



MERGERS AND ACQUISITIONS

# France

Taxation of Cross-Border  
Mergers and Acquisitions

2010 Edition

TAX

# France

## Introduction

To clarify French rules applicable to cross-border mergers and acquisitions (M&A), this chapter addresses three fundamental decisions facing a prospective purchaser.

- What should be acquired: the target's shares or its assets?
- What will be the acquisition vehicle?
- How should the acquisition vehicle be financed?

Tax is, of course, only one piece of the transaction structuring jigsaw. Company law governs the legal form of a transaction and accounting issues are also highly relevant when selecting the optimal structure. These areas are outside of the scope of this book, but some of the key points that arise when planning the steps in a transaction plan are summarized later in the chapter.

## Recent Developments

In terms of cross-border transactions, no significant reform has occurred since 2007. The last major reforms in this area were:

- the reform of French thin-capitalization rules (new Article 212 of the French Tax Code);
- the adoption by the French parliament, as part of the 2006 Finance Act, new thin-capitalization rules applicable to financial years (FYs) begun as from 1 January 2007;
- new thin-capitalization rules extending the limitations on the deductibility of interest to loans and advances made between affiliated companies belonging to the same group;
- extension of the parent/subsidiary tax regime to dividends related to securities without voting rights when the parent company owns at least 5 percent of the subsidiary's share capital;
- the exclusion of private real estate companies' securities from the long-term capital gains tax regime; and

- modification, by the corrective Finance Act for 2009, of Article 131 quater of the French Tax Code relating to the tax treatment of French-source interest arising on financial advances. As from 1 March 2010, the general principle is the exemption of French source-interest from French WHT

In addition, the latest information suggests French controlled foreign companies (CFC) rules will become stricter.

## Asset Purchase or Share Purchase

Although asset purchase may be considered the more flexible in funding options, share purchase can be more attractive notably in terms of the amount of registration tax and the right to transfer tax losses of the target company. Some tax considerations relevant to each method are discussed later in the chapter.

### Purchase of Assets

#### Purchase Price

Where several assets are purchased at market prices, there are no statutory rules governing the allocation of the purchase price among the various assets purchased. For depreciation purposes, the contract may allocate a value to each asset transferred, which will be the basis of depreciation.

As regards transfers between associated parties, the transfer must normally be made at market value, although market value, being an economic rather than a tax concept is not defined in the law. The market price is generally the price that an ordinary buyer would agree to pay.

Within a tax-consolidation group, if assets are transferred between members at a price which is lower or higher than its market value, the difference constitutes an indirect subsidy, which is neutralized at the level of the tax-consolidated results. However, such indirect subsidies have to be de-neutralized on the group taxable results of the FY during which either the company that grants or the company that benefits from the indirect subsidy leaves the tax group, or the tax-consolidation group ceases to exist.

### Goodwill

Under French tax rules, goodwill, which is considered an intangible asset, generally cannot be depreciated except by the creation of a provision, and subject to strict conditions.

The value of the goodwill is included in the net worth of the company. If goodwill is transferred, it must be included in the recipient company's accounts.

### Depreciation

Most tangible assets may be depreciated for tax purposes, the major exception being land. Rates of depreciation vary depending of the asset concerned. Higher rates are allowed for plant and machinery used in two- or three-shift manufacturing and assets subject to substantial corrosion or abrasion.

As of 1 January 2005, new accounting rules apply to depreciation. Based on IFRS regulations, component accounting is used for the separate components of an asset, and depreciation is booked component, by component.

Normal rates are:

- Motor vehicles: 20 percent, straight-line method
- Plant and machinery: 10 percent to 20 percent, straight-line method
- Buildings: 2 percent to 5 percent, straight-line method

Intangible assets, such as goodwill and securities, may not generally be depreciated, but under certain circumstances they may be depreciated by way of provisions. However, the acquisition costs of technical processes, patents, patterns, and know-how are usually depreciated over the length of their legal or contractual life.

Under French tax rules patents may be depreciated over a period shorter than their period of legal protection, but not less than five years.

### Tax Attributes

Under French tax law it is not possible to transfer liabilities. Only assets can be sold. Liabilities may be transferred in a disposal of shares.

### Value-Added Tax (VAT)

In the absence of special rules, the standard VAT rate is 19.6 percent.

However, a VAT exemption is applicable when the sale qualifies as a transfer of assets or part thereof within the meaning of French and European Union (EU) law, such as a transfer of a business.

In the case of the transfer of a business, the exemption applies to the disposal, subject to payment, of all the assets constituting the business (that is, the intangible as well as the tangible [excluding real-estate] assets).

The effective transfer of the clientele is necessary to qualify for such VAT exemption. The disposal of an isolated element would then be subject to VAT, except if the element in question is the clientele or real estate, in which case the disposal is subject to the transfer tax.

The VAT exemption does not apply to inventories.

### Transfer Taxes

In principle, the French registration tax is paid by the purchaser, but Article 1705 of the French Tax Code provides for a joint and several liability of both the purchaser and the seller for the payment of this tax.

The transfer of immovable property is subject to a 5.09-percent registration duty, calculated on the sale price (or the fair market value of the related assets if higher).

In the transfer of a business the word business refers to the French notion of fonds de commerce. From a legal standpoint, a fonds de commerce is an aggregate of business assets, both tangible and intangible, used in a particular business. It consists mainly of a clientele attached to a particular group of business assets, but it may also consist of the right to a lease or a specific collection of equipment, tools and merchandise.

Article 719 of the French Tax Code stipulates that the transfer of a business would trigger the payment of a transfer tax amounting, from 6 August 2008, to:

- 3 percent for the portion of the sale price which does not exceed EUR 200,000 after application of a EUR 23,000 allowance; and
- 5 percent for the portion of the sale price (or the fair market value, if higher) which exceeds EUR 200,000.

The tax is assessed on:

- the intangible assets transferred, such as clientele, goodwill, leasehold rights to the business premises, patents, inventions, trademarks, current contracts (such as distribution agreements), licenses, and administrative authorizations, and

- tangible fixed assets, such as furniture, equipment, tools and supplies.

Furthermore, new merchandise (inventories) is usually not subject to French registration tax or to VAT if certain conditions are met (French Tax Code, Articles 723 and 257 bis). When these conditions are not fulfilled, the new merchandise is subject to VAT.

### **Purchase of Shares**

#### *Tax Indemnities and Warranties*

In the case of negotiated acquisitions, it is usual for the buyer to request, and the seller to provide, indemnities and warranties as to any undisclosed tax liabilities of the company to be acquired. The extent of the indemnities and warranties is a matter for negotiation. Where an acquisition is made by way of a market raid or hostile takeover, it is not possible by virtue of the nature of the acquisition to seek warranties or indemnities.

#### *Tax Losses*

It must be noted that French tax legislation does not include any rule restricting the validity of tax losses in the case of a change of ownership. However, specific restrictions have to be considered in the case of tax losses crystallized in a tax group.

Tax losses generated by the target company cannot be offset against the profits of other companies, but may be offset against the company's own future profits.

Where a French target company with trading losses is acquired, these losses may be used against its own future trading profits unless the company makes substantial changes in its activity or changes its tax regime. The characterization of the substantial change in activity is essentially a matter of the facts of the case.

#### *Crystallization of Tax Charges*

If the target belongs to a tax consolidation, de-consolidation costs could arise if the acquisition leads to breaking the tax group or at least to the exit of the target from the tax group. Such costs would crystallize at the level of the head of the tax group.

#### *Pre-Sale Dividend*

No particular pre-sale dividend issues arise in France, since both a dividend distribution and a capital gain realized on a sale of shares may benefit from a full tax exemption (except for a 5-percent lump-sum which remains taxable) when some conditions are met. Otherwise, a sale of shares or a dividend distribution is

subject to the standard corporate tax rate of 34.43 percent.

#### *Transfer Taxes*

The transfer of shares in a SARL (limited liability company) is subject to tax at the rate of 3 percent for that part of the price exceeding EUR 23,000. The tax base is reduced by EUR 23,000 multiplied by the percentage that the shares to be disposed of represent of the capital of the company. The transfer of shares in an SA (corporation) or an SAS (simplified joint stock company) is subject to the 3 percent capped at EUR 5,000 per transfer.

Companies whose assets are more than 50-percent real estate (*société à prépondérance immobilière*) are subject to tax at the rate of 5 percent (with no allowance and no cap), regardless of the legal status of the company.

#### *Tax Clearances*

It is not possible to obtain a clearance from the French tax authorities giving assurances that a potential target company has no tax arrears or whether it is or is not involved in a tax dispute.

### **Choice of Acquisition Vehicle**

The following vehicles may all be used to acquire the shares or assets of the target company:

- Subsidiary
- Branch of a foreign company
- Treaty country intermediary
- Local holding company
- Joint venture
- Other special-purpose vehicles (such as a partnership)

The choice of the structure can be critical for tax purposes, especially if it is intended to set up a tax-consolidation regime.

Moreover, some specific constraints must be taken into account, such as thin-capitalization rules (see below) and the Charasse Amendment rule.

According to Charasse Amendment rule, if a group member purchases a company outside the group from shareholders that control the target company (the notion of control being defined by the French Commercial Code), and the target company becomes a group

member, a portion of the group's financial expenses is not deductible for tax purposes for nine years, even if no loan is used to purchase the target company.

## **Local Holding Company**

If profits are to be reinvested in the business, or are to be invested in other undertakings carried on by the buyer in France, the buyer should consider incorporating a local holding company to act as a dividend trap. The local holding company would receive the dividends free of tax from the subsidiary and could reinvest those dividends in other ventures carried on in France or abroad by the group.

In addition, using a French holding company partly funded by debt and forming a tax group with the target could allow the interest paid by the parent company to be offset against the operating profits of the target (subject to thin-capitalization restrictions).

## **Foreign Parent Company**

The use of a foreign parent company to acquire the shares or assets of the target company will have important tax consequences for dividend distributions and interest.

First, the French Tax Code stipulates that dividends distributed by French companies to non-residents shall, in principle, give rise to the application of a withholding tax (WHT) to be levied and paid to the Public Treasury by the distributing company. The statutory rate of this withholding tax is, in principle, 25 percent where the dividends are distributed to legal entities. The WHT rate may be reduced, however, according to international tax treaties that have been concluded by France, provided that certain formal requirements are satisfied.

Second, according to Article 119ter of the French Tax Code, which incorporated the provisions of the EU Parent-Subsidiary Directive, dividends that a French company pays to its EU Member State parent company should be exempt from WHT when the following conditions are met:

- the parent company and the distributing subsidiary take the form of one of the companies listed in the appendix to the 90-435 EU Directive;
- both companies are subject to corporate income tax at the standard-rate in the EU Member State where are located; (corporate income tax).
- the parent company's place of effective management is in an EU Member State; and

- the parent company has held at least 10 percent of the subsidiary's share capital for at least two years (or commit to hold the participation for at least two years).

Third, the French Tax Code stipulates that interest paid by French individuals or companies to non-resident entities is, in principle, subject to a French WHT of 18 percent of the gross amount of interest, unless a tax treaty provides for a lower rate or a full exemption.

Fourth, the French tax law provides for an exemption of interest taxation in many cases (see; Withholding Tax on Debt and Methods to Reduce or Eliminate).

## **Non-Resident Intermediate Holding Company**

Most of the tax treaties signed by France contain provisions designed to prevent treaty shopping.

## **Local Branch**

When profits will be regularly repatriated it is sometimes desirable to form a branch, or use an existing branch, to acquire the assets of the target company, because the remittance of branch profits is subject to a special branch profits tax. Tax treaties may provide for a lower rate of branch profits tax or an exemption from such tax. Moreover, no branch tax is levied within the European Union.

French corporate tax is the same for a branch as for a subsidiary and no WHT tax, except for the branch tax, is levied in France on foreign branch profits. The overall French corporate tax rate is 34.43 percent.

There are a number of legal and tax issues that need to be considered before choosing between a branch and a subsidiary. The main tax issues concern corporate tax. The following list is illustrative:

- Head office expenses reasonably attributable to the operations of a branch are, in principle, tax deductible. The expenses of an exchange of services between a subsidiary and a parent company are only deductible if carried out on an arm's length basis.
- Branch profits, whether or not remitted to head office, are subject to a 25-percent WHT or branch tax, depending on the relevant tax treaty, although an exemption may be obtained if there is no remittance.
- The profits of a subsidiary are subject to WHT tax only if they are distributed. Dividend distributions made abroad are subject to a 25-percent WHT, which is normally reduced by tax treaties.

Moreover, there is a withholding tax exemption on the EU Directive basis (see, Foreign Parent Company).

- Branches are generally not covered by France's tax treaties, and thus cannot usually benefit from them. Subsidiaries are French entities and thus qualify for reductions or exemptions from taxes.
- Branches are not presently entitled to claim a credit for foreign taxes paid, whereas subsidiaries, as residents, may claim a credit for foreign taxes (in particular, withholding taxes).

### **Joint Ventures**

Where an acquisition is to be made in conjunction with another party, the question arises as to what is the most appropriate vehicle for such a joint venture. Although a partnership can be used as the vehicle, in most cases the parties prefer to conduct the joint venture via a limited liability company. A limited liability company offers the advantages of incorporation (separate legal existence to that of its members) and limited liability for its members. In a partnership, the partners have unlimited joint and several liability for the debts of the partnership.

### **Choice of Acquisition Funding**

A purchaser using a French acquisition vehicle to carry out an acquisition for cash will need to decide whether to fund the vehicle with debt or equity. The tax implications of the two approaches are discussed later in the chapter.

### **Debt**

The principal advantage of debt is the potential tax deductibility of interest paid to a related party or to a bank in the framework a bank loan.

### **Deductibility of Interest**

As a general rule, interest paid by a company is tax deductible. However, the French tax rules include an exception concerning the deductibility of interest paid on shareholders' accounts. Such interest is tax deductible only if the borrowing company's capital is fully paid up (Article 39.1.3 of the French Tax Code), and only up to the rate of the yearly average of average effective rates accorded to companies by credit institutions for variable rate loans having an initial duration of over two years (Article 39.1.3 of the French Tax Code). (For the FY ending 31 December 2008, the maximum deductible interest rate was 6.21 percent).

In addition, new French thin-capitalization rules have applied to FYs since 1 January 2007. These rules apply to any loan and advance between affiliated companies and to sister companies.

Under these new provisions, interest paid to a related party should not exceed the interest rate provided for by Article 39.1.3 of the French Tax Code. Any excess interest is permanently non-tax-deductible, but a higher rate is accepted for tax purposes if it corresponds to a rate the French paying company could have obtained from a third-party bank. In such a case, the paying company has to prove that the interest rate used is arm's length (by providing bank offers, for instance).

It then has to be determined whether the theoretically deductible interest can effectively be deducted in the financial year of accrual. This would be the case if the paying company is not considered thinly-capitalized, that is, meets one of the following three ratios:

- the borrower's intra-group debt-to-net-equity ratio does not exceed 1.5:1 (debt-to-equity ratio);
- the amount of acceptable interest does not exceed 25 percent of the current pre-tax result plus intra-group interest and deductible depreciation (interest coverage limit); or
- the amount of interest does not exceed the total interest amount received by the subject French borrower from affiliated entities (received intra-group interest limit).

Whenever the amount of acceptable interest simultaneously exceeds these three thresholds, the excess amount is not immediately deductible, but can be carried forward over future FYs. The deferred interest will be deductible in the following FY (FY + one) if the interest accrued during FY + one (FY + one interest) does not exceed the interest coverage limit of FY + one. If so, the deferred interest will be deductible only up to the difference between the interest coverage limit of FY + one and the amount of FY + one interest. The part of the deferred interest not available for deduction in FY + one will be rolled over, but the amount of the deferred interest will be decreased by 5 percent per year as from the second year of carry-forward.

However, the interest limitation does not apply:

- when the borrower proves that the debt/net equity ratio of the group equals or exceeds its own debt-to-net-equity ratio;

- for certain financial operations or structures (that is, group cash pools, credit institutions, or goods leased through finance leases) under certain conditions; and
- when the portion of acceptable interest that is not immediately deductible is less than EUR 150,000.

Lastly, specific rules apply to tax consolidated groups: generally speaking, a deferred interest will be limited to the excess of the interest paid to related (but not tax consolidated) entities compared to the 25 percent coverage limit computed at the level of the tax group.

### ***Withholding Tax on Debt and Methods to Reduce or Eliminate***

The corrective Finance Act for 2009 has deeply modified the tax treatment of French-source interest arising on financial advances. As from 1 March 2010, the general principle is the exemption of French source-interest from French WHT.

The sole exception to this exemption concerns the interest arising on financial advances granted by entities located in non-cooperative jurisdictions. According to French tax law, non-cooperative jurisdictions are countries and territories which:

- are not EU Member States;
- have not concluded treaties with at least 12 different Member States or territories containing a mutual assistance clause allowing for the exchange of information; and
- have not entered into any such treaty with France.

The interest derived from financial advances granted by entities located in such jurisdictions will be subject to a 50-percent French WHT.

Until 28 February 2010, interest arising on financial advances is, by way of principle, subject to an 18-percent WHT. However, the French tax rules provide several exceptions. The WHT may be reduced or cancelled by a tax treaty, for example, and there is an exemption under Article 119 quater of the French Tax Code, which implements the EU interest Directive. This article stipulates that no WHT should be levied on interest paid by a French company to a company resident of another EU Member State if the loan is granted between related companies. A related company is one that:

- holds directly at least 25 percent of the share capital of the other or a third company holds directly

at least 25 percent of the share capital of the lender and the borrower; and

- the share capital is held for at least two years or the shareholder has committed to keep such minimum shareholding for at least two years.

The foreign company must be the effective beneficiary of the interest paid; its head office – that is, the place where the strategic, commercial, and management decisions are taken – must be in the EU; it must be liable to corporate income tax without any possibility of exemption; its legal form must be among those listed in the EC Interest Directive no. 2003/49/CE; and it cannot be directly or indirectly controlled by a non-EU resident, unless this company proves that the shareholding chain does not mainly aim at avoiding the French WHT (anti-abuse clause).

Another exemption is provided by Article 131 quater of the French Tax Code on loans taken out by a French company, provided the following conditions are met:

- The borrowings must be approved by the Ministry of Economy and Finance, that is, they must have been made in compliance with French Exchange Control Regulations. At present, borrowings in French Francs or in foreign currency made abroad may be contracted freely without limit on the amount.
- The borrower must be a French entity.
- The loan must be granted by a lender outside France, that is, the lender has its tax residence or its registered office outside of France.
- The interest must arise from a loan agreement, which must be entered into prior to the transfer of funds. Please note that the French administrative guideline considers that, in connection with this condition, the exemption provided by Article 131 quater does not apply to loans taking the form of advances in current accounts nor to interest assessed on commercial debt. The new exemption applicable as from 1 March 2010 also concerns advances in current accounts and interest derived from commercial debt
- The agreement must stipulate the amount of the loan, the date of reimbursement and the terms of remuneration of the loan. The proof of the loan agreement may be provided by any means (telex, exchange of letters, etc.).

Provided all the above conditions are met, there is no formal requirement to benefit from the article 131 quater WHT exemption.

### **Checklist for Debt Funding**

The use of bank debt may avoid thin-capitalization and transfer pricing problems.

Interest paid by a company in the framework of a bank loan is tax deductible when some conditions are met.

In the case where interest is paid to non-resident entities, French WHT of 18 percent of the gross amount of interest is applicable. Tax treaties generally provide for a lower rate or a full exemption. Moreover, the French tax law provides exemption from WHT in many cases (see, Withholding Tax on Debt and Methods to Reduce or Eliminate).

### **Equity**

If there is a risk of thin-capitalization, it may be better to use equity to fund the acquisition.

Under French corporate law, the capital of a company may be increased to finance the acquisition. This capital increase may result from a contribution in-cash or from issuing new shares to the seller in satisfaction of the consideration.

From a French registration tax standpoint, increasing share capital by way of a contribution under the *apport à titre pur et simple* regime (that is, the sole counterpart received in exchange should be new shares issued by the French company) will only trigger the payment of small registration duties limited to a fixed registration duty of EUR 375 (if the contributed company's share capital is less than EUR 225,000) or EUR 500 (if the contributed company's share capital is equal or higher than EUR 225,000).

### **Favorable Tax Treatment with Respect to Reorganization Operations**

#### *Mergers*

The following comments relating to the restructuring of companies concentrates on mergers. Specific issues arising from dissolutions, split-ups, and spin-offs are dealt with separately.

#### **Direct Taxes**

A merger involves the dissolution of the absorbed company followed by an increase in the capital of the absorbing company.

The absorbed company is taxed at the current rate of corporate tax on the profit and provisions of the financial year (currently 33.33 percent). It should be noted that a 3.3-percent surtax for companies that have a taxable income basis higher than EUR 763,000 increases the corporate and short-term capital gains tax rates to 34.43 percent.

Long-term capital gains arising from the transfer of substantial shareholdings (held for at least two years) are 95-percent exempt. They are thus taxable at the reduced rate of 1.72 percent (that is, 34.43 percent x 5 percent).

Short-term capital gains are taxed at the same rate as business profits (currently 33.33 percent).

The absorbing company will acquire the assets transferred free of tax.

Preferential treatment is available in the case of mergers (Article 210 A of the French Tax Code). The principal advantages of this treatment are as follows:

- The absorbed company is not subject to corporate tax on net capital gains on fixed assets transferred in a merger. With respect to intra-group mergers, assets are, in principle, contributed on a net book value basis, whether it is an upstream or a downstream merger. Where the merger is between unrelated parties, assets are contributed on a fair market value basis, unless it is a downstream merger.
- The absorbing company must include in its own balance sheet the provisions made by the absorbed company.
- Capital gains on non-depreciable assets can be exempt from French corporate income tax and are not taxed even if the merger value of these assets is higher than their value in the absorbed company's accounts.
- If the absorbing company re-sells a non-depreciable asset, it must calculate the capital gain or loss on the basis of the book value of the asset in the absorbed company's accounts (roll-over).
- If the absorbing company sells the transferred assets, the relevant date for long-term or short-term capital gains is the date of acquisition by the absorbed company.

The absorbed company's losses cannot, in principle, be offset against the absorbing company's profits.

However, a special ruling from the tax authorities allowing the transfer of the tax-loss carry-forwards can, prior to the merger, be obtained by right when the merger benefits from the favorable tax regime.

#### Registration Tax

Under the provisions of Article 816 of the French Tax Code, the merger of two companies gives rise to a liability to registration tax, paid by the absorbing company at a fixed amount. This amount is EUR 375 if the absorbed company's share capital is lower than EUR 225,000 and EUR 500 in other cases.

#### Retroactive Effect

Mergers may be given retroactive effect from both an accounting and tax standpoint. However, the merger may not retroact at a date which is prior to the more recent of:

- the date of the opening of the absorbing company's FY; and
- the date of the opening of the absorbed company's FY.

Such a provision enables the offsetting of the results realized by the absorbed company during the months preceding the effective date of the merger, against the profits and losses incurred by the absorbing company in the same period.

#### Dissolution without Liquidation

##### Direct Tax

According to Article 1844-5 of the French Civil Code, the dissolution without liquidation (transmission universelle de patrimoine) of a company owned by a sole shareholder is not followed by liquidation, but instead entails the transfer of all the company's assets and liabilities to the sole shareholder. In accordance with the Finance Act of 2002, the dissolution without liquidation qualifies for the favorable tax regime provided for by Article 210 A of the French Tax Code as described above for mergers.

Thus, the tax treatment of a dissolution is the same as that applicable to mergers.

##### Registration Tax

The dissolution of the merged company remains subject to a registration tax of EUR 375 or EUR 500 (Article 811 of the French Tax Code). However, the transfer of real estate resulting from such an operation can be subject to a registration tax of 0.715 percent (Article 678 of the French Tax Code).

#### Retroactive Effect

Dissolutions may have a retroactive effect only from a fiscal standpoint. Unlike the case with mergers, retroactive effect is not allowed for dissolutions from an accounting standpoint.

#### Spin-Off

A spin-off (or partial business transfer) is an operation whereby a company transfers part of its assets and liabilities to another company in exchange for shares. The part of its assets transferred must constitute a complete and autonomous branch of activity.

The concept of a complete and autonomous branch of business 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 on using its own resources under normal conditions in the economic sector concerned. In short, a complete and autonomous branch of activity is a collection of assets and liabilities of a company's division able to carry out an activity autonomously.

As regards direct taxes, by application of Article 210 B of the French Tax Code, a partial transfer will be eligible for the favorable tax treatment applicable to mergers (Article 210 A of the French Tax Code) if all the following conditions are met:

- The transfer is of a complete and autonomous branch of activity.
- The transferring company retains the shares it receives in exchange for the assets for at least three years.
- The transferring company commits itself to calculate capital gains on the sale of shares in referring to the value which the assets had in its own accounts from a tax standpoint.

If one of the above-mentioned conditions is not met, it remains possible to obtain a ruling from the French tax authorities. This ruling is granted by right if:

- The contribution is based on economic reasons and is not motivated by tax avoidance reasons.
- All guarantees will be given to the French tax authorities so that they will subsequently be able to tax the capital gains on which the taxation has been deferred.

As regards registration tax, the transfer will be subject to the favorable treatment provided for in Article 817 of

the French Tax Code, which limits the registration tax to a fixed amount of EUR 375 or EUR 500, depending on the level of share capital being lower than or equal to EUR 225,000.

### *Split-Up*

The split-up of a company (scission) is a legal operation whereby all the assets and liabilities of the company are transferred to two or more new companies. The old company ceases to exist and its shareholders receive the shares issued by the new companies. The preferable treatment available for mergers/spin-offs for direct tax can also be applied to the split-up to the extent that:

- the company which is split-up transfers at least one autonomous branch of activity to each company benefiting from the contribution; and
- the shareholders who held at least 5 percent of the company which is split-up must commit to keep the shares of the beneficiary companies or the new company for at least three years.

The favorable registration duties treatment applicable to mergers also applies to a split-up without particular conditions.

However, it must be stressed that the favorable tax treatments only apply to a split-up within the framework of a reorganization and not to a split-up resulting in equity sharing.

### **Deferred Settlement**

Deferred payments under earn-out clauses are subject to the same tax treatment as capital gains or losses realized on the sale.

## **Other Considerations**

### **Concerns of the Seller**

Capital gains are taxable at the standard French corporate income tax rate. Stamp tax is payable by the buyer.

The seller will mainly be concerned with the indemnities and/or warranties requested by the buyer (usually subject to negotiation).

For companies, capital gains on the sale of substantial shareholdings held for at least two years are 95-percent exempt from tax as from 1 January 2007. They are thus taxable at the reduced rate of 1.72 percent (that is, 34.43 percent X 5 percent). If the shares sold do not qualify as substantial shareholdings, the capital gain is

taxable at the standard corporate income tax rate of 34.43 percent.

For individuals, the capital gain is taxed at 18 percent (plus 12.1 percent of social contributions). For transfers realized as from 1 January 2012, the capital gain will be reduced by one-third per shareholding year which exceeds the fifth year of holding. In other words, capital gains will be fully tax exempt if the shares are sold eight years after their acquisition, 66.66-percent exempt if they are sold seven years after their acquisition, and 33.33-percent exempt if they are sold six years after their acquisition.

If a seller sells all his/her assets to a buyer who carries on his/her own business with those assets, the tax authorities may consider that the buyer has purchased the goodwill and may subject the transaction to registration tax at the maximum rate of 5 percent.

## **Company Law and Accounting**

### *Types of Reorganization*

- Merger (fusion) involves the absorption of one company by another company. The absorbing company may be a new company that takes over one or more existing companies, or it may be an existing company that takes over one or more existing companies.
- Split-up (scission) consists of the transfer of all of a company's assets to two or more existing or new companies. In principle, a split-up involves complete and independent branches of activity.
- Spin-off (apport partiel) occurs when a complete and independent branch of activity of one company is transferred to another company. The spin-off may be made to an existing company or a new company.
- Dissolution without liquidation (transmission universelle de patrimoine) occurs when all shares of a company are held by a single shareholder; it may be decided to dissolve this company, leading to a transfer of all its assets and liabilities to the single shareholder.
- Exchange of shares (fusion à l'anglaise) occurs when a contribution of shares is deemed to be a complete branch of activity for corporate tax purposes in three cases, that is, when the:
  - contribution applies to more than 50 percent of the capital of the contributing company;

- o contribution confers on the beneficiary company a direct holding of more than 30 percent of the voting rights, when no other partners hold more; and
- o the beneficiary company already holds more than 30 percent and the contributions give it the majority of the voting rights.

### *Investment in France*

A law dated 14 February 1996 relaxed French regulations of foreign investment. In principle, investment in France does not require prior approval from the Exchange Control Authorities. That being said, it should be noted that foreign investment in certain economic sectors connected with public health, public security, and public authority must be pre-approved by the Ministry of Finance. The ministry of Finance may grant his approval subject to the fulfillment of conditions. The approval is deemed to be granted if within two months of filing a prior authorization the Ministry of Finance has not opposed the investment.

A Decree dated 30 December 2005 sets out the rules applicable to foreign investments and makes a distinction between foreign investments made from an EU Member State and foreign investments made from a third country.

The following investments from a third country are subject to prior authorization:

- Acquisition of the control of a French company
- Direct or indirect acquisition of all or part of a branch of activity of a French company
- The crossing of the 33 percent threshold of direct or indirect holding of the share capital or of the voting rights of a French company

When the investment is made from an EU Member State the prior authorization rule only applies to the first and second types of investment described earlier in the chapter. The need for prior approval also depends on the economic sectors involved. Prior authorization is deemed to have been obtained for:

- investments between companies that are members of the same group, which means that the same shareholder holds more than 50 percent of the share capital or of the voting rights of the entity; and
- investments made from an EU Member State by an investor which holds more than 33 percent of the

direct or indirect shareholding or voting rights and which has already been authorized to acquire control of the entity.

Moreover, some categories of investments in France must be the subject of an administrative report to the Exchange Control Authorities, such as:

- the formation of a new French company by a non-resident;
- the acquisition by a non-resident of all or a part of a French company's branch of activity;
- any operation carried out by a non-resident on the share capital of a French company, provided that at the end of the operation the latter is owned more than 33.33 percent by non-residents;
- the above-mentioned operations carried out by a French company, at least 33.33 percent of whose share capital or voting rights are owned by a non-resident;
- expansion of the activities of an existing company when the amount at stake is over EUR 1,500,000;
- acquisition of agricultural land (except for the wine-producing business); and
- liquidations of foreign investments in France.

Lastly, some categories of investments have to be reported to the Banque de France for statistical purposes, notably:

- any operation between related companies (that is, loans, deposits, etc.) over EUR 15 million;
- real estate investments;
- acquisition or sale of a French company by a non-resident over EUR 15 million;
- acquisition or sale of real estate in France by a non-resident over EUR 15 million ; and
- liquidations of foreign investments in France.

It should be noted that the above-described rules are fully applicable to mergers and takeovers.

### *Choice of Entity for Investing in France*

Commercial companies are divided into joint-stock companies (sociétés de capitaux) and partnerships (sociétés de personnes).

The most frequently used company forms in France are the SA (corporation), the SAS (simplified joint-stock company), and the SARL (limited liability company).

### *Corporation, Société Anonyme (SA)*

- Earnings are taxed once at the corporate level.
- Distributions of after-tax earnings are taxed at the shareholder level – France reduces the financial effect of taxing corporate profits twice (at the entity and at the recipient levels) through the 40-percent tax deduction for individual shareholders. There is no deduction for dividends paid to a company. However, if the parent company owns at least 5 percent of the French subsidiary's share capital, it is eligible for the 95-percent dividend exemption provided for by Article 145 of the French Tax Code. The 5-percent share is taxed at the current tax rate of 34.43 percent (for FY 2009). However, within a tax-consolidated group, dividends are 100-percent tax-exempt from the second year of tax consolidation.
- Minimum share capital for SA is EUR 37,000.
- Shareholders have limited liability for the company's debts.
- There is no maximum number of shareholders (minimum seven).

### *Limited Liability Company, Société à Responsabilité Limitée (SARL)*

- Minimum share capital is EUR 1.
- Minimum number of shareholders is one.
- Maximum number of shareholders is 100.
- The shareholders must give their prior majority approval to the transfer of SARL shares to third parties.
- Shareholders may participate in the management of the company.
- Taxed according to the same rules as an SA.

### *Société par Actions Simplifiée (SAS)*

- Minimum number of shareholders is one.
- Both companies and individuals may be shareholders.

- Minimum share capital is EUR 1 ((new provision introduced by the Loi de Modernisation de l'économie-LME, dated 4 August 2008))
- Taxed in the same way as an SA.
- Shareholders have limited liability for the company's debts.
- Restriction regarding public offering.

### *General Partnership, Société en Nom Collectif (SNC)*

- No minimum or maximum capital requirements.
- Minimum of two partners.
- All the partners are jointly and severally liable for the partnership's liabilities.
- Not taxed at the entity level (unless an election for corporate tax is made).
- Partners are taxed on their share of earnings whether or not distributed.

### *Limited Partnership, Société en Commandite Simple (SCS)*

- No minimum or maximum capital requirements.
- Minimum number of shareholders is two general partners (commandités).
- Two categories of partners: general partners (commandités) and limited liability partners (commanditaires).
- General partners are jointly and severally liable for the company's debts.
- Liability of the limited liability partners is limited to the amount of their contribution to the SCS's capital.
- General partners are subject to income tax on their share of the SCS's income, whether or not it is distributed.
- The limited liability partners' share of SCS income is subject to corporate tax at the SCS level. Dividend distributions to limited liability partners are taxed at their level under normal tax rules.

### *Limited Stock Partnership, Société en Commandite par Actions (SCA)*

- Minimum share capital for SCA EUR 37,000.

- Minimum number of shareholders is one general partner (commandité) and three limited liability partners (commanditaires).
- General partners (commandités) are jointly and severally liable for the SCA's debts.
- Limited liability partners (commanditaires) are considered as shareholders and their liability for the SCA's debts is limited to the amount of their capital contribution.
- Taxed as an SA.

### **Group Relief/Consolidation**

There is a special tax regime for groups of companies. A French parent company and its 95-percent owned subsidiaries may elect to be treated as a group (that is, corporate income tax is imposed on the aggregate of the profits and losses of the group members).

The group may be composed of a parent company holding directly 95 percent or more of all its subsidiaries. A group may also exist if the 95-percent shareholding is held through other subsidiaries.

To qualify for group treatment, all the companies must be subject to French corporate tax.

An election for this special regime is made for a period of five years. A new company may be included in the group. If a company leaves the group, adjustments must be made, and such adjustments can be expensive for the parent company.

The group profit is taxed at the standard rate of corporate tax. The group profit or loss is the sum of all the members' profits and losses.

The advantages of group treatment are as follows:

- netting of the profits and losses of the companies of the group;
- double taxation is avoided; consequently, dividend distributions made within the group are exempt from corporate tax as from the second FY of the tax group; and
- tax-neutrality is achieved for transfers of assets and for any transactions within the group (but clawed back if the group terminates or one company leaves the group).

### **Transfer Pricing**

Should the companies involved in a cross border reorganization have had commercial relationships before

the transaction, it could be necessary to review, modify or amend the transfer pricing agreement in force, so as to avoid any potential transfer pricing reassessment.

Under a draft bill to be presented to the French Parliament, new rules would apply rendering mandatory the setting up of transfer pricing documentation for any company member of an international group. These new rules, if adopted, would be applicable as from 1 January 2010.

### **Foreign Investments of a Local Target Company**

Profits made by controlled foreign companies (CFCs) established in low-tax countries and whose parent companies are subject to French corporate income tax are taxed at the French parent company's level wherever the French company directly or indirectly holds more than 50 percent (5 percent if more than 50 percent of the CFC is held either by companies located in France or companies that control or are controlled by companies located in France) of the subsidiary's capital, and wherever it cannot be proven that the subsidiary's main activity is genuinely industrial or commercial, and is essentially carried on with non-affiliated companies in the low-tax country.

Two safe-harbor clauses are also provided for by the Act:

- Article 209 B does not apply to companies established in the EU unless the structure constitutes an artificial scheme, the aim of which is to avoid the application of French legislation.
- Article 209 B does not apply if the controlled foreign company carries on an effective business or industrial activity. But the taxpayer must prove the structure is not tax-driven when:
  - more than 20 percent of the profits derived by the structure abroad come from the management of portfolios, shareholdings, securities, and/or debts, either for itself or on behalf of a related party, and from trademark and patent revenues; or
  - more than 50 percent of its profits come from the operations noted above and intra-group services.

In addition, it is planned that, as from 2011, dividends received from companies located in a tax haven will no longer benefit from the 95-percent participation exemption.

## Comparison of Asset and Share Purchases

### **Advantages of Asset Purchases**

---

- The purchase price (or a proportion) can be depreciated or amortized for tax purposes (but not insofar as it includes goodwill).
- A step-up in the cost base of individual assets for CGT purposes is obtained.
- No previous liabilities of the company are inherited.
- It is possible to acquire only part of a business.
- There is greater flexibility in funding options.

### **Disadvantages of Asset Purchases**

---

- Possible need to renegotiate supply, employment, and technology agreements, and change stationery.
- A higher capital outlay is usually involved (unless debts of the business are also assumed).
- It may be unattractive to the seller, thereby increasing the price.
- Higher transfer duties (a transfer of goodwill is subject to higher registration tax than the sale of shares of an SA and equal to registration tax on an SARL sale of shares).
- Accounting profits may be affected by the creation of acquisition goodwill.
- The benefit of any losses incurred by the target company remains with the seller.

### **Advantages of Share Purchases**

---

- Likely to be more attractive to the seller, so the price is likely to be lower.
- May benefit from tax losses of target company (the target company retains its tax losses).
- May gain benefit of existing supply or technology contracts.
- Transfer duties are either quite low or nominal.

### **Disadvantages of Share Purchases**

---

- Liable for any claims or previous liabilities of the entity.
- No deduction for the purchase price (but interest payable on acquisition financing may be deductible for the purchasing company).

- Less flexibility in funding options.

## Withholding Tax Rate Chart

The rate information and footnotes contained in this table are from the 2009 IBFD/KPMG Global Corporate Tax Handbook.

Country	Dividends		Interest <sup>1</sup> (%)	Royalties (%)
	Individuals, Companies (%)	Qualifying Companies <sup>2</sup> (%)		
Albania	15	5 <sup>3</sup>	10	5
Algeria	15	5	10	5/10 <sup>4</sup>
Argentina	15	15	18/0	18
Armenia	15	5	10	5/10 <sup>5</sup>
Australia	15	0/5	10	5
Austria	15	0	0	0
Azerbaijan	10	10	10	5/10 <sup>5</sup>
Bahrain	0	0	0	0
Bangladesh	15	10	10	10
Belarus <sup>6</sup>	15	15	0/10 <sup>7</sup>	0
Belgium	15	10	15	0
Benin	- <sup>8</sup>	- <sup>8</sup>	- <sup>8</sup>	0
Bolivia	15	15	15	15
Bosnia and Herzegovina <sup>9</sup>	15	5 <sup>3</sup>	0	0
Botswana	12	5 <sup>3</sup>	10	10
Brazil	15	15	10/15 <sup>10</sup>	10/15/25 <sup>11</sup>
Bulgaria	15	5 <sup>12</sup>	0	5
Burkina Faso	- <sup>8</sup>	- <sup>8</sup>	- <sup>8</sup>	0
Cameroon	15	15	0/15 <sup>7</sup>	0/15 <sup>4</sup>
Canada (see also Quebec)	15	5	10	0/10 <sup>13</sup>
Central African Republic	- <sup>8</sup>	- <sup>8</sup>	- <sup>8</sup>	0
Chile	15	15	5/15 <sup>14</sup>	5/10 <sup>15</sup>
China (People's Rep.)	10	10	0/10 <sup>7</sup>	6/10 <sup>15</sup>
Congo	20	15	0	15
Croatia	15	0	0	0
Cyprus	15	10	0/10 <sup>7</sup>	0
Czech Republic	10	0 <sup>3</sup>	0	0/5/10 <sup>16</sup>
Ecuador	15	15	0/10/15 <sup>7</sup>	15
Egypt	0	0	15	15
Estonia	15	5	0/10 <sup>7</sup>	5/10 <sup>17</sup>
Ethiopia	10	10	5	7.5
Finland	15	0	0/10 <sup>7</sup>	0
French Polynesia	- <sup>8</sup>	- <sup>8</sup>	0	- <sup>8</sup>
Gabon	15	15	0/10 <sup>7</sup>	0/10 <sup>5</sup>
Georgia <sup>6</sup>	15	15	0/10 <sup>7</sup>	0
Germany	15	0	0	0
Ghana	15	5	10	10
Greece	- <sup>8</sup>	- <sup>8</sup>	0	5
Guinea	15	15	10	0/10 <sup>5</sup>
Hungary	15	5 <sup>3</sup>	0	0
Iceland	15	5	0	0
India	10/15 <sup>18</sup>	10/15 <sup>18</sup>	10/15 <sup>18</sup>	10/20 <sup>18</sup>
Indonesia	15	10 <sup>3</sup>	0/10/15 <sup>7</sup> <sup>19</sup>	10
Iran	20	15 <sup>3</sup>	0/10/15 <sup>7</sup>	0/10
Ireland	15	10 <sup>20</sup>	0	0
Israel	15	5	5/10 <sup>7</sup>	0/10 <sup>4</sup>
Italy	15	5	0/10 <sup>7</sup>	0/5 <sup>4</sup>
Ivory Coast	15	15	15	10
Jamaica	15	10	0/10 <sup>7</sup>	10
Japan	10	5 <sup>21</sup>	0/10 <sup>7</sup>	0
Jordan	15	5	0/15 <sup>7</sup>	5/15/25 <sup>22</sup>
Kazakhstan	15	5	0/10 <sup>7</sup>	10
Korea (Rep.)	15	10	10 <sup>7</sup>	10

Country	Dividends		Interest <sup>1</sup> (%)	Royalties (%)
	Individuals, Companies (%)	Qualifying Companies <sup>2</sup> (%)		
Kuwait	0	0	0	0
Kyrgyzstan <sup>6</sup>	15	15	0/10 <sup>7</sup>	0
Latvia	15	5	10	5/10 <sup>17</sup>
Lebanon	0	0	0	- <sup>8</sup>
Libya	10	5	0	10
Lithuania	15	5	0/10	5/10 <sup>17</sup>
Luxembourg	15	5 <sup>3</sup>	10	0
Macedonia	15	0	0	0
Madagascar	25	15 <sup>3</sup>	15	10/15 <sup>23</sup>
Malawi <sup>24</sup>	- <sup>8</sup>	10 <sup>20</sup>	10/15	0
Malaysia	15	5	15	10
Mali	- <sup>8</sup>	- <sup>8</sup>	10/18 <sup>7</sup>	0
Malta	15	5	0/10 <sup>7</sup>	0/10 <sup>5</sup>
Mauritania	- <sup>8</sup>	- <sup>8</sup>	- <sup>8</sup>	0
Mauritius	15	5	0/18 <sup>7</sup>	0/15 <sup>5</sup>
Mayotte <sup>25</sup>	- <sup>8</sup>	- <sup>8</sup>	0/18	0
Mexico	15	0/5	0/5/10 <sup>26</sup>	0/10 <sup>4</sup>
Moldova <sup>6</sup>	15	15	0/10 <sup>7</sup>	0
Monaco	- <sup>8</sup>	- <sup>8</sup>	10/18	- <sup>8</sup>
Mongolia	15	5	0/10 <sup>7</sup>	5
Montenegro <sup>9</sup>	15	5 <sup>3</sup>	0	0
Morocco	0/15 <sup>27</sup>	0/15 <sup>27</sup>	10/15 <sup>28</sup>	5/10 <sup>4</sup>
Namibia	15	5	0/10 <sup>7</sup>	0/10 <sup>5</sup>
Netherlands	15	0/5 <sup>3</sup>	0/10 <sup>7</sup>	0
New Caledonia	5/15 <sup>29</sup>	5 <sup>29</sup>	0	0/10 <sup>5</sup>
New Zealand	15	15	0/10 <sup>7</sup>	10
Niger	- <sup>8</sup>	- <sup>8</sup>	- <sup>8</sup>	0
Nigeria	15	12.5	12.5	12.5
Norway	15	0	0	0
Oman	0	0	0	0
Pakistan	15	10	0/10 <sup>7</sup>	10
Philippines	15	10	0/15 <sup>7</sup>	15
Poland	15	5	0	0/10 <sup>5</sup>
Portugal	15	15	12	5
Qatar	0	0	0	0
Quebec (Canada)	10/15	5	10	0/10
Romania	10	10	0/10 <sup>7</sup>	10
Russia	15	5/10 <sup>30</sup>	0	0
Saudi Arabia	0	0	0	0
Senegal	15	15	0/15 <sup>7</sup>	0/15 <sup>5</sup>
Serbia <sup>9</sup>	15	5 <sup>3</sup>	0	0
Singapore	15	10	0/10 <sup>7</sup>	0/- <sup>31</sup>
Slovak Republic	10	10	0	0/5 <sup>5</sup>
Slovenia	15	0 <sup>32</sup>	0/5 <sup>33</sup>	0/5 <sup>5,33</sup>
South Africa	15	5	0	0
Spain	15	0	10	0/5 <sup>4</sup>
Sri Lanka	- <sup>8</sup>	- <sup>8</sup>	0/10 <sup>7</sup>	0/10 <sup>5</sup>
St. Pierre and Miquelon	5/15 <sup>29</sup>	5 <sup>29</sup>	0	0/10 <sup>5</sup>
Sweden	15	0	0	0
Switzerland	15 <sup>34</sup>	0 <sup>34</sup>	0 <sup>34</sup>	5 <sup>34</sup>
Tajikistan <sup>6</sup>	15	15	0/10 <sup>7</sup>	0
Thailand	- <sup>8</sup>	15/20 <sup>35</sup>	0/3/10/- <sup>36</sup>	0/5/15 <sup>37</sup>
Togo	- <sup>8</sup>	- <sup>8</sup>	- <sup>8</sup>	0
Trinidad and Tobago	15	10	0/10 <sup>7</sup>	0/10 <sup>4</sup>
Tunisia	- <sup>8</sup>	- <sup>8</sup>	0/12 <sup>7</sup>	5/15/20 <sup>38</sup>
Turkey	20	15	0/15 <sup>7</sup>	10

Country	Dividends		Interest <sup>1</sup> (%)	Royalties (%)
	Individuals, Companies (%)	Qualifying Companies <sup>2</sup> (%)		
Turkmenistan <sup>6</sup>	15	15	0/10 <sup>7</sup>	0
Ukraine	15	0/5 <sup>39</sup>	0/2/10 <sup>7,40</sup>	0/10 <sup>41</sup>
United Arab Emirates	0	0	0	0
United Kingdom	15	5	0	0
United States	15	5	0	0/5 <sup>42</sup>
Uzbekistan	10	5	0/5	0
Venezuela	15	0	0/5 <sup>7</sup>	5
Vietnam	15	5	0	10
Zambia <sup>24</sup>	- <sup>8</sup>	10 <sup>20</sup>	- <sup>8</sup>	0
Zimbabwe	15	10 <sup>3</sup>	0/10 <sup>7</sup>	10

### Notes

- Many treaties provide for an exemption for certain types of interest, such as interest paid to the state, local authorities, the central bank, export credit institutions, or in relation to sales on credit. Such exemptions are not considered in this column.
- Unless indicated otherwise, the rate in this column applies if the recipient company holds at least 10 percent of the capital or the voting power of the paying company, as the case may be. Special conditions may apply.
- A 25-percent holding is required.
- The lower rate applies to copyright royalties, excluding films, etc.
- The lower rate applies to copyright royalties, including films, etc.
- The treaty concluded between France and the former USSR.
- The lower rates apply to limited cases provided by the tax treaty.
- The domestic rate applies; there is no reduction under the treaty.
- The treaty concluded between France and the former Yugoslavia.
- The 10-percent rate applies to interest from loans granted by foreign financial institutions, manufacturers or suppliers.
- The 10-percent rate applies to copyright royalties, including films. The 25-percent rate applies to trademarks.
- A 15-percent holding is required.
- The lower rate applies to copyright royalties, excluding films, to computer software, to patents, and know-how, and to royalties paid to the government or to an approved organization of Canada.
- The lower rate applies to interest on loans from banks and insurance companies and on publicly traded securities.
- The lower rate applies to equipment rentals.
- The zero rate applies to copyright royalties, excluding computer software, but including films, etc. The 5-percent rate applies to equipment rentals.
- The lower rate applies to equipment rentals, and trademarks.
- The general rate under the treaty is 15 percent on dividends and interest and 20 percent on royalties. However, by virtue of a most-favored-nation clause (Protocol Para. 7), the rate is reduced to 10 percent.
- The 10-percent 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.
- A 50-percent holding is required.
- The 5-percent rate applies if the Japanese company has held at least 10 percent of the capital in the French company for at least six months before the end of the accounting period for which the distribution takes place.
- The 5-percent rate applies to copyright royalties, including films, etc.
- The 10-percent rate applies to copyright royalties and equipment rentals.
- Extension of the 1950 treaty with the U.K.
- The treaty with the Comoro Islands no longer applies to the Federal Islamic Republic of the Comoros. It continues to apply to the island of Mayotte.
- The zero rate applies to interest paid by the government. The 5-percent rate applies to interest paid to banks and insurance companies and to interest on quoted bonds by virtue of a most-favored-nation clause (the rate on such interest is 5 percent under the Mexico-United Kingdom treaty). The general rate of 15 percent is reduced to 10 percent by virtue of the most-favored-nation clause.
- The exemption applies if the recipient is subject to tax in Morocco in respect of the dividends.
- The 15-percent rate applies to interest on term deposits and cash vouchers.
- The 5-percent rate applies if the beneficial owner is a company; no degree of ownership is required.
- The 5-percent rate applies if the recipient company is subject to tax in Russia but is exempt from tax on the dividends received and has invested in the French company an aggregate value of at least EUR 76,225 (FRF 500,000). The 10-percent rate applies if only one of these conditions is met.
- The domestic rate applies to copyright royalties, including films, and to information concerning commercial experience.
- A 20-percent holding is required.
- The zero rate applies if the recipient is a company that holds directly at least 20 percent of the capital of the paying company, or vice versa, or a third French or Slovenian company holds directly at least 20 percent of the capital of both the payer and the recipient company.
- Different rates apply if the Swiss recipient is controlled by a non-Swiss resident.
- A 25-percent holding is required for these rates; the 15-percent rate applies if the Thai company is engaged in an industrial undertaking.
- The 3-percent rate applies to interest on loans or credits which are granted for a period of four years or more with the participation of a public finance organization, to a public authority or an enterprise and which are tied to the sale of plant and machinery or studies relating to industrial, commercial or scientific installations. The 10-percent rate applies to interest paid to any financial establishment.
- The zero rate applies to films, etc. The 5-percent rate applies to other copyright royalties.
- The 5-percent rate applies to copyright royalties, excluding films, etc. The 15-percent rate applies to royalties paid for patents and know-how. The 20-percent rate applies to payments for the use of trademarks, films (0 percent if paid to a Tunisian public body) and equipment.
- The 5-percent rate applies if the Ukrainian company holds at least 10 percent of the capital of the French company. Dividends are exempt if the Ukrainian company holds at least 50 percent and the total amount of investment in the French company is at least EUR 762,245 (FRF 5 million), or if the investment is guaranteed or insured by the Ukrainian state.
- The 2-percent rate applies to interest related to the sale on credit of equipment, interest on the sale or rendering on credit of any merchandise or service by one enterprise to another and to interest paid on loans granted by a financial institution.
- The higher rate applies to copyright royalties.
- The lower rate applies notably to copyright royalties, including films, etc.

## **Fidal Direction Internationale in France**

Olivier Ferrari  
Fidal Direction Internationale  
32, Place Ronde  
Paris La Defense Cedex  
92035  
France

Tel. +33 1 55681476  
Fax +33 1 55687609  
e-Mail: [oferrari@fidalininternational.com](mailto:oferrari@fidalininternational.com)

Christophe Bergerot  
Fidal Direction Internationale  
32, Place Ronde  
Paris La Défense Cedex  
92035  
France

Tel. +33 1 55 68 15 15  
Fax +33 1 55 68 14 00  
e-Mail: [cbergerot@fidalininternational.com](mailto:cbergerot@fidalininternational.com)

FIDAL DIRECTION INTERNATIONALE IS AN INDEPENDENT LEGAL ENTITY THAT IS SEPARATE FROM KPMG INTERNATIONAL AND ITS MEMBER FIRMS.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

> `&\$%\$: -85@ZU: fYbVW`gcVpH`X"YI YfVWV`"]VpFU`OZcfa Y`Ucb!  
na Y`OX]fYVtc]fY`YhVtbgY]`XY`gi`fj`Y]`UbW": -85@[g`Ub`]bXYdYb!  
XYbh`Y[`U`]XYbh]mih`Uh]g`gYdUfUHY`Zca`?DA ;`-bHYfbU]cbU`  
7ccdYfU]j`Y`fP`DA ;`-bHYfbU]cbU`z`U`Gk`]gg`Ybh]hmUbX`]rja`Ya`VYf`  
Z]fa`g"5`"f][`hg`fYgYfj`YX"

KPMG and the KPMG logo are registered trademarks of KPMG International Cooperative ("KPMG International"), a Swiss entity.