

# SETTING UP IN FRANCE: A PRACTICAL GUIDE

2017



Étude | Baromètre | Avis d'experts | Note de synthèse | Newsletter

# MAZARS IN FRANCE

Over the years, Mazars has been working with many businesses setting up in France. They have all experienced the frustration of getting to grips with the complex regulatory environment. The overall purpose of this guide is to provide valuable information and tips to foreign business persons when they are planning to launch a business in France.

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# EXECUTIVE SUMMARY



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## Why France such a great place to do business?

Investing in France has many advantages. With more than 65 million people and the second largest market in Europe, France is a critical place for most global companies. As a place to do business, France offers a predictable and transparent legal system, outstanding infrastructure, and access to one of the world's most lucrative consumer market.

**Economy:** France has the ninth largest economy in the world, with a GDP of approximately € 2 500 billion

**Consumer Market:** global companies operate in France to be closer to their suppliers and customers in a dynamic market.

**Research and Development:** France is the country that offers the most generous R&D tax treatment for companies.

**Technology:** French companies are leaders in breakthrough technology and innovation in key industries ranging from electronics, transportation, tourism, food processing, luxury.

**Productive Workforce:** investors in France gain access to a highly productive and adaptable workforce. The French workforce ranks as one of the best educated, most productive, and most innovative in the world.

**Transportation/Infrastructure:** France has one of the largest paved roadway system, railway network, and number of airports in the world. Its strategic location serves as a hub to address both eastern and western European markets.

**Dynamic service sector:** an increasingly large share of economic activity rely on services and internet technology and it accounted for a large part of job creation in recent years.

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# I. CUSTOMIZING YOUR PROJECT

Look before you leap. As exciting launching a business could be for any project holder it is of great importance to figure out main investment objectives and goals in order to pick the right “vehicle” and cruise through one of the best business-friendly place in the world.

# 1.1 MORE THAN ONE WAY TO SKIN A CAT....

## 1.1.1. Liaison office

Liaison office is the perfect way to perform non-commercial activities, such as prospecting, advertising, providing information, storing merchandise, or other operations of a preparatory or auxiliary nature. It is the best lookout enabling foreign parent company getting new contacts on the spot with various interlocutors (potential customers, suppliers, etc.), collecting information and ensuring its communication and public relations before “going live”.

Bear in mind that the liaison office can never conclude a contract in the name and on behalf of the parent company, since its purpose is not to carry out a commercial activity.

It has only a relay role, preparatory to the negotiation of commercial contracts concluded between the customers contacted and the foreign company. Invoices and contracts must be sent and signed by the foreign parent company.

Not subjected to corporate tax or VAT as not considered as a permanent establishment since not involved in commercial activities.

## 1.1.2. Branch

### **What’s wrong with just setting-up a branch of my company?**

A branch of a foreign company is just its extension in France.

Its management is carried out by a representative of the parent company (manager) who has the power to deal with third parties. It has a certain independence in the management of the branch (responsibility for the goods, initiative in the execution of the commercial activity, hiring of staff) while remaining under the control of the foreign-based corporate’s head office.

It has its own clientele that deals with it directly but it still acts on behalf of the foreign-based corporate’s head office.



### What features would make it a suitable choice for me?

Setting up a branch would cater for investors that:

- want to have a light permanent establishment in France
- already have a good experience and knowledge of the French market
- seek to avoid statutory audit requirements
- seek to avoid financial statements filing with the Commercial Court
- need to obtain a VAT number in France for business purposes and a specific project (building site...)
- seek to avoid the 3% levy on dividends paid if the company is located in a EU country and is not a SME

Blood thicker than water: expand in France and draw your family tree including fully owned brand new French subsidiary. This is the most common way to adopt a portfolio approach when considering an investment in France.

#### 1.1.3. Subsidiary: a glimpse of legal forms

Here, we are dealing with setting up a wholly-owned French company and there are many reasons to set up a wholly-owned subsidiary when intend to:

- satisfy existing customers and prospects with a legal existence in France
- manufacture goods, assemble products, or provide services
- protect against liability claims
- minimize certain tax or customs duty-related costs
- segregate subsidiaries' and parent companies' assets for liability purposes
- apply for government support when starting up or expanding

The subsidiary must pay all applicable taxes like a regular French corporation. Investors are advised to seek specialist legal advice when setting up a subsidiary. The most common legal forms are set out below to provide a short overview.

### « Société à Responsabilité Limitée » (SARL)

The Limited Liability Company (SARL) is a commercial company where the shareholders' liabilities are limited to the amount of their contribution represented by the company's shares.

To become a legal entity, the company needs to be registered in the Trade and Companies Register (RCS).

The share capital can be held either by one or several natural persons or legal entities (whether incorporated in France or in a foreign jurisdiction) and no minimum requirement applies to the capital.

The SARL is run by one or several general managers ("gérant(s)") appointed by the shareholders:

- the manager ("gérant") is necessarily a natural person, whether or not shareholder of the company,
- the manager can be dismissed on justified grounds ("juste motif") only.

Decisions are made through ordinary general meetings or extraordinary general meetings depending on stakes.

The financial statements must be filed with the Commercial Court once a year.

### « Société par Actions Simplifiée » (SAS)

The Simplified Stock Company (SAS) is a commercial company as well. The share capital can be held either by one or several natural persons or one or several legal entities (whether incorporated in France or in a foreign jurisdiction). The liability of the shareholders is limited to the capital invested and the share capital can be freely decided within the articles of association.

Its main feature is a greater freedom to draft their articles of association with respect to internal organisation and decision-making process.

The administration and management are governed by the articles of association:

- The appointment and dismissal of the Managers (Chairman/CEO, Managing Director, so called Directeur Général and Directeur General Délégué)
- the number of Managers, their term, their compensation and their powers

It is possible to allow the dismissal of directors without providing for justified grounds and compensation.



The SAS can be managed either by an individual or a legal entity (whether shareholder or not).

If a legal person is appointed as director, the director of this legal person is personally held liable for civil and criminal charges, as if appointed in person. The SAS can also be managed by a collegiate executive body.

The mechanisms of control are also freely decided upon within the articles of association. Such as in a classical public limited company (French "SA"), a supervisory board can be provided for.

The sole executive body that is provided for by law is the "président", who disposes of the complete authority to represent the company towards third parties. This stands even if a collegiate body is appointed for the management of the company. Only one "président" can be appointed. One or several general managers ("directeurs généraux") can be given the authority to represent the company towards third parties, if the articles of association provide for it.

#### **« Société en Nom Collectif » (SNC)**

The General Partnership is a commercial company of two or more individuals or corporate partners, with the status of merchants ("commerçants"). Each partner is wholly and jointly liable for the debts of the company, which is tantamount to an unlimited liability.

The rules for the sharing of profits and losses between partners are not necessarily proportionate to the partners' share of capital but derived from what have been decided within the articles of association.

There is no minimum capital requirement, the status of each partner relates to its contribution to the nominal capital, and each partner receives shares in return for their subscription. Contributions may be either in cash or in kind.

The shares may be sold, when authorised by all the other partners.

#### **« Société Anonyme » (SA)**

The Public Limited Company (SA) is a commercial company. Its capital is divided into shares, owned by at least seven shareholders with limited liability.

Their financial commitment towards the company is limited to the value of their share in the capital of the company. They can be individuals or legal entities. That legal form is suitable for listed companies.

The articles of association must contain the name of the company, lifespan (maximum 99 years, renewable), activity, registered office address, amount of share capital, the founder's name, management, and name of the statutory auditors. The AOA are signed by the shareholders themselves or a representative and should be published in an official journal

To obtain legal entity status, the company needs to be registered at the Commercial Register.

The capital of at least € 37 000 must be subscribed, in cash and/or in kind, and deposited at a bank or with a Notary Public in an escrow account. Subscriptions in kind are assessed by a professional, the valuation auditor.

### **« Société Civile Immobilière » (SCI)**

The Real Estate Company (SCI) is often used to acquire properties in France. This provides a form of corporate ownership with minimal French taxation. It allows the owners of properties in France to organise their estate planning effectively for succession purposes.

Since 1978, civil companies need to be registered. The partners (at least two) are individually but not jointly liable to the creditors for the company's debts. Their liability is not limited to the amount of contribution in the capital of the company. A new partner joining the company will therefore be liable for future and past debts. Therefore, there is no requirement for a minimum amount of capital. The capital of the SCI is divided into shares

All profits made by a SCI whose associates are individuals will therefore be taxed in France as personal income tax, making the SCI a transparent company. However, if the SCI carries out a commercial activity it will be liable to French corporation tax.

A SCI is not required by law to file financial statements with the Commercial Court (as required for commercial companies).

## 1.2 GO LIVE 101

### 1.2.1. Simplified formalities in few steps

A “one-stop shop” called Centre de Formalités des Entreprises (CFE) is the place where all the formalities for creating a new company can be dealt with. It handles all administrative details, gathers all necessary documents and delivers them to the relevant authorities. Then, it only takes a few days for a company or branch to be recorded in the Company Register.

This is the 10-step process for the setting-up of a company in France:

1. Seeking business premises for the company's registered head office : business address agreement vs commercial lease
2. Figuring out the most appropriate type of legal structure
3. Drafting and signing the company articles of association which requires preliminary steps to be taken (Head office address, definition of business, shareholders, etc.)
4. Planning the appointment of the chairman by a shareholders 'general meeting
5. Declaring the domain name of the company website, if one exists
6. Appointing the statutory auditor(s), where relevant
7. Constituting the share capital: opening a bank account in France and depositing the capital of the company being formed
8. Registering the articles of association within a month of their adoption with the tax authorities at the registered office's location (free of charge)
9. Drafting of the form M0 (for registration of a company)
10. Publishing the notification of establishment in a legal gazette

Please notice that this list does not include specific formalities to be carried out with French authorities for certain types of regulated activities.

There are different ways of completing formalities at CFE “one-stop shop”:

- Perform the procedures yourself, acting under the authority vested by the foreign company as the future legal representative of the company’s new establishment in France
- Delegate powers to an attorney to represent you
- Delegate powers to one of your personnel or a partner in the company to be founded

You will be asked to show proof of authorization or power of representation to complete the formalities when filing your application with the CFE.

### **What are the costs for registration formalities?**

€50, plus the cost of publishing a notice announcing a new company in a legal gazette (around €500).

## **1.2.2. Practical know-how**

### **The longest road out is the shortest road home.**

When it comes to business premises, France is a place where a large array of options are available to fit your needs

Short terms affordable solutions enable you to set up the company’s registered office in a business centre offering services such as business address , mailboxes, answering phone calls, meeting rooms.

Local Authorities are also keen to provide premises such as so called “business incubators” or temporary manufacturing facilities.

### **Long terms option consists of commercial lease.**

The statutory term for commercial leases is nine years, but tenants can terminate the lease at the end of the third or sixth year.

Tenants are legally protected against non-renewal or eviction. The lessor must pay eviction compensation proportionate to the value of the business and the right to the lease. Rent increases are capped. The commercial lease agreement stipulates the commercial purpose of the premises (activity), but the parties to the lease can agree to amend the lease to change the initial purpose or add another activity. The tenant shall

hold a civil liability insurance contract for the rented premises.

Another long term option is the acquisition of a property, a massive investment that must be thought twice.

### **What about the corporate bank account?**

All foreign companies can access banking services in France (and thus open bank accounts and obtain financing) either directly, or through an establishment or subsidiary in France.

A bank account in France is vital for any company and it is a requirement for incorporation. However, because of the French penchant for bureaucracy and paperwork, anti-money laundering and counter-terrorism legislation inevitably involves a few extra hoops to jump through.

Still the lucrative opportunities in the French market easily offset this slight difficulty.

## **1.2.3. Hiring staff**

### **The only genuine form of wealth is...people**

Employers can hire staff according to their needs using a variety of different employment contracts. Contractual clauses can provide with greater flexibility in employment relationships, provided they are not contrary to the French Labor Code or to any collective agreement applying to the company.

Recruitment support services exist in France for you to find the right employees for your company. France's National Employment Office (Pôle emploi) can help companies by publicizing their vacancies, identifying and short-listing candidates, as well as offering and organizing training courses for candidates. Most of French job seekers also use the internet to find opportunities (Indeed, Monster, Cadremploi...)

The most common employment contracts in France are open-term contract ("Contrat à Durée Indéterminée"), short-term contract ("Contrat à Durée Déterminée"), temporary work contract ("Contrat de Travail temporaire").

The open-term contract (CDI) is an unlimited term contract, between an employer and an individual. This is the most common basic employment contract, all the more that it provides a certain degree of security for the employee. This type of contract does not need to be written by law, but it is highly recommended.

The short-term contract (CDD) can be used in different specific situations strictly defined by the regulation: to replace someone temporarily absent, when there is an exceptional increase of work, etc. The contract must be written. A permanent position can never be filled up with a short-term contract.

The temporary work contract (CTT), or “intérim”, requires two contracts – an availability contract (“contrat de mise à disposition”), signed between the temporary employment agency and the customer, and an assignment contract “contrat de mission”, signed between the temporary employment agency and the temporary worker.

Non-EU nationals must obtain a temporary residence permit (“carte de séjour temporaire”), which is valid for one year.

When an employee is a non-EU citizen, the employer must also declare him/her to the French administration with a copy of his temporary residence permit and passport.

These are only few hassles of French labour law. But again the game worth it and the benefits outweigh the drawbacks.

As a business friendly place, France has drastically soften law requirements regarding economic layoffs with the adoption of a new law in August 2016 (El Khomri Act) allowing French companies to dismiss staff whenever subject to a quarterly decline of turnover or other relevant indicators such as EBITDA, cash flow, backlog. That came into effect on December 1st, 2016.

## 1.3 MAIN REQUIREMENTS

### 1.3.1. Accounting and audit

#### **Keeping your books straight!**

Accounting and tax go hand in hand in France as the books meant to fuel most tax reporting requirements.

A French-based company is required to produce financial statements consisting of the balance sheet (bilan), income statement (compte de résultat) and accompanying disclosure notes (annexe) in accordance with French GAAP supporting with back-up documents.

French accounting principles authoritative rules laid down by the French Commercial Code:

- **True and fair view principle**

Accounting is a system of organizing financial information to capture, classify, and record basic figures and present statements reflecting a true and fair view of the financial position and profit or loss of the entity at the closing date.

- **Comparability principle**

Accounting allows for periodic comparisons and an assessment of the entity's evolution from a business continuity perspective.

- **Regularity and fairness principle**

Accounting is held in accordance with the rules and procedures in force which are applied with sincerity in order to translate knowledge that the preparer of the accounts have of the reality and the relative significance of the recorded events. In the exceptional case where the application of an accounting rule would be unsuitable for giving a faithful image this requirement may be waived. The justification and consequences of the derogation are set out in the disclosures notes to the financial statements.

- **Precautionary principle**

Accounting is established on the basis of conservative assessments, to avoid the risk of transfer, on future periods of uncertainty likely to affect the assets and results of the entity

- **Principle of consistent accounting methods**

The consistency of accounting information implies the application of rules and procedures over successive periods. Any exception to this principle of permanence must be justified by an exceptional change in the situation of the entity or by better information under preferential method. Preferential methods are those considered to lead to better information by the standard setting body.



- **Historical cost principle**

Under the historical cost accounting principle, assets acquired are recorded at acquisition cost, assets acquired free of charge are recorded at their market value or use value, and revenues are recorded at cost of production. Latent capital gain on assets shall not be recorded.

- **Going concern principle**

Under the going concern principle the financial statements must be drawn up on the assumption that the company will continue its business in a normal manner. This principle is at the basis of the asset valuation rules. It implies taking into account an economic perspective without serious disruption of the activity. Where there is no longer any continuity of operation (divestment of an industry, interruption of operations, judicial liquidation, etc.), the use of other valuation assumptions should be considered (market value, scrap value...)

Besides all these accounting principles certain small and medium sized companies/LLCs have an option to file abbreviated financial statements. Abbreviated financial statements provide condensed balance sheet and income statement, and less disclosures notes.

### **Do I need to appoint a statutory auditor in any cases?**

The answer is no, depending on the legal form of your company or certain thresholds being exceeded, except for the the SA where it is always compulsory.

For SARL, whenever 2 out of the following 3 thresholds are exceeded:

- Turnover > € 3.1 M
- Total Balance Sheet > € 1.55 M
- Average staff number > 50

For SAS, whenever 2 out of the following 3 thresholds are exceeded:

- Turnover > € 2 M
- Total Balance Sheet > € 1 M
- Average staff number > 20

Or if the SAS controls one or several companies, or is controlled by one or several companies.

In addition, if one or more shareholder(s) representing at least one tenth of the capital request, under urgent proceedings, to the President of the Commercial Court for the appointment of an auditor.

The role of the statutory auditor is to carry out an audit in order to issue a report specifying to the shareholders whether or not the company's audited financials provide a fair and accurate representation of its actual financial position.

The statutory auditor is appointed by the shareholders at the creation or during the annual general meeting. His mission lasts for 6 years in a row.

### 1.3.2. Year-end legal paperwork

#### **Just for the records...**

Registered companies must usually file their financial statements with the Commercial Court within 30 days after the shareholders' annual general meeting, which must be held within six months of the close of the fiscal year. The main purpose of the meeting is to allow the shareholders to approve the financial results for the year.

The general meeting may not be held more than 6 months after the closing date, unless requested postponement is filed with the Commercial Court.

The mandatory filing must include following items:

- Balance sheet
- Profit & Loss
- Management report
- Minutes of the annual general meeting approving the accounts and voting the profit allocation.



## II. SHEDDING LIGHT UPON FRENCH TAXES

## 2.1 CORPORATE INCOME TAX AND TAX BENEFITS

A resident company is subject to CIT in France on its French-source income. In that respect, income attributable to foreign business activity (if there is no treaty in force between France and the relevant foreign country) or to a foreign Permanent Establishment (if a tax treaty applies) is excluded from French tax basis.

### 2.1.1. A small tax base combined with a high nominal tax rate

France levies Corporate Income Tax at a standard rate of 33.33%, and, over a four-year period, a gradual decline in the normal to 28% is forecasted.

For small and medium-sized businesses (SMEs): reduced corporate tax rate of 15% up to €38,120 of profits and standard 33.33% rate on the remainder provided few criteria are met :

- Getting at least 75% of their shares owned directly or indirectly, by individuals, or for companies satisfying the same conditions,
- Annual turnover of less than €7,630,000,
- Fully paid up share capital.

SMEs are exempt from paying the 3.3% social contribution tax.

The CIT base is rather flexible and items such as financial costs from IC loans, assets write-downs, provisions for contingencies, regulated reserves, dividends exemptions etc..., enable companies to shrink their tax bill despite such a nominal tax rate.

### 2.1.2. Capital gains exemption

Capital gains on shares sales when held for at least two years are totally exempted except for a 12% fixed proportion representing expenses. To be eligible, the shareholder selling its stakes must have detained 5% of the companies where its investment could be considered as a long term commitment for tax purposes.

This exemption no longer applies to transferred securities of companies located in a country considered non-cooperative for tax purposes.

### 2.1.3. Innovation friendly environment

When it comes to innovation, France has set a stunning tax landscape ranking 1st in Europe for innovation related tax-incentives offering the most generous R&D tax treatment for companies. (OECD Science, Technology and Industry Scoreboard, 2013)

France has the lowest effective corporate tax rate in the world (among the 10 countries surveyed) for R&D operations, taking into account differences in tax bases, depreciation allowances, tax exemptions and tax credits.

As an attractive tax landscape for innovation and R&D, France's patent box regime allows under certain conditions, income derived from the sale or license of patents or patentable inventions being levied at a reduced CIT rate of 15%.

### 2.1.4. Many efforts made to attract investors

**France's competitiveness and employment tax credit (CICE)** is reducing labor costs by 6% in 2016, amounting to €20 billion in annual savings for companies. This tax credit is calculated in proportion to the company's gross payroll costs, excluding all salaries greater than 2.5 times the national minimum wage (SMIC).

**France's research tax credit (CIR)** is the most attractive tax incentive program of its kind in Europe: a tax break amounting to 30% of annual R&D expenses, up to €100 million, and 5% above this threshold. Salaries for research staff are wholly integrated, plus 50% of R&D operating costs and 75% of investments in R&D operations.

All companies incurring R&D expenses are eligible, regardless of their size, business sector and nationality. 16,000 companies received France's research tax credit in 2013.

The research tax credit base covers not only all R&D spending (salaries, social security contributions, amortization and depreciation allowances, operating costs, subcontracting, patents and monitoring, etc.) but also innovation expenses incurred by SMEs, at a rate of 20% (up to €400,000 a year).

All expenditures contracted out to public-sector bodies is double-counted, thereby effectively doubling the research tax credit (up to €12 million). Salaries paid to junior final-year doctoral and post-doctoral research personnel on their first permanent contract are quadruple-counted for two years.

### **Small is beautiful**

SMEs, Innovative start-ups (jeunes entreprises innovantes – JEIs), startups and ailing companies may ask for an immediate research tax credit rebate.

BPI France, France's public investment bank, offers a pre-financing solution covering 80% of expected eligible expenses (for companies based in France for more than three years, having previously received the research tax credit).

Total tax relief for research tax credit recipients amounted to more than €6 billion in 2013.

Eligible companies can combine the benefits of tax credits with those of the "Innovative Start-ups" scheme (JEI), which provides exemptions for corporate tax, local taxes and social security contributions over an eight-year period, as well as all other tax benefits (e.g. the CICE tax credit).

Important point, all the French companies must produce and store the Accounting Entries File (FEC) gathering all transactions booked for a given fiscal year. This document must be provided to the tax auditor in case of a tax audit.

## **2.2 VAT**

### **What are VAT rules in France?**

When companies are formed, the French tax authorities assign them an EU VAT number. Companies merely collect the VAT on their own sales and services and deduct the amount of VAT that they have paid on purchases of goods and services.

This is reported in a monthly, quarterly or annual statement depending on both sales and the amount of VAT paid during the previous year.

Depending on the size of the company, this declaration is sent to either the corporate tax office (Service des impôts des entreprises — SIE) or the large business tax office (Direction des grandes entreprises — DGE) before the deadline set by the French tax authorities.

If companies have paid more VAT than they have collected on sales and services, the VAT credit will be refunded to them on request.

Exports (outside the EU) and EU sales of goods and services are fully exempt from VAT.

France's standard VAT rate on sales of goods and services is 20%, but there are several reduced rates. There is a 10% tax rate on restaurants, hotels, public transport, newspapers and magazines and certain leisure activities. The rate on food, books (including those downloaded online), construction and renovation of social housing and certain agricultural products is 5.5%, while the rate on medications is either 5.5% or 2.1%.

New regulation provided by 2nd Amended Finance Law for year 2014 set a reverse charge mechanism for importation of goods under certain condition avoiding cash advances when clearing customs.

For all companies operating in France, on line filing is mandatory and must be processed out of French Tax Authorities dedicated website [www.impôts.gouv.fr](http://www.impôts.gouv.fr) by creating a corporate subscriber account.

Along with VAT requirements, EU sales and purchases of both goods and services must be reported filing Intrastat return on a monthly basis for statistical purposes only.

The form provides information about product categories, countries of origin and destination, values and weights. These returns must be filed electronically out of the French Customs dedicated website [www.prodouane.gouv.fr](http://www.prodouane.gouv.fr)



## 2.3 OTHER TAXES

### What else do I need to know to set a valuable tax planning?

There are only a few other taxes that an investor should factor-in when intending to set-up a new business in France. Forewarned is forearmed... This is a glimpse of most common taxes applying to businesses in France:

Taxes	French Name	Base	Rate	Deadline
Corporate Social Solidarity Contribution	C3S	VAT reported turnover exceeding € 19 M	0,16%	May 15th
Contribution on business value added instalment	Acompte CVAE	Former year Added Value as computed for CVAE purposes	Max 1,5%	June 15th and September 15th
Contribution on business value added balance	Solde CVAE	Current year Added Value as computed for CVAE purposes	Max 1,5%	May 3rd
Annual statement on commisions and fees paid	Déclaration DAS 2	Not applicable	Not applicable	1st of May
Annual statement on interests paid	Déclaration IFU	Not applicable	Not applicable	February 15th
Apprenticeship tax	Taxe d'apprentissage (TA)	Gross salaries	0,80%	February 28th
Employers'contributions to continuous vocational training	Formation professionnelle continue (FPC)	Gross salaries	0,55% under 9 staff (1% for companies with more employees)	February 28th
Employers'contributions to construction	Participation de l'employeur à l'effort construction (PEEC)	Gross salaries	0,45% (exemption for companies with less than 20 employees)	April 30th
Disabled levy	Taxe handicapés	Headcount	6% * 400 times hourly minimum	February 28th
Business premises contribution Instalment/ balance	Acompte CFE/Solde CFE	Business premises rental value	various local rate within each region	On June 15th/ Dec 15th

## 2.4 PAYROLL TAXES AND GOVERNMENT SUBSIDIES

French's social security system provides insurance against the costs of sickness, retirement, unemployment and training. Workers contribute through payroll taxes paid by employers on the behalf of staff employed.

The collecting agencies are URSSAF (social security covering sickness, maternity, retirement, and unemployment), private retirement funds, private provident institutions, health mutuals.

Payroll taxes must be reported and paid either monthly or quarterly depending on the headcount (respectively above 10 or below that threshold).

From 2017, social security contributions must be reported on a monthly basis using the DSN, a new project aiming at reducing administrative workload for companies enabling them to perform a single monthly and electronic data transmission instead of several ones to different collecting agencies.

France's economic policy strategy over the last few years has been to support competitiveness and job creation in French businesses. In that respect, many reforms have been launched aiming at reducing staff costs especially for low earners, thereby helping companies to compete internationally.

The two main measures have involved:

- across-the-board reductions (known as "réduction Fillon") in employer social security contributions first introduced in 1993 and increased a number of times since, up until 2014;
- the introduction in 2013 of the competitiveness and employment tax credit (as set out § 2.1).

### **Low income staff almost payroll tax exempted**

Across-the-board reductions in employer contributions for salaries up to 1.6 times the statutory national minimum wage (SMIC) have greatly reduced labor costs in all business sectors throughout France.

Since January 1, 2015 no employer social contributions are payable to URSSAF on behalf of employees earning the statutory national minimum wage; the remaining

(non-URSSAF) employer contributions due amount to around 11% to 13% depending on the status of the employee.

On higher wages, total employer social security contributions amount around 42% of gross pay while the employees' share, regardless of their salary level, amounts to around 22%.

## 2.5 INTERNATIONAL TAXATION HIGHLIGHTS

### 2.5.1. Transfer pricing within international groups

In 2010, the French government introduced Transfer Pricing policy documentation requirements which are now contained in the French Tax Code and relate to prior issued Administrative regulations on that matter.

The French government is striving to implement regulations in line with the OECD's BEPS initiative and is often ahead of some of the changes promoted by the Organization.

In this respect transparency has been strengthened by the obligation to include within Transfer Pricing documentation reports, ruling awarded to related parties by foreign tax authorities even without link to Transfer Pricing.

In addition, penalties were strengthened as well in case of an incomplete Transfer Pricing policy documentation reports. Latest shift occurred within Finance Act for 2013 and its brand new compulsory annual filing of group Transfer Pricing data through an abridged Transfer Pricing form (from 2257 SD).

As a business friendly place, France adapts constantly to new paradigm set by globalisation in order to keep pace with modern way worldwide group organize their activities.

### 2.5.2. Headquarter tax regime

Most of global groups in sectors such as internet-based technologies, big data or e-business are structured with regional headquarters.

In this case, a French subsidiary is owned by a foreign parent company based in a country with an optimized tax system and its revenue is based on the cost plus method as defined by OECD reports and guidelines on Transfer Pricing.

Such entity must be set up only for the provision of specialized services.

Headquarters may provide management, administration, coordination and auditing services, to one or more foreign companies part of the same group.

The French entity must file an application with the French DGE (Large Business Tax Office) displaying information such as : detailed group presentation, nature of the activity, major consolidated financial data, list of the companies involved and using services provided by the French entity, type of services rendered, French entity's operating costs, mark-up rate.

The French Tax Authorities shall reply within the three months of the application.

This agreement eliminates the risk of a change in the mark-up rate applied by the company during a subsequent tax audit and then prevent from future tax liabilities.

Tax is assessed at the standard rate on earnings that is derived by applying the agreed cost-plus formula to expenditure incurred by headquarters. Regular method of taxable income computation are not applicable and items such as provisions cannot be factor-in within costs basis.

The most commonly used mark-up rates range from 6% to 10% depending on criteria such as level of risk assumed, staff profile or nature of rendered services. Services eligible for HQ tax regime consist of provision of services corresponding to management, coordination or control functions in the following areas:

- administrative services and computer services relating to the internal management of the group;
- services related strategy (i.e drafting group policy in different areas);
- human resources services such as personnel management, training, payroll management;
- communication or public relations services (including advertising) and services in charge of the provision and collection of information;

Agreements made under HQ tax regime are concluded for a period of three to five years.

### 2.5.3. Withholding tax basics

Interests and royalties paid to an affiliated company will not give rise to withholding tax under certain conditions:

- amounts invoiced must be justified and in line with the prices for arm's-length transactions between independent companies and the French Tax Authorities might demand evidence that TP are in line with actual market prices
- a tax treaty involving France and the country of the parent company provides such exemptions

- these transactions can be placed under EU's interests and royalties Directive providing for exemptions whenever between companies in different Member States

Otherwise, for interest and royalties paid to foreign countries, tax treaties set out rates that range from 0 to 15%.

Dividends distributed to a European parent company are exempted from the withholding tax if it is located in the European Union and this company holds a stake of at least 10% in its French distributing subsidiary.

The withholding tax rate is 21% for dividends collected by an individual residing in an EU country, Iceland or Norway.

For dividends paid out to a non-EU company, withholding tax rates rely on the tax treaties France has signed up with major Countries with a standard rate of 5% for companies (subject to a minimum stake in the subsidiary created in France) or 15% for individuals. Besides that several tax treaties signed by France (for instance with the US) provide for no withholding tax to be applied when dividends are paid (subject to specific conditions of stake ownership).

If no tax treaty exists, the provisions of French Tax Code apply: 30% withholding tax rate. A 75% withholding tax applies to the distribution of investment income (primarily dividends and interest) from a French to a company located in tax havens labelled as "Non-Cooperative States or Territories".

France is a stunning place to invest and expand. Out of the richest country in the world it offers many opportunities for foreign groups and has always adapt to their needs in order to keep up to pace as one of the most business friendly place in Europe.

France is an innovative country with a global outlook, fitted with a labor market adapting to globalization and a modern tax system encouraging start-up, ventures and foreign investments.

Making it the natural choice for taking your ideas global and then smart-up your business when investing in France.

Mazars team dedicated to foreign investors seeking to extend their business into French market has been working together for more than 10 years and has developed several tailor feet tools aiming to make investors life easy and smart.

Aiming to share added value insights and high level professional network, we will be more than happy to stand by your side.

# CONTACTS

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