

# SALMON-LEGAGNEUR & ASSOCIÉS

AVOCATS À LA COUR

Marie Dessimond  
Nathalie Pagnon  
Sybille Salmon-Legagneur

---

## TAX ALERT September 29, 2015

### The French Administrative Supreme Court confirms the application of the *Quemener* case law<sup>1</sup> to early winding-up operations (dissolutions without liquidation)<sup>2</sup>:

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

Sybille Salmon-Legagneur  
E: [ssalmon-legagneur@sl-avocats.fr](mailto:ssalmon-legagneur@sl-avocats.fr)

Marie Dessimond  
E: [mdessimond@sl-avocats.fr](mailto:mdessimond@sl-avocats.fr)

The decision (cancelling the judgment of appeal<sup>3</sup>) concerns the case of purchase by a French corporation (French SA) of 100% of the shares in a French partnership (French SNC), tenant of a financial lease agreement on a real estate, followed by the exercise of the purchase option, by the reevaluation of the assets, and by the dissolution without liquidation of the French SNC into the French SA. Since the French SNC was tax transparent, the French SA had computed the capital gain/loss on cancellation of shares (boni/mali) by including the capital gain on reevaluation realized by the French SNC into the tax value of its shares. This adjustment had been rejected by the judges of the court of appeal who considered that the French SA was not in a double-taxation position, as referred to by the *Quemener* case law.

**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](http://www.Sl-avocats.fr)

**This decision confirms the technical position already stated in a ruling<sup>4</sup>, and comforts the tax treatment applied to the restructuring operations performed after purchase of shares in a real estate tax transparent company, allowing avoiding application of a *Discount/DTL* in the negotiation of the shares price for tax transparent companies.**

**Similar decision should be rendered soon further to the appeal in cassation of a judgment<sup>5</sup> which concerned a similar case but with Luxembourg companies involved in the restructuring.**

---

<sup>1</sup> CE 16 février 2000, n° 133296, 8e et 3e s.-s., SA Ets Quemener

<sup>2</sup> CE 27 juillet 2015 n° 362025

<sup>3</sup> Cour d'appel de Marseille N° 09MA00508 dated June 19 2012

<sup>4</sup> Ruling dated December 11, 2007 n° 2007/54 (FE) ; BOI-BIC-PVMV-40-30-20 n° 90, April 28, 2014

<sup>5</sup> CAA Paris February 18, 2014 n° 12PA03962, 2e ch., min. c/ Sté Lupa Patrimoine France