



Weil

Tax in Distressed Situations
FRANCE

DEBT RESTRUCTURINGS

GENERAL

1. Does debt have a specific meaning for tax purposes?

French tax law does not provide for a specific definition of debt, but relies on accounting principles: the primary condition for an item to be subject or eligible to specific tax rules applicable to debt restructuring is for such item to be booked as debt in the balance sheet of the debtor.

In this respect, the key criteria for an item to be respected as debt for accounting and tax purposes will include features such as the existence of a term, of a determined or determinable periodic yield, the ability for the creditor to ask for the repayment of the instrument as well as the seniority of the instrument on payments to equity holders in case of distressed situations as well as in case of liquidation of the issuer.

2. Do derivatives have specific meaning for tax purposes?

The French financial and monetary code (*Code Monétaire et Financier*) provides for a list of derivatives, which is also relevant for accounting and tax purposes.

In addition, French accounting rules applicable to derivatives may vary depending on the primary purposes of the contract; in this respect, a distinction must be made between hedging transactions and speculative transactions.

Although French tax rules will generally depend on accounting treatment, specific and complex rules apply to certain derivatives, in particular where such elements trade on financial future markets. The detailed features of derivatives entered into by a company will have to be reviewed on a case by case basis to confirm whether they fall within the scope of specific tax rules.

3. Generally, are intra-group debts treated differently to external debt for tax purposes?

French tax law provides for a wide spectrum of limitations to interest deduction, which apply to both intra-group and third party debts; in addition, such rules can apply at the level of the debtor on a standalone basis, or at group level where the debtor is a member of a French tax group.

The main general limitations will refer to (i) compliance with the corporate interest of the borrower and (ii) the so-called 30% Tax EBITDA limitation which derives from Council Directive (EU) 2016/1164 of 12 July 2016 (ATAD 1).

Beyond those general limitations, intra-group loans are subject to transfer pricing rules when granted in cross-border situations, as well as to further restrictions whose scope of application will depend on various definitions of control or intercompany relationships as set forth by the French tax code.

First, thin capitalization rules may apply to loans granted by "related parties".

Then, anti-hybrid rules deriving from Council Directive (EU) 2017/952 of 29 May 2017 (ATAD 2) apply in particular to loans granted by "associated enterprises".

Finally, a specific anti-abuse limitation can apply to French tax groups which purchase entities from sellers who directly or indirectly "control" the purchaser within the meaning of the French *Code de Commerce*.

A detailed review of such limitations will have to be carried out on a case by case basis in light of the relationships between creditors and debtors, it being noted that the French tax authorities pay particular attention to interest deduction rules on intragroup loans.

4. Does it make a difference if debt is owed by a partnership or other pass through entity in distress to third parties versus to its partners?

French tax law generally does not recognize the pure tax transparency of French entities which could be viewed as partnerships (e.g. French *sociétés civiles*, *sociétés en nom collectif* or *sociétés en commandite simple*); taxable income of such entities is determined at the level of the "partnership" itself, and then effectively taxed at the level of its partners.

In particular, where some of the partners are French entities subject to corporate income tax, their share of the taxable income of the partnership will be determined pursuant to French corporate income tax rules: interest deduction rules referred to above in *“Generally, are intra-group debts treated differently to external debt for tax purposes ?”* will have to be taken into account, subject to certain specific adjustments.

DEBT IMPAIRMENT

1. What are the key tax considerations on a debt impairment for the creditor?

Pursuant to applicable accounting rules, debt may have to be impaired when there is a risk for such debt not to be fully recovered because of (i) financial difficulties of the debtor or (ii) a dispute between the creditor and the debtor in connection with such debt.

From a French tax standpoint, such impairment will generally be tax deductible, subject to the following conditions:

- The receivable must arise from transactions carried out for genuine business or financial reasons, and must have been booked in the balance sheet of the creditor;
- The impairment must relate to facts or events which are ongoing at the end of the relevant fiscal year at the latest; such test must be run annually and on a case by case basis. It shall be noted that such principle slightly differs from accounting principles which would, under certain circumstances, also take into account events occurring between the end of the fiscal year and the immediately following the annual general meeting of shareholders;
- The need for the impairment and the quantum of such impairment must be determined with sufficient details: subject to specific situations, impairments determined on the basis of general assumptions or statistical methods will not be tax deductible.

The above principles apply to all types of debt, whether arising from commercial or financial transactions.

2. What are the key tax considerations on a debt impairment for the debtor ?

The impairment of debt by the creditor should have no French tax consequences for the debtor.

DEBT AMENDMENT, REFINANCING AND NOVATION

1. What are the key tax considerations on a debt amendment?

The possible French tax impacts of a debt amendment have to be reviewed on a case by case basis. In this respect, the following principles shall be taken into account:

- Are the amendments compliant with the corporate interest of the debtor? Such question could in particular raise some discussions in case of increase in the yield of the debt.
- Do the amendments entail a novation of the old debt into a new debt? In such a case, the tax aspects of a debt repayment, as well as the tax rules which are relevant upon issuance of a new debt (interest deduction rules, withholding tax, etc) will have to be reviewed.

In addition, where a debt amendment gives rise to an accounting adjustment and the debtor group is within the scope of Pillar 2, it will be important to consider whether such accounting adjustment gives rise to any Pillar 2 impact (see below *“Are there any Pillar 2 considerations to take into account specifically in distressed situations?”*).

2. Does the deferral of any payments of interest or repayments of principal trigger tax consequences?

For French corporate tax purposes, interest is taken into account on an accruals basis, both from a creditor and a debtor point of views. Therefore, the deferral of any interest accrual may impact the timing of recognition of the corresponding expenses or income for corporate tax purposes, while the deferral of the date of effective cash payment of interest should generally not have any specific tax impact.

The deferral of repayments of principal should generally not have any specific French tax impact unless it entails accounting adjustments for the creditor or the debtor.

3. What are the key tax considerations on a debt refinancing?

From a French tax perspective, the following elements will have to be reviewed in the context of a debt refinancing, in either a distressed or *in bonis* scenario.

First, the refinancing must be compliant with the corporate interest of the debtor; in this respect, the terms and conditions of the new debt (interest rate, maturity, cash payments, etc) as well as its purpose, will have to be carefully reviewed: while the French tax authorities are not supposed to interfere with the management decisions of a company, in particular as regards its financing structure and strategy, certain specific situations such as debt funded distributions or excessive leverage ratios can be challenged. In addition, elements such as the structure of the new debt package (e.g. availability of new facilities for capex purposes) as well as the profile of the financing institutions can be taken into account.

The various interest deduction rules which are applicable for French corporate tax purposes, as well as the tax treatment of financing costs will then have to be reviewed. In a distressed scenario, debt can carry a premium which may be subject to specific deduction rules.

Finally, while interest paid to third party lenders is generally not subject to withholding tax in France, unless paid to a so-called "non-cooperative jurisdiction", a more complex analysis can apply to financing fees and costs: unless they can qualify as interest, such fees and costs may give rise to French withholding tax, subject to applicable tax treaties.

4. Does rolling up interest or satisfying interest through issuing "payment in kind" notes give rise to any tax consequences?

For French corporate tax purposes, interest is taken into account on an accruals basis, both from a creditor and a debtor point of view. Therefore, both the rolling-up or the payment of interest in kind should not have additional impact for French corporate income tax purposes, both for the creditor and the debtor.

As interest paid on debt granted by third party lenders is generally not subject to withholding tax in France, the rolling-up or payment in kind of interest should neither have any impact for withholding tax purposes.

Finally, it should be noted that income tax on interest may have to be levied by the company when such interest is paid to individuals; in such a case, the exact terms and conditions of the debt will have to be reviewed to determine whether income tax would have to be levied upon rolling-up or payment in kind of interest.

5. Does the novation of debt by a debtor to another group company trigger any adverse tax consequences?

The novation of debt by a French debtor to a group company will generally be structured as a *delegation parfaite* under article 1337 of the French Code civil. In such a case, the novation would not have any French tax impact for the debtor to the extent an intercompany debt of the same amount would be recognized between the "old" debtor and the "new" debtor as a result of the novation.

To the extent such intercompany debt will remain outstanding, it will fall within the scope of the various French interest deduction rules, including those applicable to debts between related parties.

6. Are there any specific tax considerations to bear in mind where the security / guarantee package is amended as part of the debt amendment / refinancing?

The amendment of an existing security package should not have any impact for the French debtor for French corporate tax purposes.

The same should apply to the guarantor, although the existence of a form of compensation and transfer pricing issues may have to be considered.

DEBT RELEASES

1. Does the release of debt trigger taxable income for the debtor? If so, are there any reliefs or exemptions?

The release of debt will generally be treated as taxable income for French tax purposes at the level of the debtor, whatever the nature of the debt (i.e. financial or trade debt). Such taxable income will be included in the net taxable profit of the debtor.

Under French standard corporate income tax rules, tax loss carry forwards can be set off against the net taxable profit of a company up to an amount of 1 million euros increased by 50% of the net profit which exceeds 1 million euros.

In addition, when debt releases are granted in the frame of French insolvency proceedings set forth by the French *Code de commerce* (i.e. *procédure de conciliation, de sauvegarde, de redressement ou de liquidation judiciaire*), the 1 million euros threshold mentioned above is increased by the amount of such debt releases.

The same rules apply at the level of French tax groups.

Finally, a specific rule can apply to "financial" debt releases granted by a parent company to its direct 5% or more subsidiaries: the portion of such debt release which is non-deductible at the level of the parent company will not be taxable at the level of the subsidiary if the parent company subscribes to a share capital increase of the relevant subsidiary before the end of the second year following the debt release.

See "*Can a creditor claim a deduction in respect of any debt that is released?*" hereunder for the definition of "financial debt release" as well as for a presentation of main debt release rules for creditors.

2. Does the release of debt trigger any withholding or indirect tax? If so, are there any reliefs or exemptions?

A debt release on a French debtor should not trigger any French withholding or indirect tax exposure.

3. Can a creditor claim a deduction in respect of any debt that is released?

The analysis of deduction rules applicable to debt releases will first require to make a distinction between "releases of a trade nature" and "releases of a financial nature".

Releases of a trade nature will generally correspond to debt releases that are motivated by business reasons such as the preservation of a business partner (provider, distributor, client, etc). Such releases of debt will be tax deductible to the extent they can be viewed as compliant with the corporate interest of the creditor. As an exception, when the debtor is subject to certain French insolvency proceedings (*procédure de conciliation, de sauvegarde ou de redressement judiciaire*), debt releases will be deemed compliant with the corporate interest of the creditor.

French tax law does not provide for a clear definition of debt releases of a financial nature; they will generally correspond to releases of debt that are granted to a related party and are meant to preserve the assets or the reputation of the creditor. As a principle, such releases of debt are not tax deductible; however, all or a portion of debt releases of a financial nature can be tax deductible when they are granted to a debtor which is subject to French insolvency proceedings (*procédure de conciliation, sauvegarde, redressement ou liquidation*) as well a non-French debtor which is subject to an insolvency proceeding as listed in Annex A to Council Regulation (EC) n°1346/2000 of 29 May 2000 on insolvency proceedings; the quantum of tax deduction of such releases is based on complex accounting analysis which must be made on a case by case basis.

It shall be noted that various case law rules on the distinction between debt releases of a trade or of a financial nature.

4. Is the position different if the debt being released is a trade debt?

Please see question 3 above.

5. Does the release of an uncalled guarantee obligation trigger any adverse tax consequence? Is the position different if the guarantee has been called?

Assuming it is not recognized as a liability for accounting purposes, the release of an uncalled guarantee obligation (being a contingent contractual promise) should not have any specific French tax consequence.

Conversely, if the guarantee has been called, a liability should be recognized at the level of the guarantor. Although a case by case analysis would be required, the release of the guarantee may in such a case be treated as a release of debt.

6. Do any adverse tax consequence arise on the release of liabilities owed under a derivative contract?

To the extent the liability under a derivative contract has been booked on the balance sheet of the debtor, the release of such liability should be treated as a release of debt and consequently be treated as taxable income for French corporate tax purposes.

7. Are there any Pillar 2 considerations to take into account specifically in distressed situations?

Pillar 2 rules, which have been implemented in France, will have to be carefully reviewed in the context of any distressed situation or debt restructuring.

In particular, it will have to be analyzed whether restructuring steps will have an impact on the effective tax rate of the debtor; such rate may either increase where a taxable income is recognized or decrease in certain situations, in particular where a debt release is treated as an income under certain accounting standards but does not give rise to the recognition of taxable income under French tax rules; in those specific situations, the availability of exceptions and other adjustments to Pillar 2 rules will have to be carefully reviewed.

DEBT FOR EQUITY EXCHANGE

1. What are the key tax considerations on a debt-for-equity exchange for the creditor?

French legal and accounting rules provide for various routes to capitalize receivables into the debtor's equity, all of which have different consequences for the creditor.

The receivable can be contributed in kind in exchange for newly-issued shares of the debtor; such contribution will have to be made at fair market value, based on an independent appraisal. In such a situation, the creditor will recognize a gain or a loss corresponding to the difference between the acquisition price of its receivable and the fair market value of the shares received in exchange. Such method may be considered by creditors who acquired debt at a discount or who have booked impairments on their receivable, as the recapture of such impairments will generally be taxable. However, in practice, such method is rarely used given its potential consequences on the debtor (see hereafter).

Alternatively, the creditor can subscribe to a cash share capital increase of the debtor, which is paid up by way of set-off against the repayment of all or a portion of the debt; in this respect, the corresponding debt will have to be due and payable, which may require a prior acceleration. From a French tax perspective, the creditor will recognize a gain or loss corresponding to the difference between the face value and the acquisition price of the receivable which is capitalized: such debt-to-equity swap method can result in taxable income for the creditor when the relevant receivable was acquired at a discount. However, French tax law provides for specific rules which will allow the creditor to compute the taxable income or loss recognized upon the equitization of debt on the basis of the fair market value of the shares which are issued by the debtor and not the face value of the equitized debt. The application of such rules is subject to conditions relating to the relations between the various parties and the existence of insolvency proceedings or not.

2. What are the key tax considerations on a debt-for-equity exchange for the debtor?

When the debt-for-equity exchange is structured as a contribution in kind, the debtor may recognize a gain corresponding to the difference between the face value and the contribution value of the debt. Available tax losses may be used to set-off all or a portion of this gain under normal conditions (i.e. no ability to benefit from specific rules applicable to waivers of debt in the context of insolvency proceedings).

A debt-for-equity exchange structured as a repayment offset against the subscription to a cash share capital increase of the debtor should not lead to the recognition of a taxable gain as the issue price of the shares would correspond to the face value of the debt. It should however be noted that discussions may arise if share premium is issued as part of such debt-for-equity exchange, in particular where different levels of share premium are provided among various classes of creditors: one cannot totally exclude that the creation of share premium be characterized as a taxable waiver of debt, although limited case law exists in this respect and has ruled in favor of debtors so far.

In addition, when a debt-for-equity exchange is structured as a repayment of debt, withholdings may have to be paid by the debtor when debt is held by individual and/or non-resident creditor as interest are deemed cash paid as part of such exchange.

Finally, Pillar 2 impacts will have to be reviewed where the debtor belongs to a group that is within the scope of such rules (see above "*Are there any Pillar 2 considerations to take into account specifically in distressed situations?*").

3. Where warrants or similar instruments are issued as part of a debt restructuring, does this trigger any adverse tax consequence?

The allocation of warrants to creditors or other investors participating in a debt restructuring should generally not have any adverse French corporate tax impact for the issuing debtor, although this would have to be reviewed and confirmed on a case by case basis.

If warrants were subscribed by creditors or investors and were not initially attached to shares, the forfeiture of such warrants, as the case may be, would however be treated as taxable income for the debtor, for an amount corresponding to the subscription price of the warrants, if any.

Finally, where warrants are allocated to non-resident investors for free, it cannot be totally excluded that such allocation be viewed as a distribution or a compensation for services, which may in particular raise French withholding tax questions.

In certain situations, creditors or one of their affiliates may be granted a golden share in the debtor or in an entity of the debtor's group. The tax impacts of such instrument will have to be carefully reviewed, in particular if creditors become shareholders or related parties to the debtor as a result of the holding of a golden share, as it may trigger the application of various interest deduction rules on the remaining debt.

4. What are the key tax consequences of capital contributions by a parent company into its subsidiary?

Capital contributions, which are generally structured through a combination of nominal value of newly issued shares and share premium, will in principle not have any specific French corporate tax consequences for a French debtor.

FEES AND TRANSACTION COSTS

1. Is there any adverse tax impact in respect of common restructuring fees, for example consent fees?

The treatment of fees charged in the context of a debt restructuring will have to be reviewed carefully from a French corporate tax, withholding tax and VAT perspective.

From a French corporate tax perspective, such fees should generally be deductible by the debtor provided they are arm's length; depending on their exact nature and subject to accounting analysis, fees could either be treated as general expenses which will be immediately tax deductible, or as financing fees which, upon election of the debtor, could either be immediately deducted or amortized over the duration of the financings.

Fees charged by non-resident parties could raise some French withholding tax issues if they are viewed as a compensation for specific services, as opposed to interest-like items.

Finally, fees would generally be subject to French VAT unless they can be viewed as eligible to exemptions applicable to certain financing activities.

2. Are transaction costs deductible for tax purposes and is any VAT recoverable?

Transaction costs charged in the context of a debt restructuring will generally be deductible for French corporate tax purposes provided they are arm's length. The applicable deduction method will depend on their exact nature and accounting classification: fees treated as financing fees from an accounting standpoint could, upon election of the debtor, be immediately deducted or amortized over the duration of the loan. Other fees will generally be immediately deducted unless they are viewed as incurred in connection with the reorganization of the share capital structure of the debtor, in which case they could be eligible to a five-year amortization mechanism.

To the extent transaction fees correspond to services provided for the account and in the best interest of the debtor, VAT should be recoverable in accordance with the general VAT position of the debtor.

DEBT ENFORCEMENT

1. Aside from insolvency proceedings, what are the key methods of enforcement and their tax impact?

Key methods of enforcement will consist in a creditor exercising a power of sale and foreclosure or in a creditor directly acquiring assets from or securities of the debtor in discharge of the debt.

A specific mechanism similar to a trust (so-called *fiducie*) also exists: debtor's securities or assets are transferred to a specific estate which is managed by a third party (trustee or *fiduciaire*). Subject to certain conditions, such transfer will be French tax neutral so long as enforcement does not occur. If enforcement is required, the trustee will either sell the assets and distribute the cash to creditors or directly transfer the assets to the creditors. It shall be noted that while *fiducie* is not widely used in *in bonis* situations, creditors will often ask for it as a collateral in the context of distressed situations and debt restructurings.

2. If the enforcement results in the creditor taking ownership of equity or assets, what are the key tax considerations to bear in mind?

In situations where a creditor would take control of equity, impacts on the existence of the target French tax group, if any, as well as on interest deduction and related withholding tax rules will have to be carefully reviewed, in particular given that such an enforcement would result in the creditor becoming a related party to the debtor.

A transfer of assets to a creditor will be treated as a sale for French corporate tax purposes, which may raise capital gain tax issues for the debtor, in addition to French VAT and/or transfer tax costs. In addition, as the fair market value of the assets would be deemed set-off against the repayment of all or a portion of the debt held by the relevant creditor, the difference, if any, would be treated as a waiver of debt, which would have tax impacts for the debtor.

3. Are any specific tax considerations arising on payments or transferring security under guarantees as opposed to the debt?

Payments under a guarantee obligation should in principle give rise to the recognition of a receivable of the same amount by the guarantor on the debtor. In this respect, such payments should in principle not be tax deductible by the guarantor nor be subject to withholding tax in France, although the withholding tax analysis is complex and not free from doubt.

Following such payments, the guarantor may consider the need to book impairments or final losses in connection with its receivable on the debtor. The tax treatment of such impairments or losses has been discussed in previous sections (see in particular "*What are the key tax considerations on a debt impairment for the debtor?*" and "*Does the release of debt trigger taxable income for the debtor? If so, are there any reliefs or exemptions?*").

As far as the debtor is concerned, the French tax impacts arising in relation to the receivable held by the guarantor on the debtor will depend on the connections between the parties; in particular, such receivable may qualify as a related party debt when the guarantor and the debtor belong to a same group.

4. Are there any adverse tax consequences arising from a change of control or break of a tax group?

Change of control will generally not have any impact on the French tax attributes of the debtor. It will however be necessary to confirm whether the debtor was a party to prior transactions or reorganizations which benefited from tax free rollover regimes, as such rollover may be terminated in case of change of control.

A French tax group could be terminated if the share capital of the parent company is acquired at 95% or more by a company subject to corporate income tax in France or if all the subsidiaries of the group are transferred to third parties. In such a case, certain intragroup transactions which were previously ignored for French corporate tax purposes will be recaptured, and group tax losses, if any, will become standalone tax losses of the parent company. However, if the parent company and all or certain of its French subsidiaries join or form a tax group with the purchaser, specific elections could be made in order to use tax losses of the former tax group on a larger basis (so called *imputation sur base élargie* mechanism).

In addition, specific rules apply in the context of insolvency proceedings: a portion of group tax losses will automatically be allocated to the group's subsidiaries if such subsidiaries are transferred to a third party in the context of insolvency proceedings; in addition, such subsidiaries will have the possibility to set up a new tax group retrospectively as from the opening of the fiscal year of the transfer.

5. Where equity / assets are indirectly transferred as part of an enforcement, does that trigger adverse tax consequences?

Indirect change of control will generally not give rise to any specific French tax nor have any impact on the French tax attributes of the debtor.

6. Is any claw back permissible where a distressed company pays for taxes for which a solvent shareholder is liable?

French tax law does not provide for such general claw back mechanisms.



ACQUISITION OF DEBT

1. Does the acquisition of a creditor's interest in distressed debt trigger any adverse direct tax consequences for the debtor?

The acquisition of a creditor's interest in distressed debt should not itself trigger any adverse French tax consequences for the debtor to the extent such transfer is notified to the debtor or the debtor is a party to the transfer.

Following the transfer, interest deduction and withholding tax rules will have to be carefully reviewed in light of the relationships between the new creditor and the debtor, as well as of the jurisdiction of incorporation of the debtor.

2. Does the acquisition of distressed debt trigger any adverse withholding or indirect tax consequences for the debtor?

Following change of ownership in a debt, French withholding tax rules will have to be carefully reviewed in light of the relationships between the new creditor and the debtor, as well as of the jurisdiction of incorporation of the debtor.

Although interest payments would most often not be subject to French withholding tax, a different conclusion can apply to fees paid to creditors.

3. What are the key tax considerations for the purchaser of a creditor's interest on the acquisition of distressed debt?

The acquisition of distressed debt over a French debtor will first require to review the possible acquisition structure, and more specifically the jurisdiction of incorporation of the purchaser as well as its legal form and tax regime.

The above elements, as well as the relationships between the new creditor and the debtor, will have a direct impact on interest deduction rules at the level of the debtor and, as a result, on possible French withholding taxes applicable to future payments to the new creditor.

The impacts of a possible capitalization of all or a portion of the acquired debt into the debtor's equity will have to be analyzed, in particular where the purchaser is a French entity subject to corporate tax (see "*What are the key tax considerations on a debt-for-equity exchange for the creditor?*" above).

4. Are there any particular beneficial regimes accessible to a purchase of a distressed debt portfolio?

No particular tax regime is available in France for the specific situation of a purchase of a distressed debt portfolio.

However, various legal or regulatory regimes applicable to funds or similar vehicles may be available in the context of debt portfolio acquisitions.

INSOLVENCY PROCEEDINGS

1. What are the key insolvency procedures?

Various procedures applicable to distressed or insolvency situations are available in France and will in particular depend on the situation of the debtor.

Debtors facing financial difficulties but who are not insolvent may have recourse to confidential amicable procedures such as *mandat ad hoc* or *conciliation*, the main purpose of which is to reach an agreement with creditors under a confidential procedure.

Debtors subject to irremediable difficulties but not insolvent may have recourse to safeguard proceedings (*sauvegarde* or *sauvegarde accélérée*).

Finally, debtors in an insolvent situation will fall within the scope of *redressement* or *liquidation judiciaire*.

2. What are the key tax considerations arising upon entry into an insolvency procedure?

The entry of a French company into an insolvency procedure should not itself trigger any direct French tax consequence.

However, the existence of such procedures will have an impact on various French tax rules such as the use of tax losses against waivers of debt, debt for equity swap schemes, tax grouping rules, or ability to benefit from an early repayment of refundable tax credits.

In addition, upon entry into insolvency procedures, a French debtor should have the possibility to negotiate a specific payment calendar with tax and social authorities for taxes and contributions which were unpaid before the opening of the procedure.

3. Does the entry into insolvency procedure impact tax groupings?

The opening of insolvency procedures does not have any direct impact on the French tax group of the debtor, if any.

The various transactions or reorganizations which can take place in the context of such procedures can however have an impact on French tax groups when they lead to the transfer of more than 5% of the share capital or voting rights of a tax consolidated entity to a third party, or when more than 95% of the share capital and voting rights of the parent company of a tax group are acquired by an entity subject to French corporate tax. The relevant entities would leave the tax group, or the tax group would be terminated with possible impacts on the allocation of tax losses, if any, and the possibility for the relevant entities to join or form a new tax group will have to be considered.

4. Are there any specific tax set offs available in a insolvency?

The opening of insolvency procedures does not entail the availability of specific tax set offs.

It should however be noted that French tax law provides for various mechanisms which are aimed at dealing with cash shortfalls that distressed debtors may experience. In particular, agreements may be reached with tax and social authorities in order to pay taxes and contributions in various instalments; refundable tax credits may also be subject to accelerated repayment schedules in distressed situations.

5. Is the tax authority a preferential creditor in an insolvency?

Under French insolvency procedures, one shall make a distinction between creditors whose receivables were created before or after the opening of the procedure.

Receivables which were created before the opening of the procedure shall not be paid: debtors are expected to declare the existence of their receivables, the payment of which will then be organized under the procedure. Such rules also apply to tax receivables although, in practice, their repayment will be subject to a specific plan agreed with a dedicated authority (so called *CCSF* or *Commission des Chefs de Services Financiers*), which will generally be secured by specific collaterals.

Receivables, including tax receivables, which were created after the opening of the procedure shall be paid in due course; in this respect, the tax authorities will generally be treated as a secondary preferential creditor.

6. Are directors or other managers personally liable for tax debts in an insolvency?

Any person which is viewed as the *de jure or de facto* director of a French company can be held jointly liable for the payment of the tax liabilities of the company when it can be proved that the company has not paid its taxes in due course because of the fraudulent behavior of such person, or because such person has voluntarily and repeatedly not complied with applicable tax rules.

Such joint liability may be applicable in any situation and not only in the context of insolvency procedures.



MEET THE AUTHORS OF OUR JURISDICTIONAL GUIDES

WEIL CONTACTS

London



Oliver Walker

Partner, Tax
London
+44 20 7903 1522
oliver.walker@weil.com



Stuart Pibworth

Counsel, Tax
London
+44 20 7903 1398
stuart.pibworth@weil.com



Anna Ritchie

Associate, Tax
London
+44 20 7903 1348
anna.ritchie@weil.com

United States



Devon Bodoh

Partner, Tax
Washington, D.C.
+1 202 682 7060
devon.bodoh@weil.com



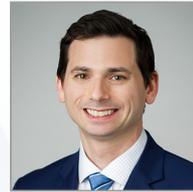
Stuart Goldring

Partner, Tax
New York
+1 212 310 8312
stuart.goldring@weil.com



Joseph Pari

Partner, Tax
Washington, D.C.
+1 202 682 7001
joseph.pari@weil.com



Adam Sternberg

Counsel, Tax
New York
+1 212 310 8431
adam.sternberg@weil.com

France



Edouard de Lamy

Partner, Tax
Paris
+33 1 4421 1571
edouard.delamy@weil.com



Benjamin Pique

Partner, Tax
Paris
+33 1 4421 9831
benjamin.pique@weil.com

MEET THE AUTHORS OF OUR JURISDICTIONAL GUIDES

LOYENS & LOEFF CONTACTS

The Netherlands



Bartjan Zoetmulder

Partner – Tax Adviser
T +44 20 7826 3071
M +44 7879 607 977
bartjan.zoetmulder@loyensloeff.com
(Currently on assignment in London)



Steffie Klein

Counsel – Tax Adviser
T +31 20 578 5045
M +31 6 51 42 67 86
steffie.klein@loyensloeff.com



Aziza Tissir

Senior Associate – Tax Adviser
T +31 10 22 46 593
M +31 6 53 42 48 78
aziza.tissir@loyensloeff.com



Ingrid Hijdra

Senior Associate – Tax Adviser
T +31 20 578 51 93
M +31 6 10 89 57 20
ingrid.hijdra@loyensloeff.com



Ellen Breteler

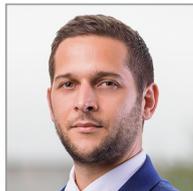
Associate – Tax Adviser
T +31 20 578 53 01
M +31 6 22 59 37 81
ellen.breteler@loyensloeff.com

Luxembourg



Pierre-Antoine Klethi

Partner – Tax Adviser
T +352 466 230 429
M +352 6 91 96 31 57
pierre-antoine.klethi@loyensloeff.com



Kévin Emeraux

Partner – Tax Adviser
T +352 466 230 570
M +352 6 91 96 32 24
kevin.emeraux@loyensloeff.com



Victoria Hodireva

Associate – Tax Adviser
T +312 057 853 27
M +352 6 91 96 31 84
victoria.hodireva@loyensloeff.com

Switzerland



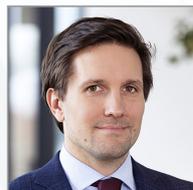
Beat Baumgartner

Partner – Attorney at Law
T +41 43 434 67 00
M +41 79 93 06 352
beat.baumgartner@loyensloeff.com



Pascal Hammerer

Senior Associate – Tax Adviser
T +44 207 826 3070
M +41 79 878 62 03
pascal.hammerer@loyensloeff.com
(Currently on assignment in London)



Aldo Engels

Partner – Attorney at Law
T +32 2 743 43 92
M +32 496 13 76 21
aldo.engels@loyensloeff.com



Benno Daemen

Counsel – Attorney at Law
T +32 2 773 23 67
M +32 497 32 99 02
benno.daemen@loyensloeff.com



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