

TAX ALERT
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**Tax news which may concern real estate investments in France
by companies:**

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OCDE Project of a solution against base erosion and profit shifting¹:

(i) First Pillar: allocation to the State where goods and services are used or consumed (excluding extractives and regulated financial services) of a portion of the consolidated global profit and,
(ii) Second Pillar: creation of Global anti-Base Erosion Rules (GloBE) rules via a **top-up tax at rate of at least 15%** on low taxed income and/or payments.

Considering the scope (turnover above 20 billion euros – Pillar One, or turnover above 750 million euros – Pillar Two), this project should not in practice concerns the real estate investors², whom taxation rates will remain subject to the location of their transactions/operations.

Reminder that the results of a tax transparent company are taxable in the hands of the partners present at the end of the fiscal year³:

The French administrative Supreme Court confirms that in absence of agreement between the seller and the purchaser of shares, the above rule applies, despite specific circumstances (i.e. important tax reassessment by the Authorities of the results recorded in the year of the sale of the shares, and its retroactive cancellation for fraud).

Reminding this strict rule reaffirms the necessity to provide, in the contractual documentation for a transaction on shares of a tax transparent company (“SPA” and Reps & warranties) provision regarding the sharing /burden of the corporate income tax of the year of sale.

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Change in the definition of a beneficial owner⁴:

For the exemption of withholding tax on dividends, a (Swiss) company is not the beneficial owner considering absence of resources (human, material and immaterial) for operating activity of administration and management, and without powers on the dividends, although formally being their owner, the corresponding funds having been put at disposal of the sole Portuguese shareholder through advances.

Position of the Supreme Court would be useful to confirm this more economic than legal approach of the beneficial owner notion.

¹ Statement dated July 1, 2021 of the OECD/G20 Inclusive Framework for reform of international tax rules agreed by 134 member jurisdictions/States

² Pension funds or investment funds being in any case not subject to the GloBE rules – Pillar Two.

³ Supreme Court dated July 20, n° 434029

⁴ Cour of Appeal of VERSAILLES, 3ème chambre, May 27, 2021, 19VE00090