

CORPORATION TAX SYSTEM IN FRANCE

Direct taxes at a Glance

Corporate Income Tax Rate (%)			
Standard rate		33.1/3	(a)
Small companies (reduced rate)		15	
Royalties (capital gain tax rate)		15	(a)
Capital gains on qualifying shareholding		0	(b)
Capital gains on real estate company quoted shares		19	
Dividends		0	(c)
Branch Tax Rate (%)			
		25	(d)
Withholding Tax (%)			
- Outbound flows	Dividends	25	(e)
	Interests	18	(f)
	Royalties and Fees	33.1/3	(g)
- Domestic flows (from France to France)	Dividends	0	
	Royalties		
Net Operating Losses (Years)			
	Carry forward	Without time limit	(h)
	Carry back	3 years	(i)

(a) The standard rate of 33.33% is increased by a 3.3% corporate tax surcharge resulting in an effective overall taxation rate of 34.43%. This surcharge applies under certain circumstances to companies whose (i) corporate income tax computed at the standard rate exceeds € 763,000, (ii) turnover realised during the preceding financial year exceeds € 7,630,000 and (iii) share capital is not held at more than 75% by individuals. The surcharge applies to royalties taxed at the 15% reduced rate.

(b) Capital gains realised upon the sale of a qualifying shareholding held for at least 2 years are 95% tax exempted (as from financial years opening on or after January 1st, 2007). Long term capital gains on the sale of quoted shares in real estate companies are taxed at the rate of 19% (as from financial years closing on or after January 1st, 2009) increased by the above mentioned 3.3% corporate tax surcharge when applicable.

(c) Under the French participation-exemption regime, qualifying parents companies are 95% exempted on dividends received from their subsidiaries.

(d) Branch tax does not apply to French branches of companies having their effective place of management within the EU and subject there to corporate income tax.

(e) This domestic withholding tax is reduced or even cancelled by relevant tax treaties provisions (France has concluded 118 double tax treaties). In addition, assuming the conditions set up by the EU parent/subsidiary directive as implemented into French law are satisfied, no withholding tax applies (when the French source dividends giving rise to the withholding tax are paid to a company having its effective place of management within the EU where it is subject to corporate income tax and provided certain conditions are met).

(f) A broad domestic exemption is available, which conditions are easy to satisfied. However, in each case, the precise circumstances have to be carefully considered. In addition, tax treaty provision may reduce or even cancel the domestic withholding tax when applicable.

(g) This domestic withholding tax can be reduced or even cancelled by relevant tax treaties provisions. Besides, when conditions for the application of the Interest and Royalties Directive (implemented into French domestic law) are satisfied, no tax is withheld.

(h) Tax losses can be carried forward without any time limitation. They cannot be transferred to another company unless prior authorization is obtained from the French Tax Authority. Moreover, the right of carrying forward tax losses can be lost in case of either a change of tax regime or, a deep change in activity of the company.

(i) Losses of a given tax year can be offset against taxable profits of the three preceding years. The corresponding tax credit can be offset against the corporate tax liability of the 5 following tax years. If not utilized, the excess is refunded after a 5-years period. However, any carry-back receivable with respect to a FY ending at the latest on September 30th, 2009 will be entitled to an immediate refund procedure.

Indirect taxes at a Glance

VAT (Value Added tax) (%)		(j)
	Standard rate	19.6
	Reduced rate	5.5
	Special rate	2.1
Business tax (%)	Applicable rates are voted by local communities	e.g. Paris appr. 21.24 % for 2009 (k)
Payroll taxes (%)		
	Apprenticeship tax	0.5 / 0.6 (l)
	Salary tax	4.25/8.5/13.60(m)
Registration duties		See note (n)

(j) VAT is a consumption tax which is applied at each stage in the production process but does not represent a final liability for most companies (except those of the banking sector) as they are usually able to recover it. The reduced and special rates only apply to a limited list of products or transactions, (e.g., foods, beverage, books for the reduced rate, and pharmaceutical products for the special rate).

(k) The business tax is a local tax due by companies on the basis of the rental value of the tangible fixed assets they use for their business. A minimum business tax of 1.5% of the added value applies to companies with turnover exceeding € 7,600,000. Certain local authorities have adopted significant incentives as far as business tax is concerned. These incentives usually apply for the first five years of activity.

(l) The apprenticeship tax is levied on the amount of salaries and wages paid. The standard rate of the apprenticeship tax is 0.5% increased to 0.6% for companies having more than 250 employees under certain circumstances.

(m) Companies not subject to value-added tax (VAT) or with a turnover at least 90% exempt from VAT in the preceding year must pay a salary tax assessed on the salaries and wages paid, which is deductible for corporate income tax purposes. The salary tax affects mainly banking and insurance sectors.

(n) There are many operations that are subject to registration duties:
 In particular, transfers of shares attract a 3% registration duty capped at € 5,000 assessed on transfer of shares (actions) in a stock company (SA, SAS).
 A 3% registration duty is assessed on transfer of interest-shares (parts sociales) in a SARL or a SNC without a € 5000 cap.
 Sale of shares or equities in real estate companies attracts a 5% registration duty without limitation. Please note that a real estate company is, in this case, an entity not listed on a stock exchange (French or foreign), which assets are, or were during the year before the sale, mainly constituted of real estate or shares representing real estate located in France or of shares in private entities (entity not listed on a stock exchange) that are real estate company.
 A registration duty also applies to sale of business as an on-going concern equals to 3% for the fraction of the price ranging from € 23,000 to € 200,000 and 5% for the fraction which exceeds € 200,000. The fraction below € 23,000 is exempt from registration duty.

Outline of French Corporate Tax System

Territoriality principle

France has a territorial system of corporate income taxation. Accordingly, French companies and French branches of foreign companies are subject to corporate income tax for profits derived from businesses run in France, i.e. companies, wherever resident, are only subject to corporate income tax on income derived from French source. Consequently, losses incurred outside France cannot be taken into consideration in determining the French taxable result.

However, as from financial years opening on or after January 1st, 2009, small and medium sized enterprises may temporarily take into account losses incurred by their foreign branches and subsidiaries in determining taxable income in France. The losses will be recaptured once the foreign entity returns to profitability or, at the latest, in the fifth fiscal year following the offset.

Taxable income

The computation of the taxable income is made on the basis of the local statutory accounts, adjusted according to the provisions of the French tax code. Allowable expenses are those whose reality can be evidenced and that were incurred for the purpose of the business.

Taxable Year

The fiscal year of a company is its financial year. It is freely determined by each company. Most companies have a fiscal year which corresponds to the calendar year (01/01 – 12/31). Corporate income tax is paid in four instalments and one final payment. The instalments are due on March 15th, June 15th, September 15th and December 15th. They are calculated as 8.33% of the taxable profit of the prior year. The final payment of tax is due with the self assessment tax return, within three and a half months of the end of the tax year.

Participation-exemption regime

Under the French Participation Exemption regime, qualifying parent companies subject to French Corporate Income Tax, at the full standard rate on all or part of their business activities, can elect for a 95% exemption on dividends received from their subsidiaries, the remaining 5% are deemed to correspond to a "management charge" (Companies can demonstrate that actual charges are less than 5% and can be taxed only on this lower amount). Hence, the effective rate of taxation is 1.67%. The threshold of participation is 5% of the voting and financial rights which must have been held for at least two years.

Similarly, capital gains on qualifying shareholding held for at least two years are 95% exempt (i.e. the effective rate of taxation is 1.67%).

Interest paid to related parties

To be tax deductible, the interest rate should be a market rate. In addition, financial charges are not tax deductible if they simultaneously exceed the 3 following ratio/thresholds (thin capitalization rules):

- 1.5:1 related party debt-to-equity ratio;
- 25% of pre-tax adjusted operating profits (i.e. profits before tax, intra-group interest, amortisation and certain specific lease payments); and
- Interest received from related parties (if the company uses the funds to finance other affiliated companies).

Unless the company can demonstrate that its own total debt-to-share capital ratio does not exceed the worldwide group's third party debt-to-share capital ratio, interest is deductible up to the amount corresponding to the highest of the above ratio/thresholds. However, the interest deduction is only disallowed to the extent the interest exceeds 150k€. The non-deductible amount can be carried forward reduced by 5% per year (the reduction starts to apply as of the second year in which the excess is carried forward).

Tax consolidation regime

The French Tax Code contains an optional tax consolidation regime, whereby French group companies may file a consolidated return. Under this regime, profits and losses incurred by the individual group are aggregated to determine a tax consolidated result (intra-group transactions are neutralised). To qualify for consolidation the head of group must be a French company that is not itself 95% or more held by another French company subject to corporate income tax. The other members must be subject to French corporate income tax. The French parent must hold at least 95% in the share capital of the subsidiary, either directly or indirectly through other companies that are members of the same tax consolidated group.

Research tax credit

A company may claim a tax credit of 30% of the research expenses incurred up to € 100 million; the rate is reduced to 5% for the surplus. This tax credit is increased to 50% (40% the second year) when a company incurs R&D expenses for the first time or has not benefited from the R&D tax credit for more than five years.

Real Estate Investment Company listed (Sociétés d'Investissements Immobiliers Cotées)

Listed real estate companies ("SIIC" or "REIT") are entitled to an exemption from corporate income tax on rental income and capital gains subject to distribution duties. A real estate company may elect for this regime provided it is listed on a French stock exchange, it has a minimum share capital of € 15 million and the main business purpose of the company is the acquisition or construction of real estate for rental purposes, and/or direct or indirect shareholdings in entities (either corporate or pass-through entities) that have a similar business purpose. Subsidiaries that are at least 95% directly or indirectly owned by a REIT and that have a similar business purpose and are subject to tax may also elect to be subject to the regime.

Anti-avoidance legislation

General anti-avoidance provisions exist to prevent the abuse of legislation or artificial transactions being undertaken for the purpose of avoiding tax. A general anti-abuse rule provides that any agreement or operation exclusively aimed at tax mitigation and undertaken contrary to the intention of the legislator, i.e. that cannot be justified by economic or other reasons can be disregarded. In addition, an 80 % penalty may apply. The burden of the proof belongs to the Tax Authorities and the case law is restrictive in admitting an abuse of tax law/fraud to tax law.

Tax Haven Rules

A tax haven in France is defined as a system in which the taxpayer is subject to income taxes that amount is 50% lower than the income tax that would have been due in France if the taxpayer had been tax resident in France. Payments made to individual or legal entities domiciled or established in a low tax jurisdiction will not be allowed as a deduction by the French taxpayer. However, tax deduction is allowed if these expenses correspond to real transactions and that the amount involved is neither outside the company's business interest nor exaggerated.

Controlled foreign companies (CFCs)

CFC rules apply to resident companies that directly or indirectly hold a participation of more than 50% in a foreign legal entity or permanent establishment set up in a country of which effective taxation is at least 50% lower than that of France. Companies subject to CFC legislation are assessed to tax in France on a pro rata amount of the income received, or deemed received, from such entity or permanent establishment. An anti-abuse provision reduces the participation threshold to 5% in situations where more than 50% of the shares in the foreign entity are owned by French companies or by foreign entities directly or indirectly controlled by a French company. CFC rules may be avoided when the CFC is located within the EU, unless the French shareholding in the CFC is deemed to be a wholly artificial arrangement intended to avoid the French tax legislation.

If the CFC is located outside the EU and engaged in genuine economic activities in its State of residence, French CFC rules will not apply.

When its passive income represents a significant share of its profits, the location of the CFC must not be solely based on tax consideration.

Mergers & Acquisitions

Favourable tax treatment (so-called “merger relief”), is available on mergers if certain conditions are met either when one company absorbs another or when a new company is constituted to absorb one or more existing companies. Some types of mergers involving foreign companies require a prior approval from the French tax authorities.

Other Significant Issues

France is one of the founding member States of the European Union (Treaty of Rome 1957).
France has entered into a significant number of double tax treaties (appr. 118 in-force DTT January 1st 2009).

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