International Tax

France Highlights

In Plain English

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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 to be tax resident. A foreign company can be resident in France 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 book income, plus or minus certain tax adjustments.

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

Capital gains – Capital gains generally are subject to corporate tax at the standard rate, but capital gains derived from the sale of qualifying shareholdings can benefit from the participation exemption (see "Participation exemption," 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 50% of the taxable result in excess of this amount for the fiscal year. Losses may be carried back for one year in certain cases, up to EUR 1 million. Additional limitations apply to the deduction of capital losses on the sale of shares between related parties.

Rate – The standard corporate income tax rate is 31%, with a reduced rate of 28% applying on the first EUR 500,000 of taxable income. The application of the standard rate of 31% for 2019 is limited to companies whose turnover is below EUR 250 million, with a 33.33% standard rate for companies with turnover of EUR 250 million or more. The rate will be progressively reduced to 25% by 2022. Small or new businesses may benefit from lower rates.

Surtax – A 3.3% social surcharge applies to a standard corporate income tax liability exceeding EUR 763,000, bringing the marginal effective rate to 32.02% with a 31% standard rate (or 34.43% with a 33.33% standard rate). Small and medium-sized enterprises benefit from specific exemptions, provided certain conditions (e.g. turnover, capital) are satisfied.

Alternative minimum tax – No

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 is 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 of the distributing entity for at least 24 months. If the participation exemption applies, the dividends are 95% tax exempt, resulting in a maximum effective rate of 1.6% with a standard rate of 31% (5% x 32.02%) or 1.72% (5% x 34.43%) with a standard rate of 33.33% that applies for companies with turnover of EUR 250 million or more. However, if an entity is merged shortly after making a distribution and the merger is within two years of its acquisition, the parent company must choose between having the distribution within the scope of the participation exemption and taking a deduction for the loss on the shares of the distributing entity. (See also "Other" under "Anti-avoidance rules.")

A participation exemption applies also to capital gains arising on the sale of shares that form part of a substantial investment if the shares have been held for at least 24 months. The gain is 88% exempt, resulting in a maximum effective rate of 3.84% with a 31% standard rate (12% x 32.02%) or 4.13% (12% x 34.43%) with a standard rate of 33.33% that applies for companies with turnover of EUR 250 million or more.

Holding company regime – See "Participation exemption."

Incentives – France offers an R&D tax credit of 30% on qualifying research expenses up to EUR 100 million and 5% above this limit, provided certain criteria are met.

A patent box regime is available under which income and capital gains arising from certain patents are taxed at a reduced corporate tax rate of 10% for financial years commencing on or after 1 January 2019.

Withholding tax:

Dividends – Dividends paid by a French corporation to a nonresident shareholder are subject to a 30% withholding tax, 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," below, for rules on noncooperative countries). The 30% domestic withholding tax rate will be progressively reduced to 25% in 2022, in line with the reduction in the standard corporate tax rate.

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

Royalties – Royalties paid to a nonresident entity are subject to the standard corporate income tax rate as from 1 January 2019 (see commentary under "Rate," above). 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," below, for rules on noncooperative countries). The rate will be progressively reduced to 25% in 2022, in line with the reduction in the standard corporate tax rate.

Technical service fees – Fees paid for commissions, consultancy and services performed or used in France are subject to the standard corporate income tax rate (see commentary under "Rate," above). The rate may be reduced or eliminated under a tax treaty (see "Controlled foreign companies," below, for rules on noncooperative countries).

Branch remittance tax – The after-tax income of a French branch of a foreign company is deemed to be distributed to nonresidents and is subject to a 30% branch tax. The rate will be progressively reduced to 25% in 2022, in line with the reduction in

the standard corporate tax rate. The tax may be eliminated or reduced under a tax treaty and is not due if the foreign head office is located in the EU/European Economic Area (EEA) and is subject to income tax with no possibility of opting out or of being exempt, and the income is taxable in the foreign country.

Other taxes on corporations:

Capital duty – Capital duty is abolished as from 1 January 2019 but most transactions that affect a company's share capital must be registered. (For share transfers, see "Transfer tax," below.)

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 "Other," below), the taxe fonciere and the "3% tax." (See also "Transfer tax," below.)

Social security – Contributions payable by the employer vary depending on the size and type of business and the location. In certain cases, employer contributions can exceed 50% of gross pay for the employer, although employers' contributions generally are reduced as from 1 January 2019.

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 5.8%.

The sale of shares of an SARL or SNC is subject to a transfer tax equal to 3% of the sales price, minus a sum equal to the number of units sold x EUR 23,000/total number of the company units. A flat rate of 0.1% applies for the sale of shares of an SA, SAS or SCA. The rate is increased to 5% if the company whose shares are transferred is a real estate company, i.e. if 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 customer list or leasehold rights is subject to a 5% transfer tax. The same tax applies to the sale of intellectual property rights (other than patents) that are related to a French going concern and used in France.

Digital services tax – A 3% digital services tax (DST) applies from 2019 to revenue derived from the provision of online placement of advertising, sale of collected user data and intermediation services to companies whose revenue from the relevant services during the calendar year exceeds EUR 750 million globally and EUR 25 million in France. For related companies, these thresholds are assessed at the group level.

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 adjusted gross receipts of the French business.

A number of minor taxes apply to corporations in France, to fund specific social initiatives.

A financial transaction tax of 0.3% applies to transactions involving shares of publicly traded companies established in France, the capital of which exceeds EUR 1 billion. The tax is calculated based on the value of the shares.

Anti-avoidance rules:

Transfer pricing – French entities controlled by entities established outside France are taxable in France on profits transferred, directly or indirectly, to an entity located

abroad through an increase or decrease in 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 at arm's length if they do not exceed an index corresponding to the average annual floating rate applied by banks to two-year loans granted to businesses. If the interest rate exceeds that index, the taxpayer will have to demonstrate that it would have paid a similar or higher rate to a bank in a comparable situation.

Interest expense deduction limitation – New interest expense deduction limitation rules apply for fiscal years beginning on or after 1 January 2019 in line with the EU Anti-Tax Avoidance Directive (ATAD 1). Net borrowing costs ("exceeding borrowing costs"), such as interest expense, guarantee costs or foreign exchange losses on borrowings, are deductible only up to the greater of 30% of the tax EBITDA (i.e. earnings before interest, tax, depreciation and amortization, restated with tax exempt income) or EUR 3 million.

Any excess amount of borrowing costs may be carried forward indefinitely, and unused interest deduction capacity in any given financial year may be carried forward for up to five years.

Companies that are members of a consolidated group for financial accounting purposes may benefit from a safeguard clause. According to this clause, if a company can demonstrate that its equity-over-assets ratio is at least equal to the ratio of the consolidated group, it may deduct 75% of the exceeding borrowing costs disallowed under the EBITDA test.

For tax consolidated groups, the EBITDA test and group safeguard provision are applied at the group level.

For companies that are considered to be thinly capitalized (i.e. where the related party debt-to-equity ratio exceeds 1:5), the portion of deductible financial expenses will be determined based on the application of two sets of rules:

- External debt: The standard 30% EBITDA test will apply to the portion of interest deemed to derive from external debt, calculated as total interest multiplied by the amounts put at the disposal of the company by unrelated parties increased by 1.5 x equity/total amounts put at the disposal of the company.

- Related party debt: Interest on related party debt will be subject to stricter rules, with a 10% of tax EBITDA limitation applying to interest expense deemed to derive from related party debt, calculated as total interest multiplied by the amounts put at the disposal of the company by related parties/total amounts put at the disposal of the company.

Financial expenses that are deemed to be nondeductible based on the external debt rule may be carried forward indefinitely to be deducted in a subsequent financial year. However, only one-third of financial expenses that are deemed to be nondeductible based on the related party debt basis rule may be carried forward. A specific safeguard clause is introduced for consolidated groups for financial accounting purposes, whereby the reinforced mechanism provided for in the case of thin capitalization will not apply if the company can demonstrate that the debt ratio of the consolidated group to which it belongs is higher than or equal to its own debt ratio. In that case, the company will continue to benefit from the application of the standard thresholds (i.e. 30% of tax EBITDA or EUR 3 million), as well as from the general safeguard clause allowing an additional deduction (if certain conditions

are fulfilled). For the application of the thin capitalization safeguard clause, the company's debt ratio would correspond to the ratio between the total amount of its debt and the amount of its equity. The debt ratio of the consolidated group would be determined by taking into account debt, except debt to companies that are part of the consolidated group. The company's debt ratio will be considered equal to the debt ratio of the consolidated group to which it belongs when the first ratio is higher than the second by a maximum of two percentage points.

The specific thin capitalization safeguard clause also applies to tax-consolidated groups.

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 the French tax that would be due on the income calculated under French GAAP). In such a case, the French company is: (i) taxed on its pro rata share of the income deemed to be received from the CFC if the CFC is a permanent establishment or a branch; or (ii) deemed to have received distributed income from the CFC if the latter is a subsidiary. 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 75% withholding tax. Further, dividends received from entities located in noncooperative countries cannot benefit from the participation exemption.

Disclosure requirements – Country-by-country reporting is required for certain companies with annual consolidated group revenue equal to or exceeding EUR 750 million.

Other – A rule to prevent hybrid mismatches disallows an interest deduction on a loan granted by an affiliated company if the interest is not subject to a tax at the level of the lending company that is equal to at least 25% of the tax that would have been due under the normal French rules.

In line with amendments to the EU parent-subsidiary directive, the French tax code excludes from the French participation exemption regime distributed profits that are deductible from the distributing subsidiary's taxable income.

A general anti-abuse rule (GAAR) in line with ATAD 1 applies as from 1 January 2019. The GAAR provides that, with respect to corporate income tax, nongenuine arrangements put in place for the main purpose (or one of the main purposes) of obtaining a tax advantage that defeats the object or purpose of the applicable tax law should be ignored. An arrangement is defined as nongenuine to the extent it is not put in place for valid commercial reasons that reflect the underlying economic reality.

In addition, the French tax authorities have the general power to disregard or recharacterize all transactions, arrangements or legal acts that are fictitious or have been executed or entered into for the sole purpose of avoiding French tax. In this case, an automatic penalty applies of 40% or 80% of the tax avoided.

A complementary measure also allows the French tax authorities to ignore arrangements put in place for the main purpose of avoiding or decreasing the normal tax liability (other than corporate income tax liability).

Compliance for corporations:

Tax year – The tax year generally is 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 that are 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. However, groups can be consolidated vertically (the traditional interpretation) or horizontally (French sister companies with a common EU parent company may form a horizontally consolidated group).

Filing requirements – A self-assessment regime applies. Corporate tax returns normally are due by 30 April of the year following the calendar year, or within three months of the year end for a noncalendar 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 0.2% per month (2.4% per year). Special penalties can apply in the event of bad faith or abuse of law.

Rulings – Rulings are becoming a regular practice and are binding only on the tax authorities. No fee is payable. A special ruling procedure exists to confirm whether a foreign entity has a permanent establishment in France. Advance pricing agreements for transfer pricing purposes also are available.

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. An individual normally 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 file a joint tax return, with no option to file separately after the year of marriage or before the year of divorce.

Taxable income – Taxable income generally includes employment income, business income, real estate income, investment income and capital gains.

Capital gains – Capital gains from the disposal of movable assets (e.g. securities, bonds) are subject to a unique 30% tax rate (i.e. a 12.8% income tax, plus a 17.2% social contribution). Capital gains from the disposal of immovable property are taxed at a special flat rate of 19%, plus special social security surcharges.

Deductions and allowances – Various deductions and allowances are available, based primarily on family circumstances and related to certain types of investment or expense incurred during the year.

Rates – Rates on ordinary income are progressive, ranging from 0% to 45%, plus special social security surcharges for French residents of a maximum of 17.2%.

An exceptional contribution applies on

the portion of income that exceeds EUR 250,000 for single individuals and EUR 500,000 for married couples. The rate of the contribution is 3% on income between EUR 250,000 and EUR 500,000 for single individuals (EUR 500,000 and EUR 1 million for married couples) and 4% on the part of income exceeding EUR 500,000 for single individuals (EUR 1 million for married couples). The measure 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 at rates ranging from 5% to 45%, after a rebate (e.g. up to EUR 100,000 per child).

Net wealth/net worth tax – Households pay wealth tax (on real estate assets only) if the net worth of their real estate exceeds EUR 1.3 million (per household, rather than per individual). Nonresidents must pay tax on their property in France, unless they are exempt under a tax treaty. Rates are progressive, ranging from 0.5% to 1.5%.

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

Compliance for individuals:

Tax year – Calendar year

Filing and payment – A Pay As You Earn (PAYE) system applies as from 1 January 2019 under which tax is withheld at source by employers from employees' remuneration, including pensions and "replacement income" (e.g. unemployment benefit, etc.). The tax due on self-employment and investment income is payable on a monthly basis (or a quarterly basis if the taxpayer so elects) and is debited by the tax authorities directly from the taxpayer's bank account. However, individuals still must file an income tax return, generally 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 0.2% per month (2.4% 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, and on imports.

Rates – The standard VAT rate is 20%. Reduced rates of 5.5% or 10% apply to most food products for human consumption and certain 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 zero-rated or exempt.

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

Filing and payment – Filing can be monthly, quarterly or annually, depending on the type of activities and other factors. Companies belonging to the same group may elect to

consolidate payment of VAT (but not VAT returns) in certain cases, but VAT grouping is not possible.

Source of tax law: Code General des Impots (CGI) (French Tax Code), and Livre de procedures fiscales (LPF) (French Tax Procedure Code)

Tax treaties: France has signed tax treaties with 125 jurisdictions. France has signed the OECD MLI and deposited its instrument of ratification with the OECD on 26 September 2018. The MLI entered force for France on 1 January 2019.

Tax authorities: French Tax Administration

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