

TAX ALERT

July 11, 2017

News concerning companies of the real estate industry

**For further information
regarding this alert,
please contact:**

Sybille Salmon-Legagneur
E: ssalmon-legagneur@sl-avocats.fr

Marie Dessimond
E: mdessimond@sl-avocats.fr

(1) Signature of the convention to implement the BEPS action plan (signed between 68 Countries)¹, including France which has notably agreed without reserve:

- The clause of prevention of treaty abuse which excludes a benefit under a tax convention if obtaining this benefit was one of the principal purposes of any arrangement or transaction and
- The clause regarding the taxation of capital gains on shares/interests in entities deriving their value principally from real property with an appreciation over the 365 days before sale.

The entry into force of this convention shall entail the review of the investment structures and the reconsidering of the use of holdings having limited economic substance.

(2) New defavorable decision² within "Quemener" case law rejecting the "double taxation" of the absorbing company (condition introduced by the *Lupa* decision of 2016³) by mentioning that the taxation of the shareholder on the reevaluation tax profit does not constitute in itself a double taxation. The Court considers that the double taxation is not characterized in the case at hand stating that the purchase price of shares already included the reevaluation profit.

This decision is contradictory with the *Quemener* case law that aims to avoid double taxation resulting from (i) indirect taxation of the shareholder on a profit realized by a transparent subs and (ii) direct taxation of the shareholder on the gain on sale/cancellation of the shares including the same profit (in the net equity of the company retained for the computation of the gain). The Court focuses on the shares acquisition price, shares received thanks to a share contribution made by a Luxembourg sister company (similar hypothesis than in *Lupa* case law). Thus opportunity of a restructuring pursuant to *Quemener* case law shall be determined in light of these Court decisions, with particular attention when the shares are received pursuant to a group restructuring, *a fortiori* from a Luxembourg company.

Salmon-Legagneur & Associés
Avocats à la Cour
A.A.R.P.I.
34 avenue George V
75008 Paris
Tel. : +33(0)1 56 89 20 20
www.Sl-avocats.fr

¹ Multilateral convention to implement tax treaty related measures to prevent Base Erosion and Profit Shifting signed on June 7, 2017 – Clauses 7 & 9

² CAA Paris 17 mai 2017, n° 16 PA01892,

³ CE 6-7-2016 n° 377904