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Recent developments in international taxation: France

Introduction
The current French tax landscape is shaped by a peculiar mix of fiscal and political constraints, including a persistently high budget deficit and a government without a parliamentary majority.

As a result, few far-reaching reforms have been enacted over the past year, while scrutiny from the French tax authorities has intensified – leading to a noticeable uptick in audits and litigation.

Against this backdrop, the sections below present a curated selection of the most relevant international tax developments and decisions.

France's new tax framework for management packages – international outlook
Effective from 15 February 2025, France has introduced a new tax regime (Article 163 bis H of the French Tax Code) that reshapes how gains from management incentive instruments are taxed. Historically, these gains – often structured as capital gains – faced a risk of requalification as employment income, resulting in significant litigation and tax uncertainty. The new regime introduces a clear, quantifiable threshold to distinguish between capital gains and salary.

The regime applies to all types of management instruments (free shares, stock options, preference shares, *bons de souscription de parts de créateur d'entreprise* or BSPCE*, bons de souscription d'actions* or BSA – both BSPCE and BSA are comparable to restricted stock units, with the latter being reserved for employees and officers, etc) and uses a formula-driven test: gains up to three times the 'multiple of financial performance' of the issuer are taxed as capital gains (flat rate ~34 per cent), while the excess is treated as employment income (up to 59 per cent total burden, including a 10 per cent special social levy).

In other words, management gains are now presumed to constitute salary, with only the portion falling below three times the performance multiple qualifying – by exception – for capital gains treatment.

Although unofficial, the position expressed by Bercy is that the re-characterised portion of the gain (ie, the amount exceeding three times the multiple) would fall under Article 15 of the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention (employment income), while the portion taxed as a capital gain would remain governed by Article 13 (capital gains).

This treatment could create mismatches under tax treaties: other jurisdictions may treat the same gains as capital gains (under Article 13 of the OECD Model), while France claims taxing rights under Article 15 (employment income). Double taxation risks arise if no foreign tax credit or treaty override is available.

Additionally, in exit tax situations (for instance, where a taxpayer becomes non-resident before liquidity), the French tax authorities consider the entire gain – including the 'salary' portion – to fall within France's taxing rights. This position may not align with treaty allocation rules and raises practical issues for mobile executives.

Tax residence of senior executive – a trilogy

First, in a controversial decision (CE, 5 February 2024 – No. 469771 *Axa Group Opérations*), the Conseil d'État ruled that an individual could be considered tax domiciled in France under domestic law (Article 4 B of the French Tax Code), even where the applicable tax treaty allocated residence to another state.

The Court maintained that the domestic concept of 'fiscal domicile' remained independently relevant for assessing source-based withholding obligations, notably under Article 182A of the French Tax Code (withholding tax on certain professional income). This position implied a dual-layer residency approach, decoupling treaty and domestic residence determinations.

Then, in direct response to the *Axa* ruling, Article 23 of the 2025 Finance Law clarifies that when a tax treaty assigns residence to the other contracting state, the individual cannot simultaneously be treated as tax domiciled in France under the French Tax Code. This provision restores the primacy of treaty residence in determining tax liability, especially for non-residents and globally mobile executives.

Article 23 also codifies a rebuttable presumption of French professional activity for senior executives of large French companies (headquartered or listed in France) who receive high remuneration. This presumption shifts the burden of proof onto executives claiming to perform their functions abroad.

Finally, the Court of Appeal of Paris applied the same logic in substance (CAA Paris, 11 April 2025 – No 23PA02576). It upheld a reassessment against a Swiss-domiciled executive of a major French group, based on his regular presence in France and active participation in strategic decision-making.

Despite the formal residence in Switzerland, the Court found that the executive's centre of effective management and influence lay in France, triggering tax residence under Article 4B of the French Tax Code.

This judgment illustrates how French courts apply a functional test grounded in substance (strategic control, decision-making) rather than formal ties or employment contracts.

Beneficial ownership and outbound dividends

In *Foncière Vélizy Rose* (CE, 8 Nov. 2024, No 471147), the French Conseil d'État delivered a landmark ruling clarifying the application of the 'beneficial ownership' requirement under French domestic law and EU law in the context of outbound dividend payments.

The decision brings guidance to the interpretation of Article 119 ter of the French Tax Code, which transposes the EU Parent-Subsidiary Directive and exempts certain dividend distributions from withholding tax, subject to the recipient being the 'beneficial owner'.

The case involved a French real estate company (FVR) wholly owned by a Luxembourg holding company (VRI), which was in turn contractually obligated – under a fiduciary

arrangement – to pass 90 per cent of its dividends to other investors, including entities in Guernsey and an individual in Germany.

After an audit, the French tax authorities denied the withholding tax exemption, asserting that VRI was not the beneficial owner of the dividends.

The Conseil d'État upheld the tax administration's position, offering several key holdings. The Court emphasised a case-by-case approach based on a 'bundle of indicators' (*faisceau d'indices*) to assess whether the direct recipient has effective power to enjoy the income. Here, VRI's immediate redistribution of the dividend, lack of other income or activities, and its pass-through nature led the Court to deny it beneficial ownership.

The Court clarified that the denial of the withholding tax exemption based on lack of beneficial ownership does not require formal reliance on the French abuse of law procedure (Article L.64 LPF). This distinction reinforces the administrative flexibility in challenging treaty claims without procedural hurdles.

The taxpayer's claim that this standard created a discriminatory regime compared to purely domestic dividend distributions was rejected. The Court reasoned that the difference stems from the distinct mechanics of taxing non-residents and is consistent with the Parent-Subsidiary Directive.

Extending its *Planet* case law (royalty context), the Conseil d'État acknowledged that tax treaty benefits might apply to the 'true' beneficial owners – even if the dividend was paid to an intermediary in another state. However, in this case, the supposed ultimate beneficiaries failed to substantiate their residence, and treaty relief was denied.

The decision confirms a shift toward a more rigorous application of beneficial ownership principles in line with OECD and EU standards. It also serves as a warning: intermediary holding structures – even with some economic substance – must demonstrate genuine entitlement to income to avoid re-characterisation and exposure to French withholding tax.

Final resolution of the *Conversant* case: PE and hidden activity in the digital sector
In a decision dated 4 April 2025 (CE, No 461220), the French Conseil d'État brought final resolution to the long-running *Conversant* case, confirming the existence of a permanent establishment (PE) in France and upholding the application of penalties for hidden activity. The case concerned Conversant International Ltd, an Irish company operating in the digital marketing sector through its French subsidiary, Valueclick France. The French entity provided support services under a cost-plus arrangement, while the Irish parent company booked revenues from advertisers.

The French tax authorities considered that Valueclick France acted as a dependent agent, effectively binding the Irish entity in its commercial dealings, thereby constituting a PE in France. Relying on OECD commentary (albeit adopted after the France-Ireland tax treaty), the Conseil d'État upheld this interpretation. It emphasised the substance of the relationship: the French entity played a decisive role in negotiating and managing client contracts, and the Irish company was merely ratifying the transactions.

Critically, the Court also confirmed that the failure to declare this PE and the resulting French tax liabilities amounted to an *activité occulte* (hidden activity). This triggered the extended

ten-year statute of limitations (Articles L169 and L174 LPF) and the 80 per cent penalty for deliberate concealment under Article 1728 of the French Tax Code.

Significantly, the taxpayer's defence – that the existence of a PE was unclear or legally uncertain at the time – was rejected. The Court made clear that legal uncertainty is not, in itself, a valid excuse to avoid enhanced penalties.

In the current enforcement environment, the burden is on the taxpayer to assess and disclose cross-border risks proactively.

Tax qualification of US-source real estate income via US partnerships
The French Conseil d'État provided significant clarification on the tax treatment of United States-source real estate gains earned by a French tax resident through a two-tier US partnership structure (Conseil d'État, 9th and 10th Chambers, 28 February 2025 – No 491788).

The case involved a French-resident individual who indirectly held an interest in a US limited partnership (LP) through a general partnership (GP). Upon the sale of US real estate by the LP, the taxpayer reported the income in France as a capital gain and claimed a treaty-based tax credit.

French tax law requires the assimilation of foreign entities to equivalent French legal forms for tax purposes. US general partnerships are typically assimilated to French *sociétés en nom collectif* (SNC), and limited partnerships to *sociétés en commandite simple* (SCS). Under the principle of subsidiarity, courts must first assess whether taxation is valid under domestic law before considering treaty relief.

The dispute revolved around the income's qualification (capital gain, investment income, or business profit) and the resulting treaty credit. While the taxpayer sought credit for capital gains, the French tax authorities limited the credit to the US tax actually paid, and the Court of Appeal re-qualified the income as business income (BIC), exempt under Article 7 of the France–US treaty.

Though the treaty arguments were technically moot (as the domestic reassessment was void), the Court addressed them obiter to clarify principles. It held that:

- pursuant to Article 7(4) of the France–US treaty, the income earned by the US limited partnership must be viewed as directly earned by the French-resident taxpayer, proportionally to her indirect interest;
- the character of the income follows its origin – here, a real estate capital gain under Article 13 of the treaty; and
- as such, the US retains primary taxing rights, but France may also tax the gain, provided it grants a credit for US tax paid (Article 24(1)(a)(iii)).

Transfer pricing under increased scrutiny (2024 Finance Bill)
The 2024 Finance Bill introduces a significant tightening of France's transfer pricing (TP) framework, marking a clear departure from a purely documentation-based compliance model. First, the threshold triggering the obligation to prepare TP documentation has been lowered: companies with annual turnover or gross assets exceeding €150m (previously €400m) are now required to maintain full transfer pricing documentation. This change considerably

broadens the scope of in-scope companies, notably targeting French mid-cap (ETI) groups, many of which had previously fallen below the former threshold.

Second, the notion of 'opposability' of documentation has been introduced. Under new wording in Article 57 of the French Tax Code, if a taxpayer's actual results diverge from its documented TP method, this variance is presumed to constitute a taxable indirect profit transfer unless the taxpayer can prove otherwise.

This reversal of the burden of proof fundamentally alters the audit landscape, particularly when it comes to defending operational TP execution, segmented P&Ls, or the alignment between contracts and economic reality.

Finally, the law introduces new powers to reassess transactions involving 'hard-to-value intangibles' (HTVI) using ex post data, via Article 238 bis-0 I ter of the French Tax Code. If post-transaction results exceed original valuations, the tax authorities can make upward adjustments – unless the taxpayer can demonstrate that the deviation was due to unforeseen events, supported by detailed contemporaneous forecasts.

Moreover, the statute of limitations is extended to six years for such HTVI-related adjustments.

Public country-by-country reporting (CbCR)
Introduced under Directive (EU) 2021/2101 and transposed into French law by Ordinance 2023-483 and subsequent texts, public CbCR applies to multinational groups with consolidated revenue exceeding €750m, for financial years starting on or after 22 June 2024.

Unlike the OECD-driven CbCR for tax authorities, the public CbCR is a corporate law obligation and requires publication of tax and economic indicators – such as revenues, profits, taxes paid, and number of employees – broken down by jurisdiction.

In contrast with the confidential CbCR filed with tax administrations, the public version must be deposited with the commercial court registry and published on the company's website. A five-year publication deferral is permitted if disclosure would seriously harm the group's competitive position.

There is no monetary sanction for non-compliance, but directors and statutory auditors are held accountable.

In addition, there is an injunction procedure, allowing any interested party to petition the president of the court to compel a company to publish or make available the required income tax report. This process can include the imposition of a daily fine until compliance is achieved.