FRANCE

1. INTRODUCTION

a. Forms of Legal Entity

From both legal and tax perspectives, two main categories of entities exist in France, companies and partnerships. The most common companies are:

- the joint stock company (société anonyme, “SA”), having minimum share capital is EUR37,000.
- the limited liability company (société a responsabilité limitée, S.à r.l.), having no minimum share capital.
- the simplified stock corporation (société par actions simplifiée, “SAS”), having no minimum share capital.

Although shareholders of these companies may forfeit their equity contributions, they are not responsible for the obligations and debts of the companies. These companies are subject to corporate income tax (“CIT”).

The most common partnerships are:

- the commercial partnership (société en nom collectif, “SNC”); and
- the French real estate company (société civile immobilière, “SCI”) whose purpose is to hold real estate assets.

Partners are responsible for the obligations and debts of the partnerships to the extent of their personal assets. No minimum capital is required. The tax results of a partnership are determined at the level of the partnership itself, but the tax on the results is assessed directly against the partners, such that a partner’s share of the losses of one partnership may offset that partner’s share of income from a different partnership.

b. Taxes, Tax Rates

The standard French CIT rate is being gradually reduced from 33.3% in 2017 to 25% for financial years open on or after 1 January 2022 (see section 2 for the applicable rates). France does not assess local taxes on income.

The top rate for personal income tax amounts to 45%.

c. Common divergences between income shown on tax returns and local financial statements

In France, there are several discrepancies between accounting and taxable income.

Regarding M&A transactions, the common divergences are as follows:

- Long-term capital gains : Capital gains derived from the sale of qualifying participations that have been held for at least two years are subject to CIT on only 12% of the gross capital gains, resulting in a taxation at an effective rate of up to 3% maximum.
- Dividends : dividends distributed under the parent-subsidiary regime are exempt up to 95% or 99% within a tax consolidated group.

2. RECENT DEVELOPMENTS

a. Progressive reduction of the CIT rate:

Finance Laws for 2018, 2019 and 2020 provided for the following progressive reduction in the French CIT rate:

<table>
<tr><th>Portions of taxable income</th><th>2019</th><th>2020</th><th>2021***</th><th>2022***</th></tr>
<tr><td colspan="5">Turnover < €7.63 million*</td></tr>
<tr><td>€0 – €38,120</td><td>15%</td><td>15%</td><td>15%</td><td>15%</td></tr>
<tr><td>€38,120 – €500,000</td><td>28%</td><td rowspan="2">28%</td><td rowspan="2">26.5%</td><td rowspan="2">25%</td></tr>
<tr><td>>€500,000</td><td>31%</td></tr>
<tr><td colspan="5">Turnover 7.63 million – 250 million</td></tr>
<tr><td>€0 – €500,000</td><td>28%</td><td rowspan="2">28%</td><td rowspan="2">26.5%</td><td rowspan="2">25%</td></tr>
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<tr><td>>€500,000</td><td>33.3%**</td><td>31%</td></tr>
</table>

* Subject to compliance with the conditions set forth in Article 219, I-b of the CGI
** Thirty three and one third percent. The rate of 33.3% applies to fiscal years ("FY") beginning in 2019 and ending on or after 6 March 2019
*** Turnover increase to EUR10 million to allow companies to benefit from the 15% corporate reduced rate

b. Interest limitation rules modified:

New interest deduction limitation rules were adopted and implemented for financial periods open as of 1 January 2019 and as of 1 January 2020. Those new rules implement the European Union Anti-Tax Avoidance Directive ("ATAD"). The former thin capitalisation mechanism, the former anti-hybrid mechanism, the general ceiling rule and the Carrez amendment have been repealed.

c. Facilitation of the reorganisation regime:

French tax law provides an election for certain mergers to be tax neutral, with the primary advantage of such election being that the absorbed company is not subject to CIT on net capital gains on fixed assets transferred in such a merger (rollover regime).

Furthermore, the scope of restructuring operations eligible for the tax neutral merger regime has also been amended[1] as follows:

- Extension of the scope of the rollover regime to contributions of shares to reinforce an existing controlling situation; and

1 Second amended Finance Law for 2017, article 23.

- Cancellation of the formal commitment to hold shares received from a contribution for a three year period, although, in practice, such shares must be held for more than two years to benefit from the participation exemption regime.

The favourable tax regime for mergers applies to operations which, since 21 July 2019, can legally be carried out without an exchange of shares, mergers of sister companies wholly owned by the same parent company and spin-offs of a company wholly owned by a parent company in favour of companies which are also wholly owned by that company.

For mergers placed under the preferential regime that are carried out as of 1 January 2020, the transfer to the absorbing company of prior tax losses, net financial expenses carried forward and the unused deduction capacity of the absorbed company is, subject to conditions, exempt from approval if the amount of the sums transferred is lower than EUR200,000. This automatic transfer may also apply in the event of the absorption of the parent company of a tax consolidated group.

d. Adjustment of the tax consolidation regime:

For fiscal years beginning on or after 1 January 2019, several adjustments apply:

- Capital gains derived from the sale of qualifying participations that have been held for at least two years are subject to CIT on only 12% of the gross capital gains. The taxable 12% fixed proportion was previously neutralised at the level of the tax group. Such neutralisation was repealed.
- The merger of the parent company of a French tax consolidated group into another company belonging to the same tax group should no longer trigger the termination of the tax group provided that certain conditions are met (notably filing of election letters).
- Dividends not subject to the parent-subsidiary regime will no longer be fully tax exempt, but a 1% lump sum will remain taxable if the dividend is received by a member of a French tax consolidated group and the dividend is received from a subsidiary located in EU, Iceland, Norway or Liechtenstein.

e. Patent box introduced

French companies (not including partnerships) benefit from a favourable tax rate that applies to (i) income derived from the licensing of patents and patentable rights and (ii) capital gains realised on patents and patentable rights held for at least two years. This rate was reduced from 15% to 10% for fiscal years beginning on or after 1 January 2019. Because the Finance Law for 2019 adopts the so called “nexus approach” of BEPS Action 5, the patent box regime applies only if the taxpayer performs R&D activities in France.

f. General anti-abuse provision

Pursuant to ATAD, the Finance Bill for 2019 creates a new and vague general anti-abuse rule applicable to CIT for financial years open on or after 1 January 2019. Under the new Article 205 A of the French Tax Code (“FTC”), no account will be taken of an arrangement or a series of arrangements which, having been put into place for the main purpose, or one of the main purposes, of obtaining a tax advantage contrary to the object or purpose of the applicable tax provisions, are not authentic, considering all relevant facts and circumstances.

g. DAC 6

Please note that Directive (EU) 2018/822 (“DAC 6”) imposes reporting obligations on intermediaries or, where appropriate, taxpayers, as of 1 July 2020 with respect to cross border arrangements that include at least one of the hallmarks as referred in the aforementioned Directive and that have been implemented as of 25 June 2018. In this context, an analysis should be carried out to determine the operation at stake should be reported to the competent authorities in order to comply with the automatic exchange among EU Member States.

h. Public economic measures against COVID-19

The emergency bill n° 2020-290 to deal with the COVID-19 pandemic enacted on 23 March 2020 empowers the French Government to implement the measures previously announced through ordinances.

Some of the tax measures which have been implemented by the French government include the following:

- Deferred payment and payment extensions for tax deadlines;
- Deferred payment and easing of the adjustment of CIT instalments;
- Automatic deferral and easing of the adjustment of the company valued-added contribution (“EAVC”) instalments;
- Possibility to suspend payments of EAVC, the Enterprise Land Contribution (“ELC”) and property tax, etc;
- Early repayment in 2020 of account receivables for losses carried back;
- Deferment of DAC6 reporting requirements until 28 February 2021 for arrangements entered into until 30 June 2020 and until 1 January 2021 for arrangements entered into since 1 July 2021; and
- Deductibility of rents waived by the creditor between 15 April and 31 December 2020.

Other measures taken by the government concern VAT, tax audits and collections, the possibility to obtain tax rebates, the early repayment of account receivables for losses carried back, etc.

i. 2021 Finance Bill / Update for 2022

The 2021 Finance Bill includes the following tax measures (subject to Parliamentary approval):

- Diminution of the Economic Territorial Contribution (“ETC”) by reduction of EAVC and adjustment of the ceiling rate of ETC;
- Extension of the ELC exemption within three years from the creation of the extension of an establishment;
- Tax neutralisation of the free reassessments of assets (this optional mechanism applies to the first free reassessment of assets recorded at the end of a fiscal year ending on from 31 December 2021 until 31 December 2022;
- Extension of the reduced CIT (15%) rate on part of the profit of companies with a turnover lower than EUR10 million (instead of EUR7.63 million);
- Creation of a tax credit for collaborative research;

- Extension and adjustment of the innovation tax credit;
- Reduction of the profit basis for the losses' offset (carry-back mechanism); and
- Temporary amortisation mechanism for goodwill acquired between 1 January 2022 and 31 December 2025.

3. SHARE ACQUISITIONS

a. General Comments

SA and SAS companies are frequently used for share acquisitions due to lower registration duties (see below).

b. Tax attributes

In France, a change in control of a company does not impair its tax attributes and generally has no tax consequences unless the company concerned joins another tax consolidated group (i.e. there is an acquisition of more than 95% of its share capital).

Tax consequences may exist where the company leaves (and does not join) a tax consolidated group. The leaving subsidiary may not deduct from its subsequent income any tax losses and long-term capital losses incurred during the tax consolidation.

Unless it results from a merger subject to the special regime of Article 210 A of the FTC with another company of the group, or an intermediate company, the exit also results in the add-back in the tax consolidated group income of the year of exit of:

- capital gains or losses on intragroup transfers previously neutralised;
- subsidies and debt write-offs that have been neutralised in respect of a financial year beginning before 1 January 2019.

As from 1 January 2004, losses may be carried forward indefinitely, but their use is limited. Losses carried forward may be used fully against a following year's taxable income up to EUR1 million and thereafter only against 50% of such year's income exceeding EUR1 million.

Up to EUR1 million of losses may also be carried back and offset against the taxable income of the previous financial year. For the losses which are recorded during financial years closed as from 31 December 2021, the basis of such carry back is reduced up to the amount of taxable income that gave rise to corporate tax paid thanks to a tax credit.

c. Tax Grouping

French corporations and their 95% owned (taking into account both capital and voting rights) domestic subsidiaries may elect to file one single tax return, thus allowing the offset of losses (generated during the tax consolidation) of one group corporation against the profits of another group corporation. CIT is then levied on the aggregate income after certain adjustments for intragroup provisions (e.g. dividend distributions) have been made.

A French subsidiary can also be included in a tax consolidated group if the French company that is the head of the consolidated group owns indirectly at least 95% of the capital and voting rights of the French subsidiary so long as no intermediary company is organised outside the European Union, Iceland, Norway or Liechtenstein.

Moreover, it is possible to set up a "horizontal" tax consolidation between French companies subject to CIT and at least 95% of whose capital and voting rights are held, directly or indirectly by the same non-resident parent entity, so long as such non-resident parent entity is organised in the European Union, Iceland, Norway or Liechtenstein and is subject to a tax equivalent to CIT2[2]. In this case, a French company is chosen as the head of the tax consolidation and will be solely liable for the group's CIT. Acquisition, by a French company subject to CIT, of 95% of the share capital and voting rights of the parent company of a tax consolidated group results in the termination of said tax consolidation.

d. Tax Free Reorganisations

Upon election, a merger or spinoff benefits from a deferral of taxation of capital gains and provision (unless provisions are no longer required) at the level of the absorbed company if the beneficiary company complies with several requirements to allow the future taxation of capital gains and provisions which were exempt from tax at the time of the merger/spin-off (e.g. record all the transferred assets for the value they had in the absorbed company's books).

The operation can be retroactive from the fiscal year opening date for accounting and tax purposes. As a consequence, the operation is deemed to take place at the fiscal year opening date. In other words, so long as it is formally provided in the merger agreement, mergers or assimilated restructuring can be concluded with retroactive effect such that any taxable result generated by the absorbed company between the retroactive date and the effective date of the merger would be included in the taxable profits of the absorbing company.

When a wholly owned subsidiary merges with and into its sole owner, the operation can be implemented by a simplified merger or a "dissolution without liquidation"[3]. The dissolution without liquidation can benefit from the same tax rollover regime. Although retroactive effect may (as per the above) be applied for tax purposes, it may not be applied for accounting purposes.

Taxpayers should be aware that the French Tax Authorities ("FTA") often attempt to deny the deduction of interest related to the acquisition of a company if the holding company decides to merge the target company in a short period of time after the acquisition. Some arguments and formal FTA positions may exist to justify the merger, but taxpayers will need to evaluate their facts and apply the authorities' positions to them on a case by case analysis.

e. Intragroup share transfers

Acquisitions of shares between companies of the same group (controlled companies as defined by article L 233-3 of the Trade Code[4] or tax consolidated group) are exempt from registration duties.

2 Please refer to BOI-ANNX-000071-20150506 for a list of tax equivalent to CIT in the French tax guidelines

3 As defined by Section 1844-5 of the FTC.

4 Within the meaning of Article L. 233-3 of the Commercial Code: "I. – [...] a company is deemed to control another company: 1 When it directly or indirectly holds a fraction of the capital that gives it a majority of the voting rights at that company's general meetings; 2 When it alone holds a majority of the voting rights in that company by virtue of an agreement entered into with other partners or shareholders and this is not contrary to the company's interests; 3 When it effectively determines the decisions taken at that company's general meetings through the voting rights it holds; 4 When it is a partner in, or shareholder of, that company and has the power to appoint or dismiss the majority of the members of that company's administrative, management or supervisory structures." The notion of control is still used in laws and regulations dealing with major holdings and concerted actions, but explicit mention of control has been phased out of the laws dealing with takeover bids.

f. Purchase Agreement

It is common in France that shares in the target company are acquired by a French special purpose vehicle ("SPV") which may borrow funds to finance the operation and permit the offset of the SPV's interest expense with the target company's net income through the use of a tax group.

No special rules regarding warranties for share deals exist. In a share deal, the target continues to be liable for all taxes. Therefore, special attention must be paid to the drafting of the representations and warranties (that may give rise to indemnities in case of a breach) in the share purchase agreement notably considering the existence of a tax consolidation group.

g. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

France subjects acquisitions of shares to much lower registration duties than asset acquisitions. Stamp duty is 0.1% of for SA and SAS companies, 5% for real estate and 3% for all other interests in companies. A real estate company is a company whose fair market value of gross assets is composed of more than 50% of French real estate at any time during the year preceding the sale.

Registration duty is assessed against the purchase price of the company interests reduced by the product of (i) the ratio of number of shares purchased divided by total number of shares issued by the acquired company and (ii) EUR23,000.

As from 1 January 2019, mergers and assimilated operations (spin-offs, partial business transfers, etc.) are no longer subject to registration duty[5].

h. "Purchase accounting" applicable to share acquisitions

As a general principle, acquisitions of shares are performed at fair market value and booked as such in the balance sheet of the acquiring company. The accounting and tax bases of the assets of the acquired company are not adjusted to fair value but remain at their historical figures.

i. Transaction costs

The acquisition costs of shares are the transaction costs which are connected directly with the acquisition of the shares, for example, fees for legal, accounting and tax advice, bank advisory fees (other than fees attributable to the financing of the acquisition) and registration duties due upon the transfer of ownership[6].

From an accounting standpoint, acquisition costs of shares must be, upon election of the taxpayer, either booked as a deductible expense of the fiscal year during which they are incurred, or included in the book value of the shares acquired (Section 332-1 of the Accounting General Code).

From a tax standpoint, Section 209-VII of the French Tax Code ("FTC") provides that costs incurred to acquire shares qualifying as a controlling interest (as qualified by Section 39-1- 5°-18 of the FTC) must be incorporated into the acquisition cost of said controlling interest. However, the above mentioned Section provides that the deduction of acquisition costs may be spread over a five year period. In the case of an acquisition in the course of a fiscal year, the deduction is pro-rated. Acquisition costs include registration duties, commissions, fees (including auditor fees, external appraiser fees, adviser fees etc.) and "act expenses" related to the acquisition ("act expenses" refers to the costs incurred for the signing of the acquisition agreement itself and for making it enforceable, (i.e. printing costs, legal formality of publicity, prospectus, etc.).

5 Finance Act for 2019, Article 26.

6 BOI-IS-BASE-30-10 n°30.

Since a merger involves the cancellation of the shares of the acquired company, it is not possible to amortise the transaction costs borne by the buyer company on the acquisition.

On the other hand, a merger may result in a merger loss corresponding to the difference between the book value of the shares, net of the said costs and the net book value of the assets transferred by the merged entities.

Pursuant to accounting guidelines, when the difference between the value of the shares and the value of the transferred assets generate a loss ("mali de fusion"), this loss could be treated differently depending on its nature:

- The so called "mali technique" : it corresponds, up to the limit of the cancelled shares value, to the latent capital gains on assets transferred by the merged company, (i.e. the difference between the fair market value and the net book value of the transferred assets, less unrecognised liabilities). This component is generally recognised for mergers or universal transfers of assets and liabilities performed at the book value, when the net value of the shares of the merged company (booked at the level of the merging company) exceeds the net book asset contributed. At the transaction date, the "mali technique" is allocated to the various assets contributed, whether or not they are booked in the accounts of the merged company, and then (i) recorded in a specific account by category of asset concerned after its allocation (PCG, Section 745-6).
- The so called "vrai mali": the surplus of merger loss corresponds to a depreciation of the interest hold in the merged company and should be recorded in P&L account, as a financial expense.

From a French tax standpoint, the merger loss is computed with respect to the tax value of the cancelled shares, (i.e. their acquisition price increased by the part of the acquisition costs that has not been depreciated yet).

- The so called "vrai mali" corresponds to a tax loss which can be subject to the tax long term regime, if the cancelled shares have been held for more than two years. Otherwise, this merger loss would be in principle tax deductible.
- The so called "mali technique" cannot be considered as a deductible loss and cannot be depreciated either through provision or amortisation.

j. Financing costs

Loan issuance costs are as general matter deductible from the taxable profits made on the financial year, during which such costs were incurred. Nevertheless, upon prior option, these costs may be linearly spread over the duration of the loans or pro rata the accrued interest due in consideration of the loan[7].

The tax treatment of these costs must comply with their accounting treatment. It must be underlined that no pro rating of these costs can be applied during the first fiscal year.

This option to spread deductions of the financing costs is made for a two year long period and applies to all the loans entered into during this two year period. This option is tacitly renewable.

7 Section 39-1-1° quarter of the FTC; BOI-BIC-CHG-20-30-40 n°1

k. Share Purchase Advantages

The main advantages of a share acquisition are the following:

- An acquiror may benefit from tax losses of the target company (tax losses become limited in France not as a result of a change in control but, as explained below, only upon a change in underlying activity);
- Existing supply or technology contracts remain binding (i.e. generally no counterparty consents or renegotiations except where required by contract upon change in control); and
- Registration duties on share acquisitions are generally lower than transfer taxes on asset purchases.

l. Share Purchase Disadvantages

The main disadvantages of a share acquisition are the following:

- The historical liabilities of the target company remain with the target company; and
- The purchase price is not deductible (currently or through depreciation/amortisation).

4. ASSET ACQUISITIONS

a. General Comments

The purchase of assets consists of the straight sale of one or more assets or of a going concern (“fonds de commerce”).

As the acquisition must be made at actual value, the tax basis of the assets will reflect the purchase price paid, including cash transferred from buyer to seller, liabilities assumed by buyer and acquisition costs incurred by buyer.

b. Purchase Price Allocation

A Purchase Price Allocation (“PPA”) is needed to assess the value of assets. The valuation of the assets determines the amount of capital gains and the existing goodwill transferred with the assets.

c. Tax Attributes

The asset acquisition may entail a change of the purchaser's activity and the forfeiture of carried forward losses available.

In fact, an addition / a sale of new business activity may constitute a change in activity where, during the fiscal year of the change or the following fiscal year, in comparison with the fiscal year preceding] the change, there is an increase of more than 50% of either:

- The company's turnover; or
- The average number of staff and the gross amount of fixed assets.

A complete or partial surrender or transfer of a business activity may also characterise a change in activity if there is a decrease of more than 50% of both of the previous criteria in comparison to the relevant time periods.

d. Tax Free Reorganisations

A contribution of a business is a transaction whereby a company transfers part or all of its assets and liabilities to another company in exchange for shares. The assets transferred must constitute a "complete and autonomous branch of activity." This concept of a complete and autonomous branch of activity requires that the collection of assets and liabilities to be transferred are those of a division of a company that constitutes, from a technical standpoint, an independent activity capable of being carried out autonomously using the division's own resources under normal conditions in the economic sector concerned[8]. Such a transfer should not be taxable in France currently. The tax deferred nature of this transaction is not contingent on the transferee conducting the transferred activity for a minimum period.

As of 1 January 2018, a contribution of shares that increases the participation of a shareholder that already holds more than 50% of the share capital can qualify as a complete and autonomous branch of activity.

e. Purchase Agreement

The joint sale of several assets may be requalified as a transfer of a going concern ("TOGC") by the French Tax Authorities ("FTA"), which has consequences in terms of registration duties (see Section 4.g.). If the sale is not requalified as a sale of a going concern, the value of each asset must be determined separately. Registration duties will apply to each asset depending on its nature and according to the rates described below in section 4.g. Transfer Taxes, VAT.

f. Depreciation and Amortisation

Amortisation of shares is not possible from an accounting and tax standpoint.

From an accounting standpoint, in some specific cases, amortisation of intangible assets such as goodwill are only possible if it is foreseeable, at the date of their creation or the date of acquisition, that their beneficial effects will end on a given date. Intangible assets that grant the company temporary rights are amortisable.

From a tax standpoint, the amortisation of goodwill was not deductible, as a general principle. However, according to the 2022 Finance Bill, amortisation booked on goodwill acquired between 1 January 2022 and 31 December 2025 has become deductible from taxable income under certain conditions.

8 French tax guidelines (BOI-IS-FUS-20-20-20181003, n°230 and 240) accept that back office services provided by the transferring company after such a transfer do not prevent the transferred activity from qualifying as a "complete and autonomous branch of activity" for these purposes.

g. Transfer Taxes, VAT

The transfer of assets qualifying all together as a going concern are subject to registration duties at:

- 0% up to EUR23,000;
- 3% of the sale price from EUR23,000 to EUR200,000; and
- 5% of the sale price exceeding EUR200,000.

The transfer of real estate assets (both assets that are immovable by nature, such as land and buildings and assets that are immovable by use, such as equipment permanently affixed to land) are subject to a transfer tax at a rate of 5.09% plus additional duties, calculated on the sale price. From a VAT standpoint, the asset deal should be neutral, provided the assets sold all together form at least a single complete business.

In cases of mergers and assimilated operations (described above), under Article 816 of the French Tax Code ("FTC"), no transfer tax is due as from 1 January 2019[9].

h. Asset Purchase Advantages

The main advantages of an asset purchase are the following:

- The purchase price can be depreciated or amortised for tax purposes (except for goodwill);
- A step up in the cost base of individual assets for capital gains tax purposes is obtained;
- No previous liabilities of the company are inherited; and
- It is possible to acquire only part of a business.

i. Asset Purchase Disadvantages

The main disadvantages of an asset purchase are the following:

- There may be a need to seek transfer consents or renegotiate supply, employment and technology agreements;
- Capital gains derived from the sale of assets are subject to the standard CIT rate, while capital gains on shares generally benefit from a participation exemption regime (CIT limited to a 12% lump sum of the capital gain realised);
- Higher registration duties; and
- The benefit of any losses incurred by the target company remains with the seller (although such losses may be available to the seller to offset any gains on the asset dispositions).

9 Finance Act for 2019, Article 26.

5. ACQUISITION VEHICLES

a. General Comments

Acquisition transactions in France generally involve the incorporation of a French SPV. The SPV will raise the acquisition financing and acquires the shares or the assets. The type of SPV created is driven by economic, legal and tax considerations. The SPVs commonly used in France are companies subject to corporate income tax ("CIT") in order to set up a tax consolidation group.

b. Domestic Acquisition Vehicle

In general, the main acquisition vehicle is a joint stock company or a simplified stock corporation as they are companies with limited liability (see Section 1). For real estate investments, French property companies are frequently used.

c. Foreign Acquisition Vehicle

There is no special rule under French tax law for a foreign acquisition vehicle.

d. Partnerships and Joint Ventures

Partnerships and joint ventures are possible even if no specific legal form is provided under French law. A joint venture can be organised by contract or by setting up a company or a French economic interest grouping (Groupement d'intérêt économique – "GIE").

e. Strategic vs Private Equity Buyers

The preferred acquisition vehicle mainly depends on the investment strategy pursued by the investor as well as the industry. No general statement can be provided.

6. ACQUISITION FINANCING

a. General Comments

Broadly speaking, a company is generally not prohibited from borrowing or receiving funds as equity contributions. Financial expenses are deductible, within certain limits.

b. Equity

i Increase in share capital

The share capital of a company may be increased to finance an acquisition. An increase in share capital can be performed by a contribution in cash or in kind, remunerated through issuance of shares. Cash contributions made to companies subject to CIT are exempt from registration duties.

ii Consequences of the detention of more than 50% of the shares of a company subject to a privileged tax regime

Pursuant to Article 209 B of the FTC, if a legal entity established in France and liable to CIT carries on a business established outside France or holds directly or indirectly more than 50% of the shares in a legal entity established outside France benefiting from a privileged tax regime[10], the entire profits of that legal entity are taxable in France at the level of the shareholder. This rule does not apply if the legal entity is:

- Conducting its activity in a Member State of the European Union, unless the situation is an artificial arrangement intended to circumvent French tax law; or is
- Outside the European Union, if the French taxpayer demonstrates that the operations of the company or legal entity established or incorporated outside France has a principal purpose and effect other than to enable profits to be located in a territory where it is subject to a privileged tax regime.

Currently, the French Tax Authorities ("FTA") are focusing special attention on taxpayer compliance with these provisions.

c. Debt

i Limitations on use of debt

A company and its shareholders may generally choose the company's forms and amounts of financing (as between equity and debt)[11]. However, French tax authorities may challenge the use of indebtedness if the incurrence of debt (a) was against the corporate interest of the company or (b) abusive[12].

ii Limitations on interest deductions

A number of rules relate to the deductibility of interest on borrowings.

Interest rate limitation for related party debt

Assuming a company's share capital has been entirely paid by its shareholders[13]:

- When the lender is a direct shareholder and not a "qualified related party"[14], the law permits the underlying debt to carry, at maximum, an interest rate provided by Section 39-1-3° of the French Tax Code ("FTC") and corresponding to the rate that the borrowing company would have obtained from independent financial institutions under similar conditions.
- When the creditor constitutes a "qualified related party" of the borrowing entity, the law permits the underlying debt to carry, at maximum, an interest rate equal to that which the borrowing company could have obtained from independent financial institutions under similar conditions, so long as the company is be able to prove that the interest rate applied is arm's length. Currently, the FTA are focusing special attention on taxpayer compliance with these provisions.

10 A privileged tax regime refers to two criteria : (1) absence of taxation and (2) tax paid abroad is lower (40% or more) than tax that would be paid in France.

11 Supreme Administrative Court, December 30, 2003, No. 233894, SA Andritz.

12 Supreme Administration Court, January 13, 2007, No.3911196, SAS Ingram Micro

13 A company may not deduct interest if its share capital is not entirely paid.

14 According to Section 39-12 of the FTC, related parties are deemed to exist between two undertakings (a) where one of the undertaking holds directly or through an interposed person the majority of the share capital of the other undertaking or exercises de facto therein the decision power, or (b) where the two undertakings are under the control of a third undertaking under the conditions defined in (a) above.

Anti-hybrid legislation

As from 1 January 2020, new rules against hybrid schemes have been introduced into French tax legislation in order to implement ATAD1 and ATAD2 Directives. A hybrid mismatch should be qualified where the mismatch outcome[15] is attributable to:

- A difference in the tax characterisation of (i) the financial instrument16[16] or the underlying payment or (ii) the debtor/beneficiary entity[17]; or
- A difference in the laws applicable in the residency country of the hybrid entity governing the allocation of that payment to the hybrid entity and the laws of the residency country of any person with a participation in such hybrid entity.

However, only mismatches occurring between associated enterprises, between a head office and its permanent establishment or between two or more permanent establishments of a same entity fall within the scope of this new regulation.

An “associated enterprise” is defined for the purpose of ATAD2 mechanism as:

a) an entity in which the taxpayer holds directly or indirectly a participation in terms of voting rights or capital ownership of 50%[18] or more or is entitled to receive 50% or more of the profits of that entity;

b) an individual or entity which holds directly or indirectly a participation in terms of voting rights or capital ownership in a taxpayer of 50% or more or is entitled to receive 50% or more of the profits of the taxpayer;

c) an entity in which an individual or entity who/which holds directly or indirectly a participation in terms of voting rights or capital ownership of 50% or more of the taxpayer, also holds a participation in terms of voting rights or capital ownership of 50% or more.

(d) an entity that is part of the same consolidated group for financial accounting purposes as the taxpayer (section 212 bis, VI, 2° of the FTC), an enterprise in which the taxpayer has a significant influence in the management of an enterprise that has a significant influence in the management of the taxpayer. A significant influence is presumed when the parent entity holds directly or indirectly a participation in terms of voting rights of 20% or more of the other entity.

For the application of a), b) and c), a person who acts together with another person in respect of the voting rights or capital ownership of an entity shall be treated as holding a participation in all of the voting rights or capital ownership of that entity that are held by the other person.

Also, section 205 B, III-3 of the FTC provides for a specific rule to deny the deduction in France in respect of a payment giving rise to an imported hybrid mismatch (i.e. when this payment, which is deductible in France, corresponds with another payment qualified as hybrid mismatch in a third country).

15 A “mismatch outcome” means a double deduction or a deduction without inclusion or a double inclusion.

16 A“financialinstrument”meansanyinstrumenttotheextentthatitgivesrisetoafinancingorequityreturnthatistaxedundertherulesfortaxingdebt,equityorderivativesunderthelawsofeitherthepayeeorpayerjurisdictionsandincludesahybridtransfer.

17 17 An “hybrid entity” means any entity or arrangement that is regarded as a taxable entity under the laws of one jurisdiction and whose income or expenditure is treated as income or expenditure of one or more other persons under the laws of another jurisdiction.

18 For several types of hybrid mismatches, the 50% threshold mentioned in a), b) and c) must be replaced by a 25% threshold.

In this context, where a hybrid mismatch falls within the scope of the new anti-hybrid provisions, corrective measures set out in section 205 B, III-1 of the FTC provide for:

- A denial of the deduction of such payment from French taxable income of the debtor; or
- The add-back of the payment to the tax result of the French beneficiary.

Lastly, please note that this new regulation does not address extensively the case of structure involving UCITS except for reverse hybrid mismatches where UCITS[19] are expressly excluded from the limitation.

Even if the FTC does not provide for such exception in the case of an ordinary hybrid mismatch, one could consider that flows involving UCITS are out of the scope of the regulation as well but specific commentaries on the ruling will be necessary to confirm such analysis.

Limitation based on EBITD

For fiscal years beginning on or after 1 January 2019, French companies (not partnerships) are subject to EBITDA based limitations on interest deductibility; the applicable rule depends on whether the company is thinly capitalised. A company is deemed to be thinly capitalised if the amount of debt from qualified related parties exceeds 1.5 times the "fonds propres" (adjusted net equity). Third party loans which are guaranteed by a related party are not considered to be debt from a related party for this purpose. These rules are applied to any French company or to a French consolidated tax group, if one exists.

If the company or group is not thinly capitalised, a corporate taxpayer may deduct net financial expenses (including interest) only up to the greater of 30% of its earnings before interest, tax, depreciation and amortisation ("EBITDA") or EUR3 million.

- A company (or group) may deduct 75% of its financial expenses in excess of 30% of its earnings if it can demonstrate that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the taxpayer's (or group's) local financial consolidated group (so called "safe harbour provision").
- Financial expenses which cannot be deducted in one tax period as a result of these limits may be carried forward indefinitely. In addition, unused interest capacity may be carried forward over five tax years.

If the company or group is thinly capitalised, two levels of deduction apply:

- Interest paid by a company or group to unrelated party companies (not including partnerships or individuals) may be deducted up to the greater of 30% of its prorated EBITDA or EUR3 million, to the extent related party debt does not exceed 1.5 times the company's (or group's) equity ("fonds propres") (the "First Level").
- Total interest paid by a company (or group) to one or more related party companies (not including partnerships or individuals) may be deducted up to the greater of 10% of its prorated EBITDA or EUR1 million, to the extent related party debt amount does not exceed 1.5 times the company's (or group's) equity ("fonds propres") (the "Second Level").

A thinly capitalised company (or group) is not subject to the Second Level if the debt to equity ratio of the company (or group) is equal to or lower than the equivalent ratio of the financial consolidated group.

19 "Collective investment vehicle" means an investment fund or vehicle that is widely held, holds a diversified portfolio of securities and is subject to investor-protection regulation in the country in which it is established.

Financial expenses which cannot be deducted in one tax period as a result of these limits may be carried forward indefinitely. However, only one third of any amounts limited by the Second Level may be deducted in any one year.

Moreover, thinly capitalised companies or groups may deduct limited financial expenses which have been carried over only to the extent of any positive difference between (a) the greater of 30% of the prorated EBITDA or EUR3 million pro-rated and (b) the net financial charges for the year minus those subject to Second Level. Thinly capitalised taxpayers may not carry forward unused interest capacity.

Charasse amendment for consolidated groups

The so called "Charasse amendment" limits tax deductibility for interest expenses within a French tax consolidated group of companies when:

- The shares of a French company have been purchased by another company from parties who also directly or indirectly control (de jure or de facto) the acquiring company at the time of acquisition; or
- Both the acquired and acquiring companies become members of the same French tax consolidated group of companies after the transaction (including by way of merger).

Any interest expense resulting from this situation is non-deductible to the extent of:

- Financial expenses x [(acquisition price – amount of contribution in cash to the acquiring company) / average group debt]
- For the acquisition accounting period and the following eight tax years.

iii Debt Pushdown

Most taxpayers achieve debt pushdowns in France with either (a) a levered distribution up to the amount of the target company's distribution capacity or (b) the purchase of part of the target's assets (including stock of a subsidiary) by an affiliated company in exchange for an intercompany note.

A company's dividend distribution capacity may be increased without adverse tax consequences, for example, by transactions made at fair market value with a limited tax impact (e.g. sale of shares benefiting from the participation exemption regime).

If the debt pushdown is achieved by a sale of assets, care should be taken that tax on any gain is either immaterial relative to the pushdown benefits or non-existent due to the application of a participation exemption regime or fiscal unity rules.

A merger may also create a debt pushdown when an acquisition company borrows funds for the acquisition of a target and subsequently merges the target into the acquisition company. If the merger occurs within a short time of the acquisition, French authorities generally attempt to deny the deduction of interest on acquisition related debt. However, much depends on the particular facts and the reviewing authorities (e.g. FTA recently permitted such a situation between two holding companies in the case of a secondary leveraged buyout). Aside from careful tax analysis, a taxpayer must also carefully analyse the application of financial assistance regimes and prohibitions on financing a company's own acquisition.

d. Other instruments

Some securities issued by a company (such as preference shares/*actions de préférences*, "ADP", or share purchase warrants/bons de souscription d'actions, "BSA") may resemble, in part, both traditional debt (bank debt or bonds) and equity. In each case, particular care must be taken to their characteristics and valuation so that they are not reclassified as debt instruments.

e. Earn-outs

Earn-out payments are taxable only upon receipt.

7. DIVESTITURES

a. Tax free

Only a 12% lump sum of the capital gains derived from the sale of qualifying shareholdings is subject to CIT, resulting in capital gains taxation at the effective rate of 3% maximum.

Qualifying shareholdings must satisfy both of the following conditions:

- They must be qualified as a controlling interest (specific class of shares for accounting purposes that enables the shareholder to have a controlling interest[20]) or, be eligible for the dividend participation exemption regime (i.e. the shareholding constitutes at least 5% of the voting rights in the subsidiary's capital); and
- They must have been held for at least two years before their sale.

b. Taxable

Capital gains derived from the sale of shares other than those mentioned below are fully subject to CIT at standard rate.

c. Cross border

Subject to the provisions of relevant tax treaties having a substantial shareholding provision (e.g. those with Spain, Italy, Hungary, etc.), capital gains recognised by non-French resident companies on shareholdings held in a French company are subject to French withholding tax at the standard CIT rate provided the that the foreign seller has held, at any time during the five years preceding the sale, directly or indirectly, more than 25% of the share capital of the French company[21].

20 For this purpose, a "controlling interest" exists, without regard to the percentage of shares or their value, if the shareholdings provide rights to a shareholder that allow effective participation in the company as a shareholder.

21 Section 244 bis-B of the French Tax Code ("FTC").

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

France applies a territorial tax system. Regarding CIT, Article 209, I of the French Tax Code (FTC") provides that profits realised by companies operating in France are taxable in France. As a result, profits realised by companies on operations outside of France are generally not taxable in France other than as provided in the French CFC regime described below.

b. CFC regime

Controlled foreign companies ("CFC") rules apply to more than 50% owned or controlled foreign subsidiaries or to permanent establishments of a French company when the actual cash tax imposed on such subsidiary or establishment is lower than 50% of the French CIT rate. In such a case, taxation of the French company is computed as follows:

- If the CFC is a PE or a branch, the French company is taxed on the income deemed to be received from the CFC computed according to French tax rules;
- If the CFC is a subsidiary, the French company is deemed to have received distributed income from the CFC computed according to French tax rules.

EU companies are outside the scope of the CFC rules unless the structure was put in place to avoid tax. Moreover, for companies located outside the EU, CFC rules do not apply if the French company demonstrates that the operations of the CFC have a principal purpose and effect other than to avoid tax in France.

c. Foreign branches and partnerships

Under the application of the territorial tax system, local branches of foreign corporations and partnerships are taxed similarly, in respect of their French profits, to French corporations and partnerships.

d. Cash repatriation

Dividends distributed by a French company to non-residents are, in principle, subject to withholding tax. However, the law provides for various exemptions (e.g. dividends paid to a parent company established in EU, Iceland, Norway or Liechtenstein). Moreover, most double tax treaties reduce or eliminate the rate of the withholding tax.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

For capital gains tax purposes, a real estate company is any entity (including a partnership) with assets made than 50% of whose gross fair value[22] consists of French real estate assets at the date of the transfer or at the closing date of the last fiscal year. Properties used for the purpose of a commercial activity (other than the business of leasing or in the business of buying and selling real estate) are not deemed to be "real estate assets" for these purposes.

Capital gains on the transfer of shares in or assets of real estate companies are subject to CIT at the standard CIT rate. No participation exemption is available with respect to transfers of shareholdings in real estate companies. As discussed above, different transfer duties apply to the transfers of real estate companies and real estate than apply to transfers of other assets.

b. CbC and Other Reporting Regimes

i Transfer Taxes Territoriality

Transfers of shares in French companies (other than real estate companies) recognised by deeds concluded abroad are subject to transfer tax in France, unless otherwise provided for in double tax treaties.

Transfers of shares of foreign companies are only subject to transfer tax in France if they are recognised by a deed concluded in France.

Transfers of shares of a real property company, either French or foreign, with a preponderance of French real estate assets, is subject to transfer tax in France, even if the deed is concluded abroad.

ii Country-by-Country Reporting

France introduced a country-by-country reporting requirement in 2016 (see Section 10).

10. TRANSFER PRICING

French transfer pricing rules generally follow the OECD guidelines and principles. Multinational companies with French operations must ensure that the pricing of intercompany transactions meet the arm's length standard.

Transfer pricing documentation rules were introduced into French law in 2010. Companies with sales in excess of EUR400 million must maintain extensive transfer pricing documentation. Companies with sales less than EUR400 million but in excess of EUR50 million must maintain "light" transfer pricing documentation if annual payments to related foreign entities exceed EUR100,000.

France introduced a country-by-country reporting requirement in 2016 for groups with an aggregated turnover of EUR750 million or more at the level of the local financial consolidated group. For fiscal years beginning on or after 1 January 2018, the head of such a group must present to the FTA transfer pricing documentation (a master file and local file) that largely follows the OECD's recommendations.

22 Fair value must be supported by a legitimate appraisal.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of hybrid entities

The use of hybrid entities is not common in France, as the main categories of legal entities in France are companies and partnerships.

b. Use of hybrid instruments

France implemented the Anti-Tax Avoidance Directive (EU) 2016/1164, as modified by Council Directive (EU) 2017/952 ("ATAD").

As regards hybrid instruments and relevant considerations, please refer to Section 6.

c. Principal/limited risk distribution or similar structures

France does not have specific rules that tax contract or toll manufacturing operations differently than any other business, so long as the return of the company is consistent with the arm's length principle.

d. Intellectual Property

Income and capital gains arising from patents24 (acquired or created) are taxed in France at a reduced corporate tax rate of 10% for FYs open on or after 1 January 2019. Taxation at the reduced rate is applicable on an option basis, exercised either on an asset by asset approach or on a group of assets. The Finance Law for 2019 also introduces the so called "nexus" approach of BEPS Action 5. Therefore, this favourable tax regime should only apply if the taxpayer performs R&D activities.

The favourable reduced rate applies to the net income derived from the licensing of qualifying patents, after deduction of R&D expenses and after application of a ratio comparing the R&D expenses incurred for the creation or development (but not the acquisition) of the qualifying patent by the taxpayer or non-related parties to the total R&D expenses incurred for the creation, development or acquisition of the qualifying patent.

e. Special tax regimes

France has special tax regimes for certain types of activities and business sectors that, due to their complexity, must be considered on a case by case basis, for example the carried interest regime, funds regime, innovative start-up regime and the privatisation regime.

12. OECD BEPS CONSIDERATIONS

France has implemented many measures to address BEPS issues. France is proactive and sometimes implements measures before the publication of BEPS final reports.

For example, the following measures have been implemented: hybrid instruments (Action 2), CFCs (Action 3), interest deductibility and thin capitalisation rules (Action 4), treaty abuse (Action 6), permanent establishments (Action 7) and transfer pricing documentation (Action 13).

Recently, France has introduced the patent box and presented measures on digital economy taxation[23].

23 This rule applies only to patents (with certain exceptions) and not to any other kind of intellectual property.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

In the case of mergers and similar transactions, the transcription of contributions into the accounts of the beneficiary company must be carried out in accordance with accounting rules.

Contributions must be recorded at their book value for transactions involving entities under common control. The contributed assets must also be recorded at their book value for transactions involving entities under separate control, when the acquired company takes control after the merger.

Contributions must be recorded at market value when the entities are under separate control when the purchaser takes control after the merger.

b. Divestitures

Divestitures must be recorded at fair market value.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

The distributable profit is determined by Article L. 232-11 of the Trade Code and merely correspond to share premium, retain earnings and accounting income of the year.

It should be noted that free of tax contributions repayments (through share capital decrease) would be viewed as deemed dividend distribution, and taxed as such, should the company whose share capital is decrease has available distributable reserves at the time of the contributions repayments.

b. Substance Requirements for Recipients

Article 119 of the FTC exempts from withholding tax dividends distributed by a French company to a parent company located in the European Economic Area under certain conditions.

However, this exemption does not apply to dividends distributed in the context of an arrangement (or series of arrangements) which aim is to obtain a tax advantage contrary to the object or purpose of the regime.

c. Application of Regional Rules

European Union law has an increasing influence over Member States' tax law. Regarding M&A, several European directives have been adopted by France, such as the Directive 90/435/EEC of 23 July 1990 on parent companies and subsidiaries, the Directive 90/434/EEC of 23 July 1990 on cross-border mergers, the Directive 2003/49/EC of 3 June 2003 on the common system of taxation applicable to interest and royalty payments made between associated companies or the Directive 2016/1164 of 12 July 2016 ("ATAD").

d. Tax Rulings and Clearances

In France tax rulings are not commonly used for mergers and acquisitions.

Prior approval by the tax authorities is required to allow the transfer of tax losses carried forward from the absorbed company or the branch of activity transferred to the acquiring or receiving company.

15. MAJOR NON TAX CONSIDERATIONS

This section is left intentionally blank.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends % [1]	Interest % [2]	Royalties %	Footnote Reference
Argentina	15	20	18	
Australia	0 / 5 / 15	0 /10	5	[3] [4]
Austria	0 / 15	0	0	[5]
Belgium	0 / 12.8	0	0	[5]
Brazil	15	0 / 10 / 15	10 / 15 / 25	[6] [7]
Canada	5 / 15	0 / 10	0 / 10	[5] [8] [9]
Chile	15	4 / 5 / 10 / 15	2 / 5 / 10	[10] [11] [12] [13]
China (People's Rep.)	5 / 10	10	10	[14]
Colombia	0 / 30	0	0 / 31	[15]
Croatia	0 / 15	0	0	[5]
Cyprus	10 / 15	0 / 10	0 / 5	[5] [16] [17]
Czech Republic	0 / 10	0	0 / 5 / 10	[18]
Denmark	0 / 15	0	0	[19]
Finland	0	0 / 10	0	[20]
French Polynesia	D	0 / D	D	[21] [22]
Germany	0 / 15	0	0	[5]
Greece	D	0 / 12	5	[21] [23]
Hungary	5 / 15	0	0	
India	5 / 10 / 15	0 / 10 / 15	10 / 20	[24] [25] [26]
Indonesia	10 / 15	0 / 10 / 15	10	[27]
Ireland	10 15	0	0	[28]
Italy	5 / 15	0 / 10	0 / 5	[5] [29] [30]
Japan	0 / 5 / 10	0 / 10	0	[31] [32]
Korea (Rep.)	10 / 15	0 / 10	10	[5] [33]
Luxembourg	5 / 15	10	D	[21]
Malaysia	5 / 15	15 / D	10 / D	[5] [34] [35] [36] [21]
Malta	0 / 15	0 / 5	0 / 10	[5] [37] [38]
Mauritius	5 / 15	0 / D	0 / 15	[5] [37] [21] [39]

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Jurisdiction	Dividends % [1]	Interest % [2]	Royalties %	Footnote Reference
Mexico	0 / 5 / 15	0 / 5 / 10 / 15 / D	0 / 10 / 15	[40] [41] [42] [43] [44] [21]
Netherlands	5 / 15	10	0	
Norway	0 / 15	0	0	[5]
Philippines	10 / 15	0 / 15	15	[45]
Poland	5 / 15	0	0 / 10	[3] [37]
Portugal	15	10 / 12	5	[46]
Puerto Rico	0 / 30	0	0 / 31	[19]
Romania	10	10	10	
Russia	5 / 10 / 15	0	0	[47]
Serbia	5 / 15	0	0	[48]
Singapore	5 / 15	0 / 10	0 / D	[5] [49] [50] [21]
Slovakia	10	0	0 / 5	[37]
Slovenia	0 / 15	0 / 5	0 / 5	[37] [51] [52] [53]
South Africa	5 / 15	0	0	[5]
Spain	0 / 15	0 / 10	0 / 5	[5] [29] [54]
Sri Lanka	D	0 / 10	0 / 10	[37] [21] [55]
Sweden	0 / 15	0	0	[5]
Switzerland	0 / 15	0	5	[5] [56]
Turkey	15 / 20	0 / 15	10	[5] [57]
United Kingdom	0 / 15	0	0	[5]
United States	0 / 5 / 15	0	0	[58]
Venezuela	0 / 5	0 / 5	5	[59] [60]

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Footnotes: this table only refers to outcome flows from France to contracting States	
1	Dividends - Unless indicated otherwise, the lowest rate in this column applies when the recipient company holds directly or indirectly at least 25% of the capital or the voting power of the paying company.
2	Interest - The withholding tax rates listed in the table are the ones provided in the treaties. Please note that a 0% rate should normally apply as per French domestic tax law.
3	Dividends - To qualify for the zero rate, the Australian company must hold at least 10% of the voting power in the French company. The 5% rate applies if the profits related to the dividends paid (in respect of a 10% holding) have not been subject to the normal corporate tax rate.
4	Interest - To qualify for the zero rate, interest must notably be related to a public loan made by the government or a local authority, The zero rate also applies to interest paid to a financial institution independent from the paying company.
5	A new tax treaty has been entered into between both countries on 9 November 2021 (not yet in force nor effective). Dividends - To qualify for the zero rate, the company must, inter alia, hold 10% of the capital for 365 days period that includes the day of the payment of the dividends. Otherwise, 12.8% rate applies.
6	Interest - The zero rate applies to loans granted by the government. To qualify for the 10% rate, interest must relate to loans granted for at least seven years by banks with public participation and linked to the sale or installation of industrial or scientific equipment or public works.
7	Royalties - To qualify for the 10% rate royalty payments must relate to copyright. The 25% rate applies to trademarks.
8	Interest - To qualify for the 0% rate, interest must be paid by the state, local authorities, the central bank or entities of similar nature. The zero rate also applies to interest related to sales on credit (but not between "associated" companies), public bonds notably or guaranteed by particular institutions.
9	Royalties - To qualify for the zero rate, royalty payments must be received as consideration of the use or the right to use copyright (excluding cinematographic films which are not cultural cinematographic films), computer software, patents and know-how. The zero rate also applies to royalties paid to the government or to an approved organisation of Canada.
10	Interest - The 5% rate applies to interest on loans from banks, insurance companies, publicly traded securities and sale of equipment on credit. The 15% rate applies in all other cases.
11	Interest - By virtue of a most favoured nation clause, the rate is reduced to 4% when the beneficiary is a bank, an insurance company, a company selling equipment on credit or a company of which more than 50% of the debts come from bonds issued on financial markets or of which 50% of the assets come from receivables from unrelated companies.
12	Royalties - The 5% rate concerns the use or the right to use industrial, commercial or scientific equipment.
13	Royalties - A most favoured nation clause might apply and reduce the rate to 2%.
14	Royalties - Royalties paid for the right to use industrial, commercial or scientific equipment are subject to tax on 60% of the gross income.
15	The tax treaty between France and Colombia has not entered into force yet. For now, the domestic rates apply to dividends, interest and royalties (we refer to [19]).
16	Interest - The zero rate applies to interest paid to the State or a local authority and interest guaranteed by a banking institution, the State or a local authority. It also applies to interest related to sale on credit of merchandise between two companies or industrial, commercial or scientific equipment.
17	Royalties - To qualify for the 5% rate, royalty payments must concern copyright on films and television.

Footnotes: this table only refers to outcome flows from France to contracting States	
18	Royalties - To qualify for the zero rate, royalty payments must relate to copyright, excluding computer software. The 5% rate is applicable to equipment leasing. The 10% rate applies to patents, trademarks and know-how.
19	A tax treaty has been entered into between both countries on 4 February 2022 (not yet in force or effective). Dividends - To qualify for the zero rate, the company must, inter alia, hold 10% of the capital for 365 days period that includes the day of the payment of the dividends. Otherwise, 15% rate applies. Interest - 0%. Royalties - 0%.
20	Interest - The zero rate applies to interest paid in relation with the sale of industrial, commercial or scientific equipment. It also applies to loans granted by a banking institutions and to specific compensations for delay.
21	D' means that according to the provisions of the Tax Treaty, domestic rates may apply to dividends, interest and royalties in specific situations. Dividends - To qualify for the zero rate, the company must, inter alia, hold 10% of the capital for two years. Otherwise, 30% rate applies. Interest - 0%. Royalties - The zero rate applies to royalties paid between "associated companies" (holding 25% of the capital for two years, centre of effective management within the European community, being subject to corporate income tax, inter alia). Otherwise, 31% rate applies in 2019, 28% in 2020 and 26.5% in 2021.
22	Interest - There is no withholding tax on interest relating to loans, deposits, bank accounts, etc.
23	Interest - The 12% rate applies to interest from negotiable bonds and debentures.
24	Dividends - By virtue of a most favoured nation clause, the rate is reduced to 5% (for holdings of 10%) and 10% in all other cases.
25	Interest - The 10% rate applies to interest paid to banking institutions or to a company holding 10% at least of the capital of the company paying the interest and 15% in all other cases. By virtue of a most favoured nation clause, the general rate is reduced to 10%. The zero rate applies to interest paid to the government or particular institutions. It also applies to loans guaranteed by the BFCE, COFACE, and other specific institutions in charge of financing foreign trade.
26	Royalties - By virtue of a most favoured nation clause, the rate is reduced to 10%.
27	Interest - The 10% rate applies if the interest is paid by a financial institution or by an enterprise engaged in specified activities, or to a bank or another enterprise. The zero rate applies to interest paid to a public institution or to loans implicating a public institution in relation to the sale of industrial or scientific equipment.
28	Dividends - To qualify for the specific rate a 50% holding is required.
29	Royalties - The lower rate is applicable to royalty payments received as consideration for the use of the right to use any copyright of literary, artistic or scientific work, excluding cinematographic films and works used for radio and television shows, etc.
30	Interest - The zero rate applies to sale on credit of industrial, commercial or scientific equipment or merchandise between two companies. It is also applicable to interest paid by, paid to, or guaranteed by a state or a local authority.

Footnotes: this table only refers to outcome flows from France to contracting States	
31	Dividends - To qualify for the 5% rate the Japanese company must hold at least 10% of the capital of the French company for at least six months before the end of the accounting period. The zero rate is applicable when the Japanese company is a “qualified resident” and has held at least 15% of the capital in the French company for at least six months.
32	Interest - The zero rate, inter alia, applies to interest paid to banks, insurance companies, the state or a local authority.
33	Interest - The zero rate applies to interest related to sale on credit of industrial, commercial or scientific equipment, as well as public bonds, inter alia. It is also applicable to loans made or guaranteed by particular institutions.
34	Royalties - The domestic rate is applicable to royalty payments related to films.
35	Interest - The domestic rate applies if the recipient is not the effective beneficial of the interest.
36	Royalties - The domestic rate might apply to excessive royalty payments.
37	Royalties - The lower rate is applicable to royalty payments in relation with copyright, including films, etc.
38	Interest - The zero rate applies to loans granted to a State or guaranteed by a State or a public institution.
39	Interest - The zero rate applies to interest paid if the recipient is the effective beneficial of the interest paid and if the interest is paid to a State, a public institution or a banking institution of the State.
40	Dividends - To qualify for the 5% rate, the recipient must be a Mexican company whose capital is controlled for more than 50% by one or more residents of third parties. The 15% rate applies when the company holds less than 10%.
41	Interest - The zero rate is notably applicable to interest received or paid by the government or public institutions. The 15% rate applies to interest paid to the effective beneficiary, otherwise the domestic rate applies.
42	Interest - By virtue of a most favoured nation clause, the rate is reduced to 5% when concerning interest paid to banks and insurance companies and for interest from quoted bonds and 10% in other cases.
43	Royalties - The zero rate is applicable to copyright royalties, except films.
44	Royalties - By virtue of a most favoured nation clause, the rate is reduced to 10%.
45	Interest - The zero rate is notably applicable to public bonds or similar securities. It also applies to loans granted by the BFCE or COFACE. The 15% rate applies to interest paid to the effective beneficiary, otherwise the domestic rate applies.
46	Interest - The 10% rate is applicable to interest on bonds issued in France after 1 January 1965.
47	Dividends - To qualify for the 5% rate, the recipient company must be subject to tax in Russia but is exempt from tax on the dividends received and must invest in the French company at least EUR76,225. To qualify for the 10% rate, only one of these conditions must be met.
48	Refers to the treaty concluded between France and the former Yugoslavia.
49	Royalties - The domestic rate applies to copyright related to literary or artistic work, including films, and information in relation with commercial experience. The domestic rate applies to royalty payments related to copyright and know-how.
50	Interest - The zero rate applies to interest paid to the Government or specific public institutions. It also applies to interest paid in relation to bonds issued by a company with an industrial or lender activity.
51	Dividends - To qualify for the lower rate, a 20% holding is required.

Footnotes: this table only refers to outcome flows from France to contracting States	
52	Interest - The zero rate applies to interest paid to the State, or a local authority, or interest paid in relation to loans guaranteed by a State, the Central Bank, or a local authority.
53	Interest / Royalties - To qualify for the zero rate, the recipient must be a company holding directly at least 20% of the capital of the paying company (or vice versa), or a third French or Slovenian company holding directly 20% of the capital of both the payer and the recipient company.
54	Interest - The zero rate is applicable to some specific interest such as interest paid by the government, to a banking institution and between companies engaged in commercial or industrial activities.
55	Interest - The zero rate applies to interest paid in relation to sale on credit of industrial, commercial or scientific equipment when approved by the Government. It also applies to interest paid to a Government.
56	Dividends - To qualify for the zero rate, the Swiss recipient company must not be directly or indirectly controlled by a non-Swiss resident.
57	Interest - The zero rate applies to interest paid to the Government or the Central Bank or to loans guaranteed or supported by the State.
58	Dividends - To qualify for the 5% rate, the US company must hold directly or indirectly at least 10% of the capital of the French company. To qualify for the zero rate, the US company must own directly or indirectly at least 80% of the capital of the French company for at least 12 months.
59	Interest - The zero rate applies to interest paid or received by a State or a local authority.
60	Dividends - To qualify for the 5% rate, a 10% holding is required. Venezuelan shareholders - natural persons or legal entities that are not parent company - may obtain a refund of the tax credit (less a 15% withholding tax) provided that the dividends (including the tax credit) are subject to tax in Venezuela.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Documentation is requested for the last three fiscal years (general statute of limitation), except for specific documents (for which the specific statute of limitation has been specified below).

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss income and non-income tax matters. A current organisation chart, including all entities by full legal name, jurisdiction, date and place of formation, entity type, class of shares, and ownership percentages. Include a full history of each entity in the structure.
3	Tax Due Diligence	Corporate income tax	Corporate income tax returns.
4	Tax Due Diligence	Corporate income tax	Form n°2572.
5	Tax Due Diligence	Corporate income tax	Financial statements.
6	Tax Due Diligence	Corporate income tax	General ledgers.
7	Tax Due Diligence	Corporate income tax	General and special statutory auditors' reports.
8	Tax Due Diligence	Corporate income tax	Minutes of the shareholders general ordinary and extraordinary meetings.
9	Tax Due Diligence	Corporate income tax	If applicable, election letter for CIT normal basis regime.
10	Tax Due Diligence	Corporate income tax	If the company has a special tax status: any information relating to this status.
11	Tax Due Diligence	Tax consolidation (if applicable)	Tax consolidation returns.
12	Tax Due Diligence	Tax consolidation (if applicable)	Election letter for the tax-consolidation regime filed by the parent company (with the corresponding acknowledgement of receipt).
13	Tax Due Diligence	Tax consolidation (if applicable)	Agreement letter for the group subsidiaries (with the corresponding acknowledgement of receipt).
14	Tax Due Diligence	Tax consolidation (if applicable)	Tax-consolidation agreements concluded with member companies of the group.
15	Tax Due Diligence	Tax credit	Tax credit form n° 2069-RCI.
16	Tax Due Diligence	Tax credit	Any document related to tax credit held by the company.
17	Tax Due Diligence	R&D tax credit	R&D tax credit form n° 2069 A.
18	Tax Due Diligence	R&D tax credit	Available documentation to justify the eligibility of the projects for R&D tax credit.
19	Tax Due Diligence	R&D tax credit	Detailed documents regarding the computation of expenses that have been considered as eligible for R&D tax credit.

Nº.	Category	Sub-Category	Description of Request
20	Tax Due Diligence	Competitive and employment tax credit ("CICE")	CICE tax credit form 2079-CICE.
21	Tax Due Diligence	FEC ("Fichier des écritures comptables")	FEC files.
22	Tax Due Diligence	VAT	VAT returns.
23	Tax Due Diligence	VAT	Table of cross-checking between turnover for VAT purpose (as declared in VAT returns) and turnover booked in P&L accounts.
24	Tax Due Diligence	VAT	If applicable, election letter for VAT on leases.
25	Tax Due Diligence	VAT	Sample of invoices issued by companies within the Group to a client located in France/ EU/outside EU.
26	Tax Due Diligence	VAT	If applicable, detail of VAT credits held by each entity (origin, refunds already obtained, etc.).
27	Tax Due Diligence	Economic Territorial Contribution ("Contribution Economique Territoriale")	Tax notice for "Enterprises Land Contribution" ("Cotisation Foncière des Entreprises") for the last three civil years.
28	Tax Due Diligence	Economic Territorial Contribution ("Contribution Economique Territoriale")	Tax returns n°1329-DEF for "Enterprises Added Value Contribution" ("Cotisation sur la Valeur Ajoutée des Entreprises") for the last three civil years.
29	Tax Due Diligence	Economic Territorial Contribution ("Contribution Economique Territoriale")	If applicable, copy of the request letters for the benefit of tax ceiling.
30	Tax Due Diligence	Tax audits	Any information relating to past/ongoing tax audits.
31	Tax Due Diligence	Intercompanies agreements	If applicable, any agreements concluded between the companies of the group.
32	Tax Due Diligence	Intercompanies agreements	If applicable, any loan agreements concluded between the companies of the group.
33	Tax Due Diligence	Transfer pricing	Transfer pricing documentation and choice of pricing method.
34	Tax Due Diligence	Transfer pricing	If applicable, French 2257-sd filling forms.
35	Tax Due Diligence	Transfer pricing	Country by Country Reporting (CbCR), where applicable.
36	Tax Due Diligence	Transfer pricing	Documents containing discussions with the FTA on this subject (e.g. exchange letters, tax rulings etc.).
37	Tax Due Diligence	Transfer pricing	Any analysis performed by advisers on the transfer pricing policy.

Nº.	Category	Sub-Category	Description of Request
38	Tax Due Diligence	Transfer pricing	All the computations files used to remunerate the intercompany transactions implemented.
39	Tax Due Diligence	Previous restructuring	Any legal and tax documents relating to past reorganisations.
40	Tax Due Diligence	Previous restructuring	FTA agreements for the transfer of tax losses and of the special merger tax regime.
41	Tax Due Diligence	Previous restructuring	"54 septies" form (special form about tax deferrals).
42	Tax Due Diligence	Wage tax	Wage tax forms.
43	Tax Due Diligence	Wage tax	Internal documents with the computation of the taxation ratio.
44	Tax Due Diligence	Filing requirements	Specific forms n°2561 ("IFU") for the declaration of interest and dividend payments and acknowledgment of receipt for the last five civil years.
45	Tax Due Diligence	Filing requirements	DAS 2 forms for the declaration of wages, commissions and fees and acknowledgment of receipt for the last five civil years.
46	Tax Due Diligence	Others	If applicable, any tax rulings from the FTA.
47	Tax Due Diligence	Others	Any internal documents of tax related topics.

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