



International tax

France Highlights 2012

Investment basics:

Currency – Euro (EUR)

Foreign exchange control – No

Accounting principles/financial statements – French GAAP. Financial statements must be filed annually.

Principal business entities – These are the joint stock company (SA/SAS), limited liability company (SARL), commercial partnership (SNC) and branch of a foreign company.

Corporate taxation:

Residence – A company incorporated in France is deemed a French tax resident, A foreign company can be French resident if it is managed and controlled in France.

Basis – France operates a territorial tax system. Residents and nonresidents are taxable in France on profits allocable to a French business and on French source income. Foreign-source income of French residents generally is not subject to French tax (and foreign-source losses may not be deducted).

Taxable income – Taxable income is equal to the book income, plus or minus certain tax adjustments.

Taxation of dividends – Dividends are taxable income in general, although distributions from qualifying subsidiaries benefit from the participation exemption (see below).

Capital gains – Capital gains are generally subject to corporate tax at the standard rate. Capital gains derived from the sale of qualifying shareholdings can benefit from the participation exemption (see below).

Losses – Ordinary losses may be carried forward indefinitely, but may be offset against taxable profit of a given year only up to an amount equal to EUR 1 million, plus 60% of the taxable result for the fiscal year. Losses may also be carried 1 year back but only up to an amount of EUR 1 million, under certain conditions. Capital losses on the sale of shares qualifying for the participation

exemption may be offset only against capital gains of the same nature. Additional limitations apply to the deduction of a capital loss on the sale of shares between related parties.

Rate – The standard corporate income tax rate is 33.33%. Small or new businesses may benefit from lower rates.

Surtax – A 3.3% social surcharge applies to the standard corporate income tax liability that exceeds EUR 763,000, resulting in an overall effective corporate tax rate of 34.43%.

A 5% temporary surtax applies to the standard corporate income tax liability for large companies with a turnover exceeding EUR 250 million, resulting in an overall effective corporate tax rate of 35%, or 36.10% for largest companies when subject to the 3.3% social surcharge.

Alternative minimum tax – French resident companies are subject to a minimum tax based on their turnover before VAT (maximum EUR 110,000).

Foreign tax credit – French domestic law generally does not provide for a credit for foreign taxes. Income subject to foreign tax that is not exempt from French tax under the territoriality principle is taxable net of foreign tax paid. However, most tax treaties provide for a tax credit mechanism, which generally corresponds to the withholding tax paid in the source country, but capped at the French tax actually due on the net income. The portion of the credit exceeding the cap is forfeited.

Participation exemption – A participation exemption on dividends applies where the recipient owns at least 5% of the shares (both by vote and value) of the distributing entity and retains the shares for at least 24 months. If the participation exemption applies, the dividends are 95% exempt, resulting in a maximum effective rate of 1.8% (5% x 36.10%). However, if an entity is merged shortly after making a distribution and the merger is within 2 years of its acquisition, the parent company must choose between having the distribution within the

scope of the participation exemption regime and taking a deduction for the loss on the shares of the distributing entity.

A participation exemption also applies to capital gains arising from the sales of shares that form part of a substantial investment if the shares have been held for 24 months. The gain is 90% exempt, resulting in an effective rate of max 3.61%.

Holding company regime – See under "Participation exemption."

Incentives – France offers an R&D tax credit, which takes the form of an actual cash payment from the government if the credit has not been used to offset income tax liability within 3 years.

Withholding tax:

Dividends – Dividends paid by a French corporation to a nonresident shareholder are subject to a 30% withholding tax calculated on the gross dividends, unless a tax treaty provides for a lower rate or the EU parent-subsidiary directive applies. Under the directive, dividends paid by a French corporation to a qualifying EU parent company are exempt from withholding tax (see "Controlled foreign companies" discussion, below, for rules on non-cooperative countries).

Interest – Interest paid by a French company to a nonresident lender generally is not subject to withholding tax (see "Controlled foreign companies" discussion, below, for rules on non-cooperative countries).

Royalties – Royalties paid to a nonresident entity are subject to a 33.33% withholding tax. The rate may be reduced or eliminated under a tax treaty or where the royalties qualify for the benefit of the EU interest and royalties directive (see "Controlled foreign companies" discussion, below, for rules on non-cooperative countries).

Technical service fees – Fees paid for commissions, consultancy fees and fees for services performed or used in France, are subject to a withholding tax of 33.33%. The

rate may be reduced or eliminated under a tax treaty or where the royalties qualify for the benefit of the EU interest and royalties directive (see “Controlled foreign companies” discussion, below, for rules on non-cooperative countries).

Branch remittance tax – The after-tax income of the French branch of a foreign company is deemed to be distributed to non-French residents and is subject to a branch tax at a rate of 25%. The branch tax may be eliminated or reduced under a tax treaty, and is not due if the foreign head office is located in the EU and is subject to income tax with no possibility of opting out or of being exempt.

Other – No

Other taxes on corporations:

Capital duty – A fixed EUR 375 duty applies to most transactions that impact a company’s share capital (EUR 500 for companies with capital in excess of EUR 225,000, which is the minimum registered capital for a public company). Capital reductions are taxed at a flat rate of EUR 125. Upon dissolution, a company pays a “droit de partage” equal to 2.5% of net worth if the net worth is distributed pro rata to the shareholders. Amounts paid to a shareholder exceeding its pro rata rights in the distribution are taxed as a sale. For share transfers, see under “Transfer tax.”

Payroll tax – Payroll tax is levied on entities that collect revenue not subject to VAT (mostly banks and financial institutions).

Real property tax – Several real property taxes apply in France, including the “CET” (see discussion, below, under “Other”), the “Taxe Foncière” and the “3% tax.” See also under “Transfer tax,” below.

Social security – Contributions payable by the employer vary depending on the size and type of business and the location, but in certain situations can exceed 50% of gross pay for the employer.

Stamp duty – Stamp duties apply but they are nominal.

Transfer tax – The sale of real property is subject to a transfer tax at a maximum rate of 5.08%.

The sale of shares of an SARL or SNC is subject to a transfer tax equal to 3% of the sales price (above EUR 23,000). However, for shares of an SA, SAS or SCA, a progressive schedule applies as follows: 3% on the part of the sale price below EUR 200,000; 0.5% on the part between EUR 200,000 and EUR 500 million; and 0.25% on

the part exceeding EUR 500 million.

The rate is increased to 5% if the company whose shares are transferred is a real estate company, i.e. more than 50% of the fair market value of the company’s assets correspond to French real property or real property rights.

The sale of a French going concern, a French clientele/customer list or leasehold rights is subject to a transfer tax at a rate of 5% (above EUR 23,000).

The same tax applies to the sale of IP rights (other than patents) when exploited in France.

Other – Resident and nonresident companies operating a French business must pay the CET (“*Contribution Economique Territoriale*”). The CET has two components: a real property tax and a tax calculated on an adjusted gross receipt of the French business.

A number of minor taxes also apply to corporations in France to fund specific social purposes.

Anti-avoidance rules:

Transfer pricing – French entities controlled by entities established outside France are taxable in France on profits transferred directly or indirectly to the entity located abroad through an increase or decrease in the purchase or sales prices or by any other means. Companies exceeding certain thresholds must maintain contemporaneous transfer pricing documentation.

Rates on interest paid by French corporate taxpayers to related parties are deemed to be arm’s length if they do not exceed an index corresponding to the average annual floating rate applied by banks to 2-year loans granted to businesses. If the interest rate exceeds that index ([3.99%] for fiscal years corresponding to calendar year 2011), the taxpayer will have to demonstrate that it would have paid a similar or higher rate to a bank in a comparable situation.

Thin capitalization – The deduction of interest expense on related party debt is deferred if the interest exceeds the highest of the following thresholds: (1) the interest expense on a debt equal to 1.5 times the equity; (2) 25% of the borrower’s adjusted EBITDA; and (3) the amount of interest income received from related parties. (An additional deduction may be available when the borrower is part of a consolidated tax group.)

Nondeductible interest is carried forward for 20 years, but 5% of the total carryover becomes permanently disallowed each year.

The scope of the thin capitalization rules has been extended in certain circumstances to loans granted by a third party entity, but guaranteed by a related company.

Acquisition-related expense is fully deductible only where the shareholding is actually managed from France. The burden of proof is on the taxpayer to demonstrate that decisions on share-related transactions are made in France and control of the subsidiary’s management is effectively undertaken from France. Failing that, a portion of the interest expenses relating to the acquisition will be disallowed each year in an amount corresponding to the ratio between the acquisition price and the average of the overall company’s indebtedness for the fiscal year concerned. This will apply until the end of the eighth fiscal year following the acquisition. The interest disallowance will apply for fiscal years beginning on or after 1 January 2012, but will not apply to situations in which:

- The value of the shares held by a company does not exceed EUR 1 million; or
- The French company demonstrates that the indebtedness ratio of the group exceeds, or at least equals, its own; or
- The French company demonstrates that the loan was aimed at financing assets other than the shares.

Controlled foreign companies – The CFC rules apply to more-than-50%-owned or controlled foreign subsidiaries or permanent establishments of a French company when the local taxation is less than 50% of the French rate (i.e. the actual tax paid compared to French tax that would be due on the income calculated under French GAAP). In such a case, the French company is taxed on its pro rata share of the income deemed to be received from the CFC. EU companies are outside the scope of the CFC rules (unless the structure was put in place to avoid tax).

Dividends, interest, royalties and payments for services made to companies located in a noncooperative country may be subject to a 55% withholding tax. Further, dividends received from entities located in noncooperative countries cannot benefit from the participation exemption.

Other – The French tax authorities have the general power to disregard or recast all transactions, arrangements or legal acts that

are fictitious or have been executed or entered into for the sole purpose of avoiding French tax.

Disclosure requirements – No

Administration and compliance:

Tax year – The tax year is generally the calendar year, although a taxpayer may choose a different year-end date. The tax year is 12 months, but can be shorter or longer in certain cases.

Consolidated returns – Under the fiscal integration regime, a group of companies may opt to consolidate profits and losses so that tax is assessed at the level of the parent company, but is based on the group profit or loss. To qualify for consolidation, the parent must, *inter alia*, be subject to French tax and cannot be 95% or more owned (directly) by French corporate taxpayers. Only subsidiaries at least 95% owned (directly or indirectly) by the parent can be included in the tax group (if subject to French corporate tax). Subsidiaries indirectly held through a chain of participations that include French companies not part of the tax group or non-EU resident companies cannot be part of the group.

Filing requirements – A self-assessment regime applies. Corporate tax returns are normally due by 30 April of the year following the calendar year or within 3 months of the year end for a non-calendar financial year.

Penalties – Late payments and late filing are subject to a 10% penalty. If additional tax is payable as a result of a reassessment of tax, interest is charged at 0.4% per month (4.8% per year). Special penalties can apply in the case of bad faith or abuse of law.

Rulings – Rulings are increasingly becoming a regular practice. A special ruling procedure exists to confirm whether a foreign entity has a permanent establishment in France.

Personal taxation:

Basis – Residents are taxed on worldwide income, whereas nonresidents are taxed only on French-source income.

Residence – Individuals domiciled in France are considered resident. Normally, an individual is considered domiciled in France if his/her principal residence, main place of business or professional activity, or center of financial interests is located in France.

Filing status – Married persons may file an individual or a joint tax return.

Taxable income – Taxable income generally includes employment income, business

income, real estate income, investment income and capital gains. Under the “tax shield,” total taxes (including wealth tax) are capped at 50% of income; the taxpayer can request a refund of the excess in the following year. For example, the taxpayer can claim in 2012 taxes paid in 2011 that exceed 50% of his/her 2010 income.

Capital gains – Capital gains from the disposal of movable assets (e.g. securities, bonds) and immovable property are taxed at 19% (plus special social security surcharges for French residents, amounting to approximately 13.5%).

Deductions and allowances – Deductions and allowances are available primarily based on family situations and relating to certain type of investments or expenses incurred during the year.

Rates – Rates on ordinary income are progressive, ranging from 5.5% to 41% (plus special social security surcharges for French residents, amounting to a maximum of 13.5%).

In addition, an exceptional contribution applies on the part of income that exceeds EUR 250 000 for single and EUR 500,000 for married couples (at a rate of 3% for the part of income between EUR 250,000 and EUR 500,000 for singles and between EUR 500,000 and EUR 1 million for married couples, and at a rate of 4% for the part of income above EUR 500,000 for singles and above EUR 1 million for married couples). The measure applies to income tax years beginning on or after 2011 and will remain in effect until the government achieves a zero deficit.

Other taxes on individuals:

Capital duty – No

Stamp duty – Stamp duties apply, but they are nominal.

Capital acquisitions tax – No

Real property tax – Owners are liable for a tax based on the “rental value” of the property assessed by the tax authorities. Occupants are liable for a dwelling tax based on the rental value of the property assessed by the tax authorities.

Inheritance/estate tax – Transfers between close relatives are subject to tax from 5% to 40%, after a rebate (e.g. up to EUR 159,325 per child).

Net wealth/net worth tax – Households pay wealth tax if the net worth of more than EUR 1,300,000 per household (rather than per individual). Some types of assets are exempt,

and small deductions for dependents are allowed. Nonresidents must pay tax on their property in France unless they are exempt under a tax treaty. There are two rates: 0.25% if net assets do not exceed EUR 3 million and 0.50% if net assets exceed that amount.

Social security – Social security contributions and surcharges are deducted at source from salary payments, with contributions around 20% for the employee.

Administration and compliance:

Tax year – Calendar year

Filing and payment – The income tax return generally must be filed by 31 May after the end of the tax year.

Penalties – Late payments and late filing are subject to a 10% penalty. If additional tax is payable as a result of a reassessment of tax, interest is charged at 0.4% per month (4.8% per year). Special penalties can apply in the case of bad faith or abuse of law.

Value added tax:

Taxable transactions – VAT is levied on the sale of goods and the provision of services.

Rates – The standard VAT rate is 19.6%. Reduced rates of 5.5% or 7% apply to most food products for human consumption and other items, and a preferential rate of 2.1% is payable on some periodicals and medicines reimbursed by the social security system. Certain transactions are exempt.

Registration – Entities subject to VAT must register with the tax authorities.

Filing and payment – The filing can be monthly, quarterly or annually, depending on the type of activities and other factors.

Companies belonging to the same group are permitted to elect to consolidate payment of their VAT liability in certain cases.

Source of tax law: *Code General des Impôts* (CGI)

Tax treaties: France has signed more than 100 tax treaties.

Tax authorities: French Tax Administration

International organizations: EEA, EU, WTO, OECD

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