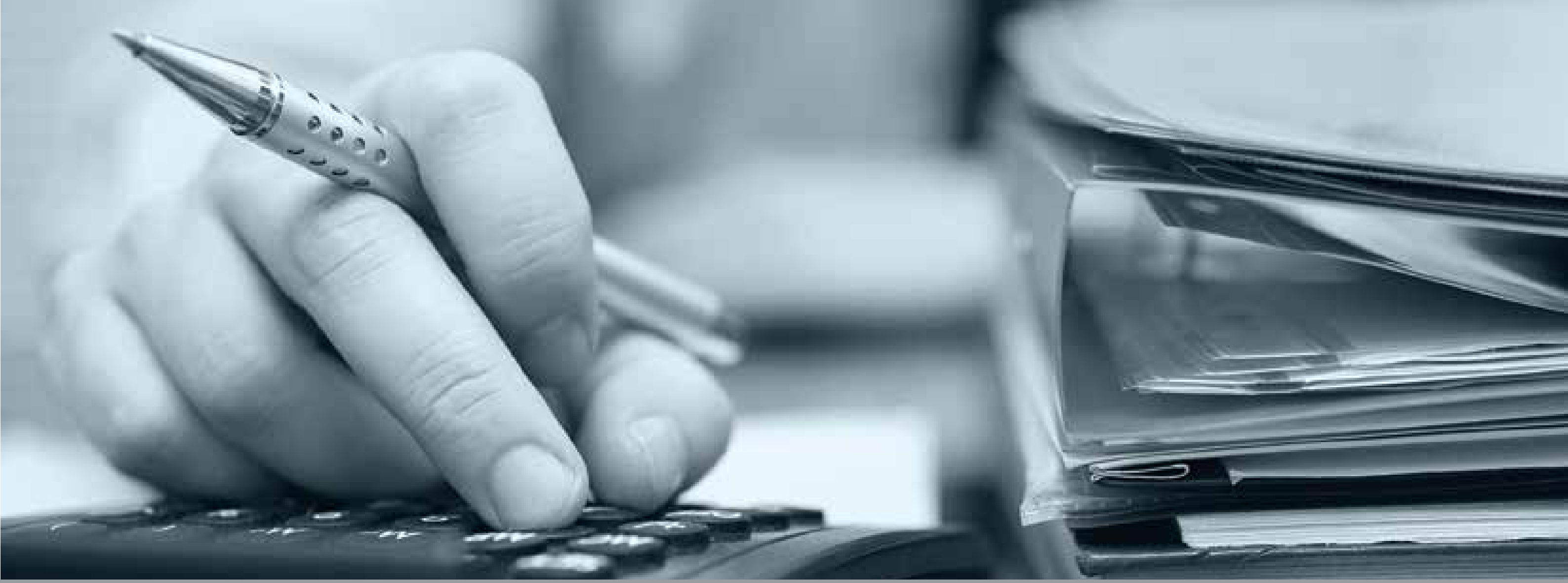

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The International Comparative Legal Guide to:

Corporate Tax 2019

15th Edition

A practical cross-border insight into corporate tax work

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General Chapters:

Country Question and Answer Chapters:

EDITORIAL

Welcome to the fifteenth edition of *The International Comparative Legal Guide to: Corporate Tax*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of corporate tax

It is divided into two main sections:

Two general chapters, offering an insight into tax and state aid, and tax in relation to the digital economy.

Country question and answer chapters. These provide a broad overview of common issues in corporate tax laws and regulations in 34 jurisdictions.

All chapters are written by leading corporate tax lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor William Watson of Slaughter and May for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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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 treaties 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 internal law. As an example, the concept of "*société à prépondérance immobilière*" (real estate company) is very often developed. The more recently negotiated amendments or tax treaties are more sophisticated than the previous ones and allow France to apply its extensive tax scope.

1.3 Do treaties have to be incorporated into domestic law before they take effect?

Tax treaties enter into force after the ratification process has been duly accomplished by each contracting state.

1.4 Do they generally incorporate anti-treaty shopping rules (or "limitation on benefits" articles)?

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.

France also signed, on 7 June 2017, the multilateral instrument ("MLI") covering 83 jurisdictions. Among others, MLI's main purposes are to limit base erosion profit shifting ("BEPS") through treaty abuse (Action 6 of the BEPS project), improve dispute resolution, prevent the artificial avoidance of permanent establishment status and neutralise the effects of hybrid mismatch arrangements.

The MLI entered into force on 1 July 2018 in five countries: Slovenia; Austria; Isle of Man; Jersey; and Poland. The MLI will enter into force on 1 October 2018 in four other countries: United Kingdom; Sweden; Serbia; and New Zealand. On 12 July 2018, the law authorising the ratification of the MLI by the French Parliament was published. The MLI should enter into force in France in 2019 depending on the date of the ratification of the instrument by the French Parliament.

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

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?

Article 209-1 of the French Tax Code ("FTC") provides that French or foreign resident companies are taxable in France on all profits made on business carried out in France under the territoriality principle. The concept of "business carried out in France" is not defined in the legislation. Cases have, however, held that the requirement is established when there is a routine commercial activity carried out in a place of business or through a representative or by operations comprising "*cycle commercial complet d'activité*". This concept is very close to the definition of a permanent establishment provided by the OECD model.

Under the French principle of restricted territoriality, profits (or losses) realised by a French company from business carried out outside France are not subject to French corporate tax.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

No documentary taxes exist *per se* in France. However, the sale of shares of French companies and of French or foreign companies qualifying as *sociétés à prépondérance immobilière* are subject to transfer duties under certain conditions. Transfer of goodwill is also subject to transfer duties.

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

European VAT rules apply in France, which is a member of the European Union. 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%).

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 transactions, 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?

A taxpayer may recover VAT charged on goods and services used to realise the turnover, subject to VAT. The main exception to this principle is VAT on cars.

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, "*fonds de commerce*" (goodwill) or clientele and company shares.

(The sale price of commercial property and/or clientele is subject to registration duties at a rate of 3% for amounts between €23,000 and €200,000, and 5% for greater amounts.)

Purchases of French real estate are subject to registration duties at rates which may vary depending on the location of the real estate. A French notary should be appointed. Registration duties, including the notary's fees, may reach 7%.

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 company (French or foreign) whose assets are mainly composed of real estate property located in France (that is more than 50% of their market value) are subject to transfer duties at a rate of 5%.

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, 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;
- 30% 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 Directive 90/435/EEC relating to parent and subsidiary companies ("EU Parent-Subsidiary Directive"), 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, as from 1 January 2016, the EU Directive 2015/121 adopted on 27 January 2015 added an anti-abuse provision to the EU Parent-Subsidiary Directive. Under this new provision, withholding tax exemption only applies if the main motivation of the ownership structure was not to benefit from such an exemption. As a result, ownership structures considered artificial will no longer benefit from the EU Parent-Subsidiary Directive.

Finally, the French Administrative Supreme Court recently stated 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, 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 entails many difficulties, in the opinion of the authors. The French tax authorities will systematically refuse to apply tax treaties, while 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 33.33% 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 country.

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.

French companies liable for corporate tax can only deduct from their annual taxable basis 75% of the net interest expenses occurring during the same year, unless the interest amount does not exceed €3 million ("General interest deductibility limitation").

In addition, the deduction of interest on loans granted by related parties is disallowed when the lender is liable to tax on the interest received from the borrowing company up to an amount which is less than a quarter of the French tax burden it would have been subject to corresponding to:

- 8.33% for fiscal years starting 1 January 2018;
- 7.75% for fiscal years starting 1 January 2019;
- 7% for fiscal years starting 1 January 2020;
- 6.63% for fiscal years starting 1 January 2021; and
- 6.25% for fiscal years starting 1 January 2022.

Interest paid by a French borrowing company can be disallowed for French corporate tax purposes if its amount exceeds, cumulatively, the following three ratios:

- 1.5 times the company's share capital (debt-equity ratio);
- 25% of the company's earnings results before tax (interest coverage ratio); and
- the amount of interest received from affiliates (net paid interest).

Once the ratios have been met, the portion of interest which exceeds the highest of those is not deductible from the taxable results unless either of the following applies:

- it does not exceed €150,000 per year; or
- the borrowing company can prove that the overall debt-equity ratio of the group to which it belongs exceeds or equals its own debt-equity ratio.

Subject to restrictions, the portion of non-deductible interest from a year's taxable results can be deducted from the following fiscal year's results at a 5% reduction per financial year as from the second year.

The deductible interest rate paid to an affiliate company cannot exceed a certain percentage, which is published every year (1.67% for fiscal years ended between 31 December 2017 and 30 January 2018).

Finally, within a French tax consolidation group, the deduction of a portion of interest paid by a tax group is disallowed and added back into the global taxable income when a member company acquires the shares of either of the following:

- a "head" company controlling, directly or indirectly, the purchasing company; that is, the acquiring company and the purchased company become members of the same group; or
- a company controlled directly or indirectly by the "head" company.

France, as an EU Member State, will have to implement in its domestic legislation provisions complying with the Anti-Tax Avoidance Directive ("ATA Directive") by 31 December 2018. As a consequence, the general limitation of the deduction of interests paid by taxpayers (i.e. 30% of the taxpayers' EBITDA) provided by the ATA Directive will affect or replace the French General interest deductibility limitation.

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 below do not apply.

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

Thin capitalisation rules also apply in this case; see our answer to question 3.4.

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 our answer to question 9.1).

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 should comply with French accounting obligations and file an annual corporate tax return.

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 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 enforce article 57 of the FTC, the French tax authorities must prove both 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**.

4 Tax on Business Operations: General

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

The standard corporate tax rate is 33.33%. However, there is an exception for companies having an annual turnover inferior to €7.63 million and fulfilling certain conditions, which are subject to a corporate income tax ("CIT") rate of 15% for the fraction of their net profit lower than or equal to €38,120.

Small and medium-sized enterprises ("SMEs") starting their fiscal year on or after 1 January 2017, benefit from a reduced CIT of 28% on the fraction of their net profit which does not exceed €75,000. Companies eligible for the 15% rate of CIT continue to benefit from this reduced rate, and will be subject to the 28% rate only on the fraction of their net profit exceeding €38,120 and lower or equal to €75,000.

For fiscal years starting on or after 1 January 2018, a 28% CIT rate applies on the first €500,000 of taxable profit of all companies. Taxable profit in excess of €500,000 are subject to a 33.33% CIT rate.

For fiscal years starting on or after 1 January 2019, a 28% CIT rate will apply on the first €500,000 of taxable profit of all companies. Taxable profit in excess of €500,000 will be subject to a 31% CIT rate.

For fiscal years starting on or after 1 January 2020, a 28% CIT rate will apply for all companies.

For fiscal years starting on or after 1 January 2021, a 26.5% CIT rate will apply for all companies.

For fiscal years starting on or after 1 January 2022, a 25% CIT rate will apply for all companies.

Moreover, companies subject to CIT with turnover exceeding €1 billion would be subject to a 15% exceptional contribution on their CIT and companies subject to CIT with turnover exceeding €3 billion would be subject to a 15% additional contribution on their CIT.

However, these contributions are temporary and will only apply for the financial years ended between 31 December 2017 and 30 December 2018.

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.

Double tax treaties may, however, allow France, under specific circumstances, to tax certain foreign source income.

As regards the taxation of distributed income, two co-existing parent-subsidiary regimes are applicable, based, respectively, on French domestic tax law and on EU regulations.

These regimes allow a qualifying parent company to benefit from reduced taxation on certain transactions on capital gains realised by the parent company on the sale of participations and dividends received from its subsidiaries.

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.

French corporate tax is pre-paid in four instalments (in March, June, September and December). Please note in this respect that a fifth instalment was added for certain companies through the 2017 Finance Bill. The debit/credit of corporate tax is due/refunded by 15 May 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 year, corrected to specific tax adjustments.

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

The income of companies taxable under corporate tax law is determined by adjusting accounting profits and losses in conformity with specific tax regulations.

The major adjustments involved are the reintegration 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 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 additional 3% contribution applied on profits distributed by French companies has been considered by the European Court of Justice as contrary to EU law. The Finance Bill for 2018 suppresses the 3% contribution for dividend payments made on or after 1 January 2018.

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") and the annual 3% tax should be noted.

The TEC replaced the former business tax ("*taxe professionnelle*") in 2010. This is a local tax levied by the French departments and regions, made up of the following components:

- the "*cotisation foncière des entreprises*", which is based on the rental value of the real estate property used for the company's business; and
- the "*cotisation sur la valeur ajoutée des entreprises*", which is based on the added value 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 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 listed shares of real estate companies ("*sociétés à prépondérance immobilière*") 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?

Unless tax treaties provide otherwise, withholding taxes are levied in France either 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.

The sale of a real estate property located in France by a foreign company is subject to a withholding tax amounting to 33.33%. Depending on the seller's country of residence, the taxable basis of this withholding tax may vary.

Assuming the seller is a company resident in a Member State of the EEA, the 33.33% withholding tax is levied on the difference between the sale price and net book value of the real estate property.

Assuming the seller is a company resident in a state which is not a member of the EEA, the 33.33% 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.

Assuming the company (French or foreign) sold qualifies as a real estate company ("*société à prépondérance immobilière*"), the withholding tax is levied at the rate of 33.33% on the difference between the sale price and the purchase price if the seller is a foreign company.

If 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 ("*société à preponderance immobilière*") is a prepayment of corporate tax (at the standard rate of 33.33%), which is computed at the end of the fiscal year during which the real estate is sold. Assuming the 33.33% withholding tax exceeds the corporate tax due at standard rates (see question 4.1.), the excess can be refunded by a claim filed to the French tax authorities.

Assuming the French company sold does not qualify as a real estate company and that more than 25% of its share capital is held by a foreign company at the time of the sale or at any time during the five years preceding the sale, a 33.33% withholding tax applies which is a final payment. If the shares of the company are owned and sold by an individual a withholding tax of 12.80% is levied. The withholding tax paid is also 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.

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.

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, 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 6.3.

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.

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.

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 33.33% 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 a 33.33% withholding tax on the sale of shares of companies (French or foreign) owning (directly or indirectly) real estate properties 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.

The French tax authorities may use the theory of abuse of law ("*abus de droit*") provided by article L64 of the Tax Procedure Handbook ("*livre des procédures fiscales*") 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 only 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.

The theory of abnormal management act ("*acte anormal de gestion*") allows the French tax authorities to disregard an operation which has not been realised in the best interest of the company.

These general provisions may be difficult to apply because the French tax authorities may conclude that an "*abus de droit*" or "*acte anormal de gestion*" exists.

This is the reason why specific anti-avoidance provisions have been introduced in the FTC which presume the existence of tax avoidance. Then the taxpayer should (sometimes) prove the absence of the intention of avoidance in order to escape the application of the presumption imposed by the law.

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 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.

Finally, 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.

As explained in question 3.4, as an EU Member State, France will have to implement in its domestic legislation ATA Directive-compliant provisions by 31 December 2018 (with the provisions applying from 1 January 2019).

9.2 Is there a requirement to make special disclosure of avoidance schemes?

The requirement to make special disclosure of avoidance schemes has not yet been introduced into French tax law.

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 €2 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, a draft law is being discussed in French Parliament, of which the purpose is to strengthen the sentences against fraudsters who violate the principles of equality in relation to public burdens and of free consent to taxation. One of the main provisions of this bill is the creation of administrative sanctions against third parties 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.

Article 109 of the Finance Bill for 2017 also introduced, temporarily, the possibility for the FTA to compensate individuals providing information on existing "infringements" of the provisions of the FTC (i.e. absence of reporting, tax avoidance arrangements, etc.). This provision entered into force on 1 January 2017, and the system is supposed to be tested for two years.

10 BEPS and Tax Competition

10.1 Has your jurisdiction introduced any legislation in response to the OECD's project targeting Base Erosion and Profit Shifting (BEPS)?

France has already introduced legislation in response to the OECD's project targeting BEPS, as a specific mechanism which aims to strive against the effects of hybrid mismatch arrangements. 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's interests are deductible only if the borrowing company shows that the lending company is subject to income tax on the same interests.

On 7 June 2017, France signed the MLI to amend its tax treaties in line with the OECD BEPS principles. On 12 July 2018, the law authorising the ratification of the MLI by the French Parliament was published. The MLI should enter into force in France in 2019 depending on the date of the ratification of the instrument by the French Parliament. The MLI provides notably for substance-over-form and anti-treaty shopping provisions that are mandatory for all signatory States.

10.2 Does your jurisdiction intend to adopt any legislation to tackle BEPS which goes beyond what is recommended in the OECD's BEPS reports?

France largely follows the recommendations of the OECD's BEPS reports. 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 public Country-by-Country Reporting (CBCR)?

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. The Member States have to apply their 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. The France Country-by-Country report shall be filed at the latest on 31 December 2018 for the fiscal year closing 31 December 2017.

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).

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?

The French Government has already tried to introduce what was commonly called the "Google Tax" in the 2017 Finance Bill. However the Constitutional Court ("*Conseil Constitutionnel*") has repealed this disposition before it was enacted. Thus, France has not yet taken unilateral action to tax digital activities or to expand the tax base to capture digital presence. However, France is acting at the EU level for such a legislation to be implemented as explained in question 11.2 below.

11.2 Does your jurisdiction support the European Commission's interim proposal for a digital services tax?

France's Minister for the Economy and Finance, Bruno Le Maire, has welcomed the European Commission's draft directives in a 21 March 2018 joint statement with Finance ministers from Germany, Italy, Spain and the United Kingdom.

The Digital Services Tax ("DST") should apply to revenues created from activities where users play a major role in value creation such as those revenues created from:

- selling online advertising space;
- digital intermediary activities; and
- the sale of data generated from user-provided information.

The DST should only be levied on companies which totalise:

- annual worldwide revenues of €750 million or more; and
- annual EU revenues of €50 million or more.

The rate of the DST is proposed to be 3%.

The DST proposal indicated that Member States shall adopt and publish by 31 December 2019 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive and that they shall apply those provisions from 1 January 2020.

However, this measure is only a proposal which will require the unanimous agreement of the Member States to be adopted.

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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 acquiring French real estate property, as well as French clients with foreign interests. Ms. Naudin also has a wealth of expertise in matters relating to trust aspects in a civil law environment, European taxation and, in particular, tax litigation with respect to community freedoms. She is the co-founder and former secretary of the French branch of STEP, and a former chairman of the International Estate Planning Commission of the *Union Internationale des Avocats*. She is a member of the international Academy of Estate and Trust Law.

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Tirard, Naudin is a highly reputed Paris-based boutique law firm co-founded in 1989 by Jean-Marc Tirard and Maryse Naudin, which specialises in international tax and estate planning (including trusts), tax representation and litigation in all aspects of French taxation, with a particular emphasis on international tax issues. The firm's experience in the trust field is virtually unique in France. Its client base includes corporate clients, who come both for its special expertise in negotiating with the French tax authorities and for its experience of structuring international transactions. It also acts for high-net-worth private clients and their families who need help in resolving complex tax and inheritance issues. It has considerable expertise in property tax issues and the creation of efficient structures for non-resident investors. Tirard, Naudin acts regularly as "lawyer's lawyers", providing specialist support for other firms and their clients. The firm's two founding partners are now assisted by Ouri Belmin, who is in charge of Tirard, Naudin's team in Paris.

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