Recent tax reforms in France

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Agenda

1. A difficult budget situation
2. Recent tax reforms in France
3. Tax competition : what tax incentives are available in France ?
4. Trends in tax audits
5. Question & Answers

01

A difficult budget situation

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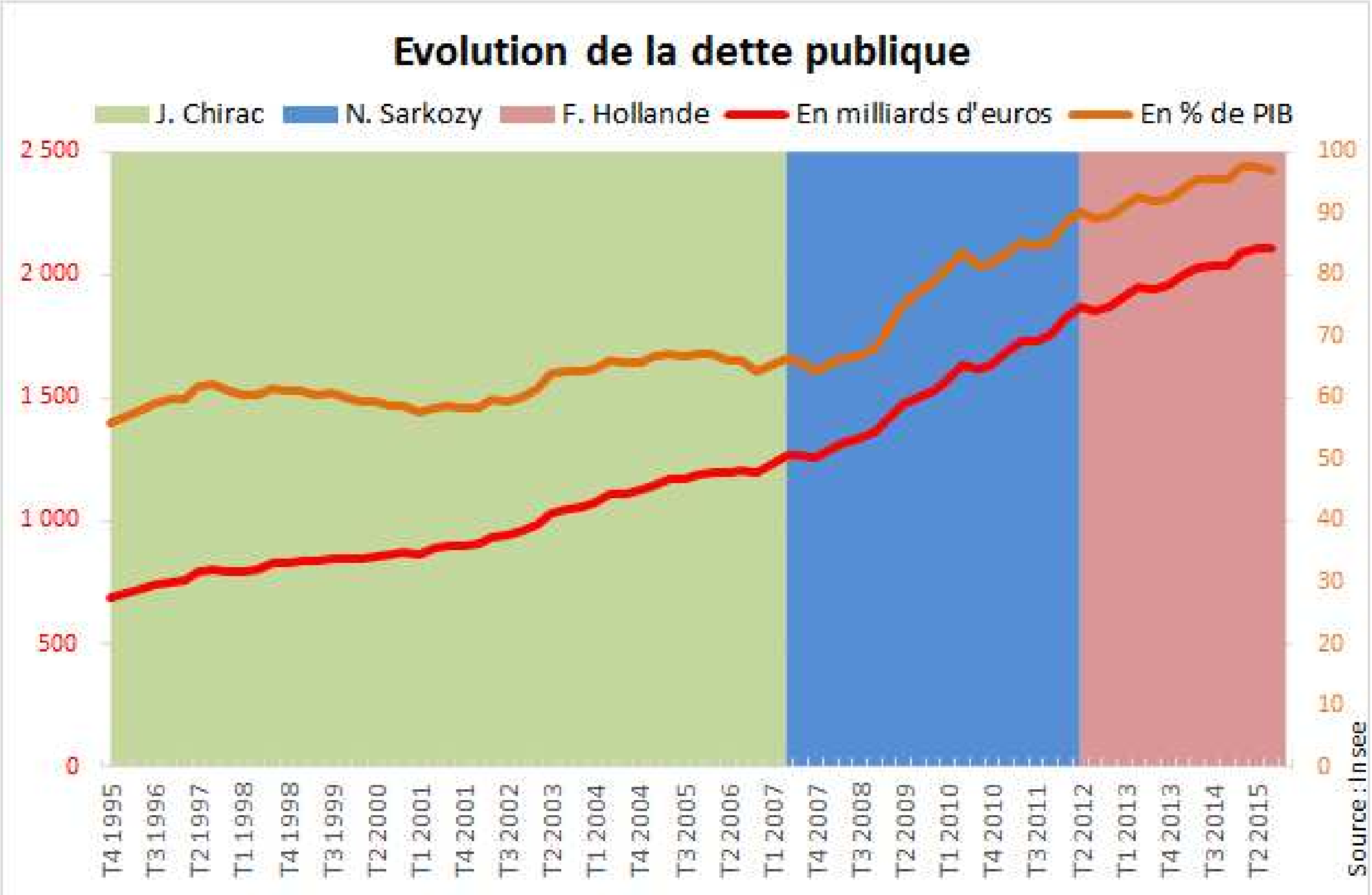
Public debt now amounts to 96,9% of GDP

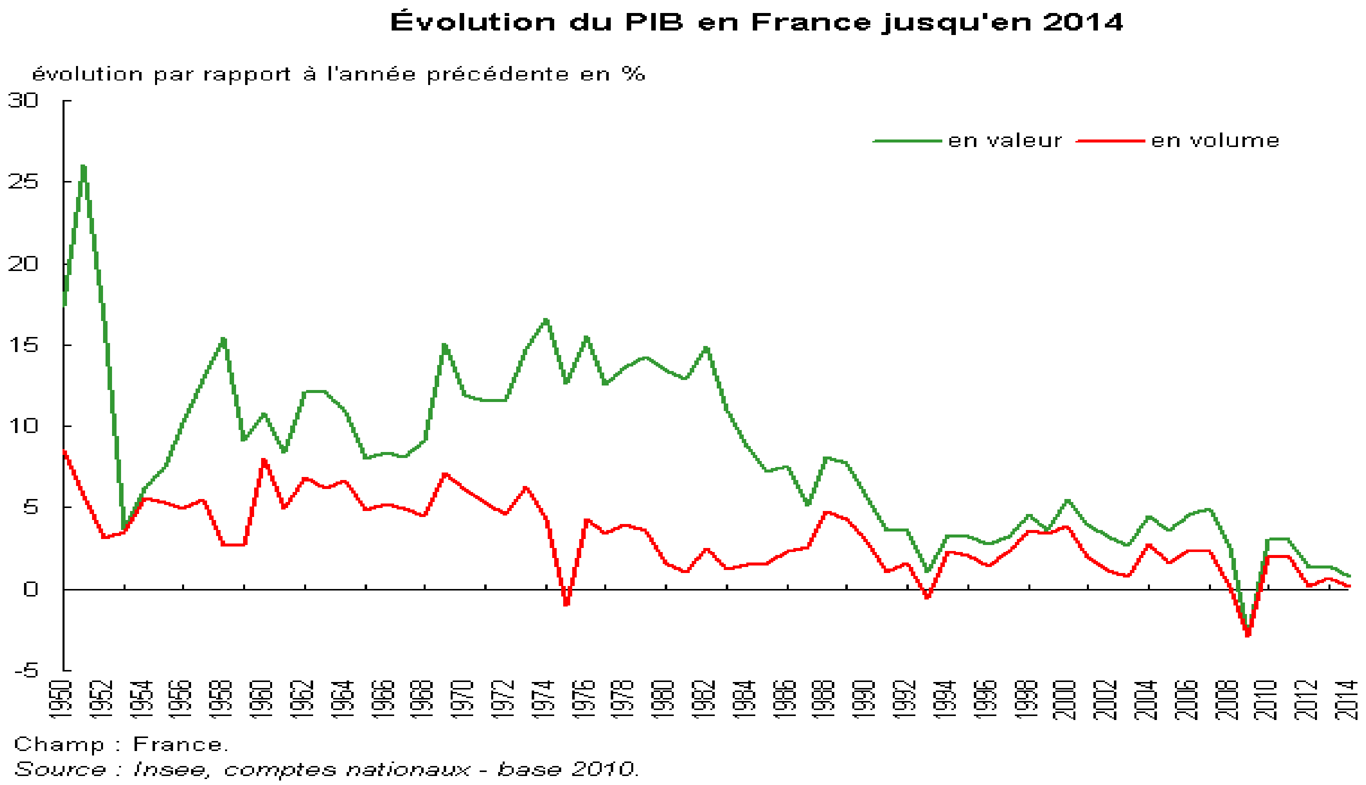
01

Public debt of 2,103 billion € (96,9% of the GDP)



Uncertain economic outlook 01

- **Debt increase and slower of GDP growth**



Lower interest rates : a temporary relief?

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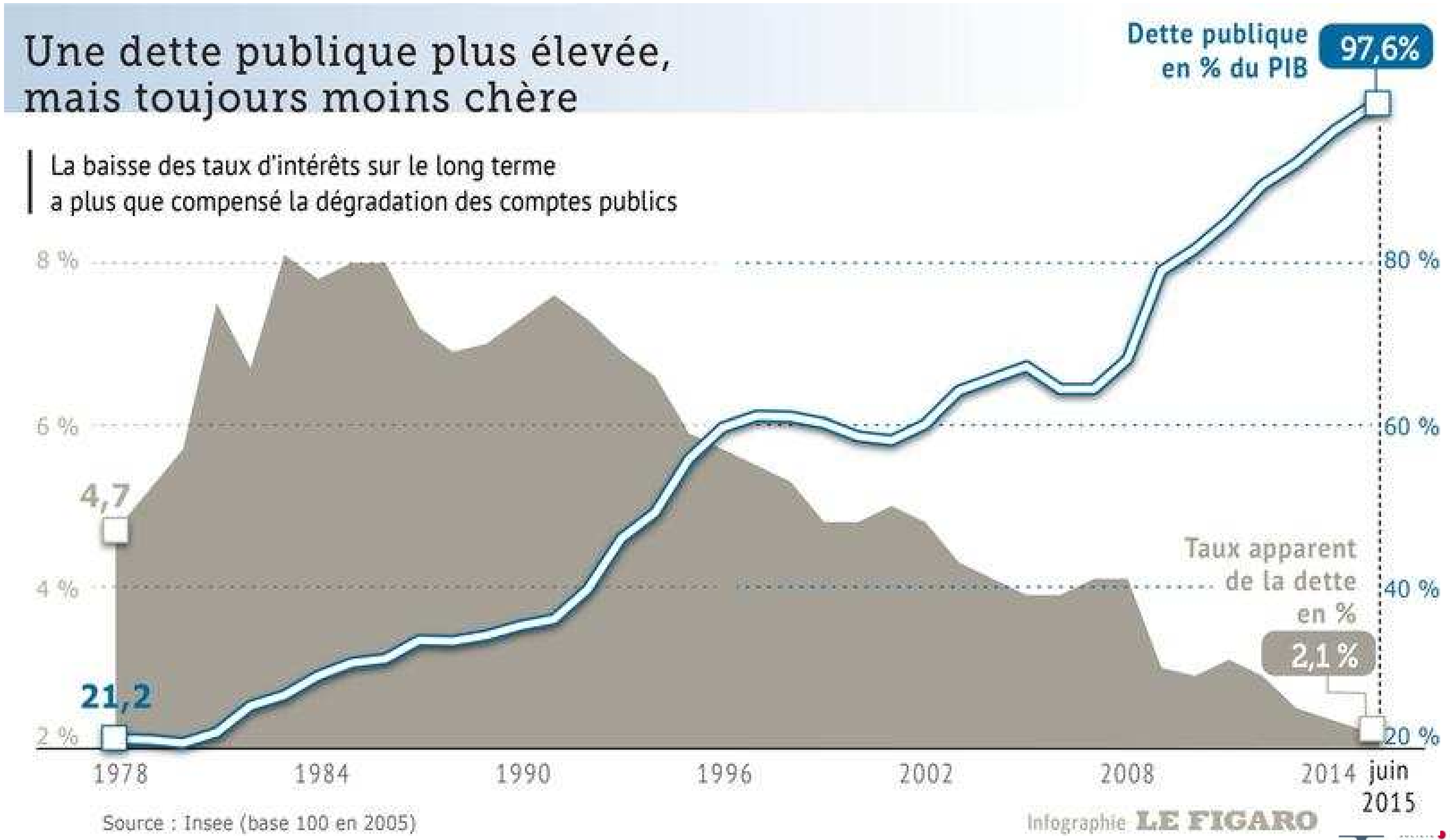
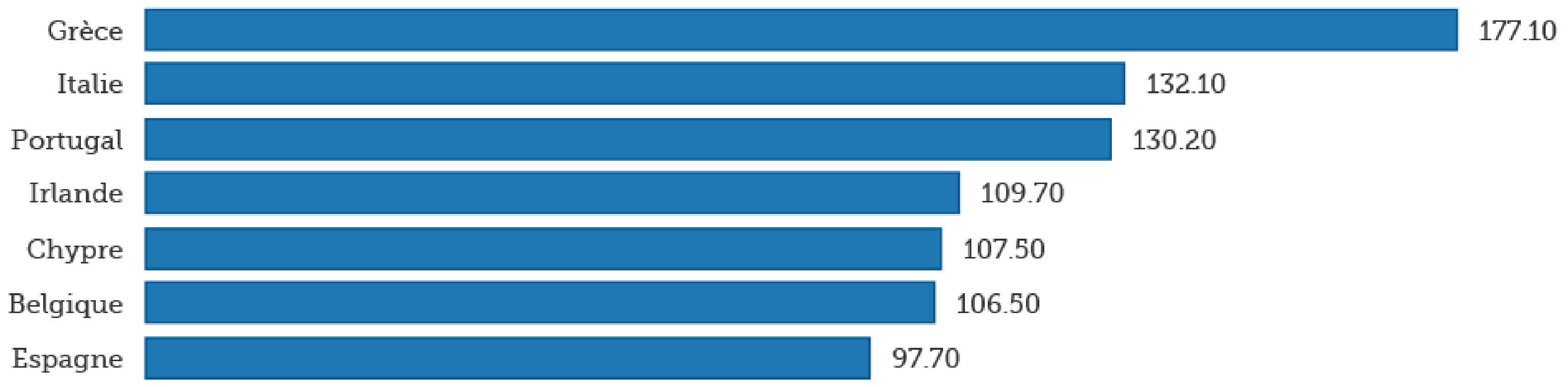


Comparison with other EU States 01

- **France is not the "last in class" :**

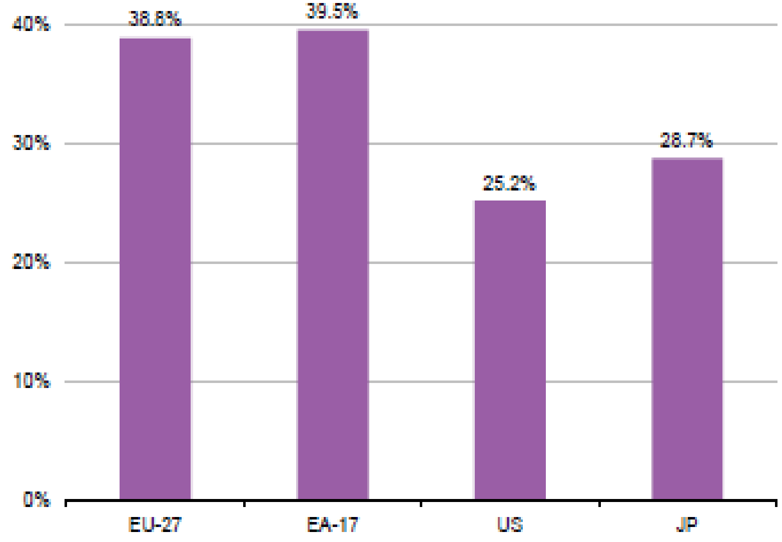


- **However, growing concern over the fact that 65% of this public debt is held by non-residents…who could request higher interest rates in the future**

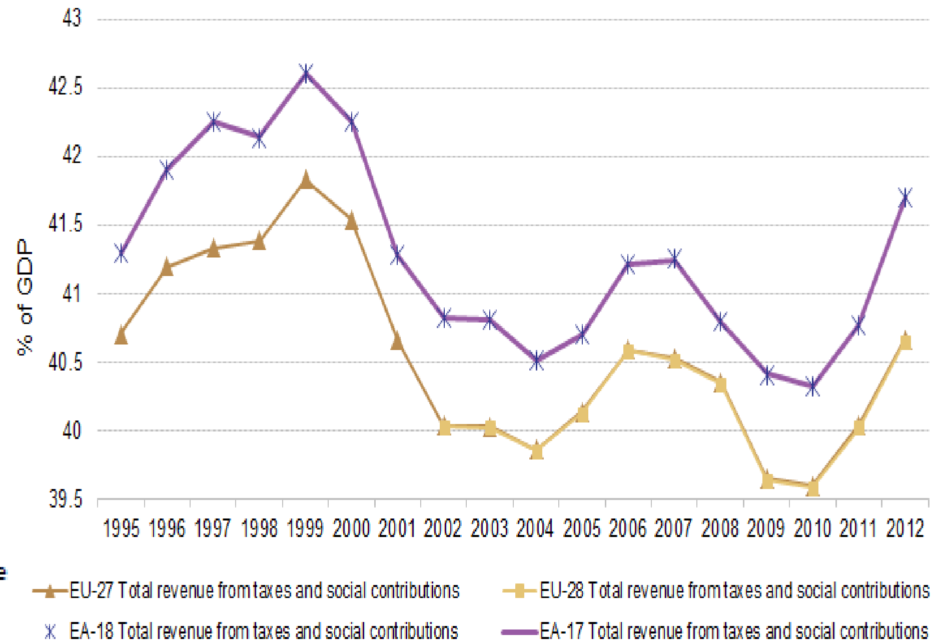
A difficult budget situation 01

- **Record rates of tax and social security contributions**

Graph 1: Overall tax-to-GDP ratio (incl. SSC) in the EU, US and Japan in 2011



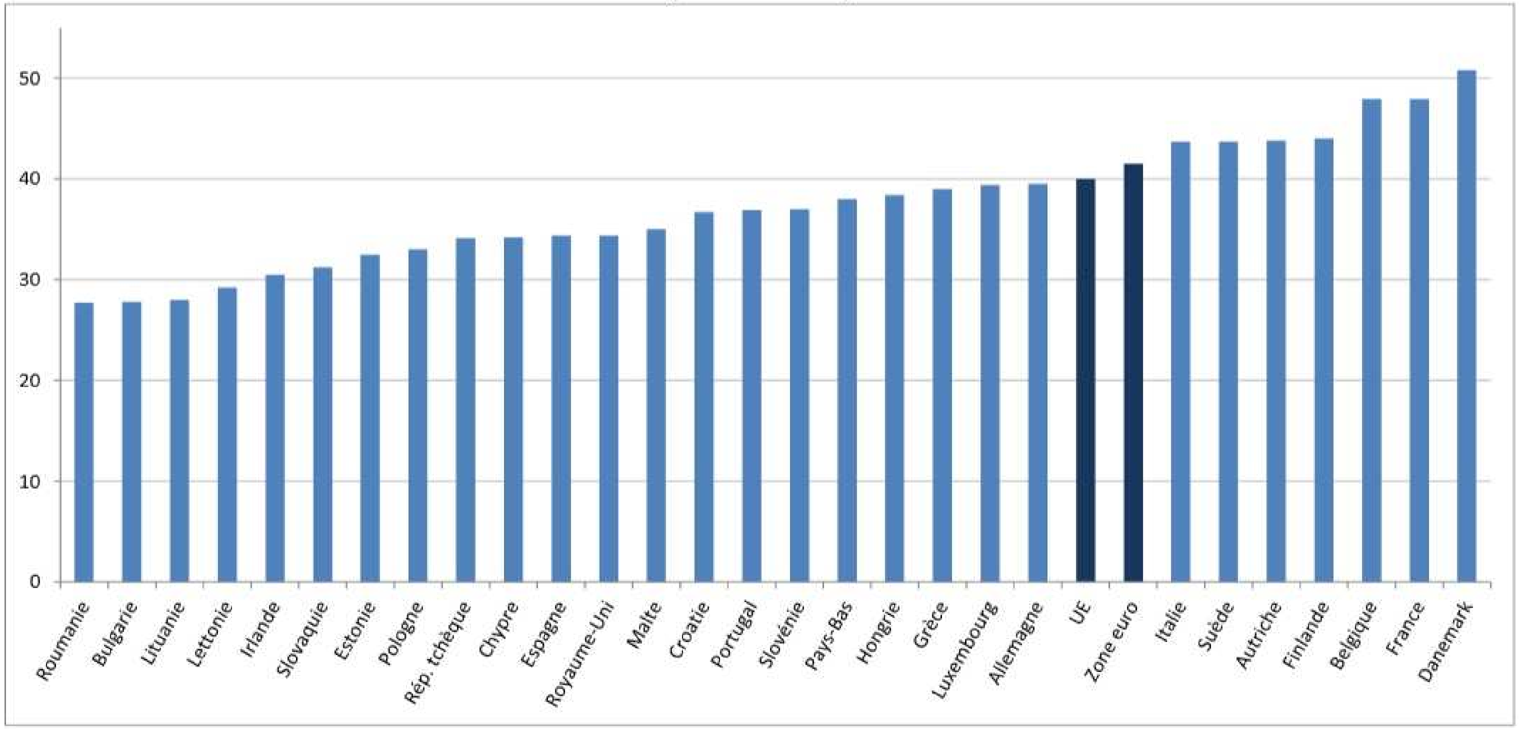
Source: Commission Services and Eurostat (ESA95) (gov_a_tax_ag) for the EU, OECD (SNA2008) for the US and Japan



Public debt and social welfare 01

• **Record rates of tax and social security contributions…**

Recettes totales issues des impôts et cotisations sociales dans les États membres de l'UE, 2014
(en % du PIB)



Public debt and social welfare

01

…which essentially weigh on the « labour force »

Répartition des prélèvements obligatoires par type de prélèvement en 2011

En %	Impôts directs	Impôts indirects	Cotisations sociales
État	39,3 %	57,9 %	2,8 %
Organismes divers d'administrations centrales	49,5 %	50,5 %	0,0 %
Administrations de sécurité sociale	25,5 %	6,2 %	68,3 %
Administrations publiques locales	68,1 %	31,9 %	0,0 %
Total des prélèvements obligatoires	**35,6 %**	**26,2 %**	**38,3 %**

Source : Insee, comptes nationaux.

- **…and may undermine efforts to boost employment.**

Public debt and social welfare 01

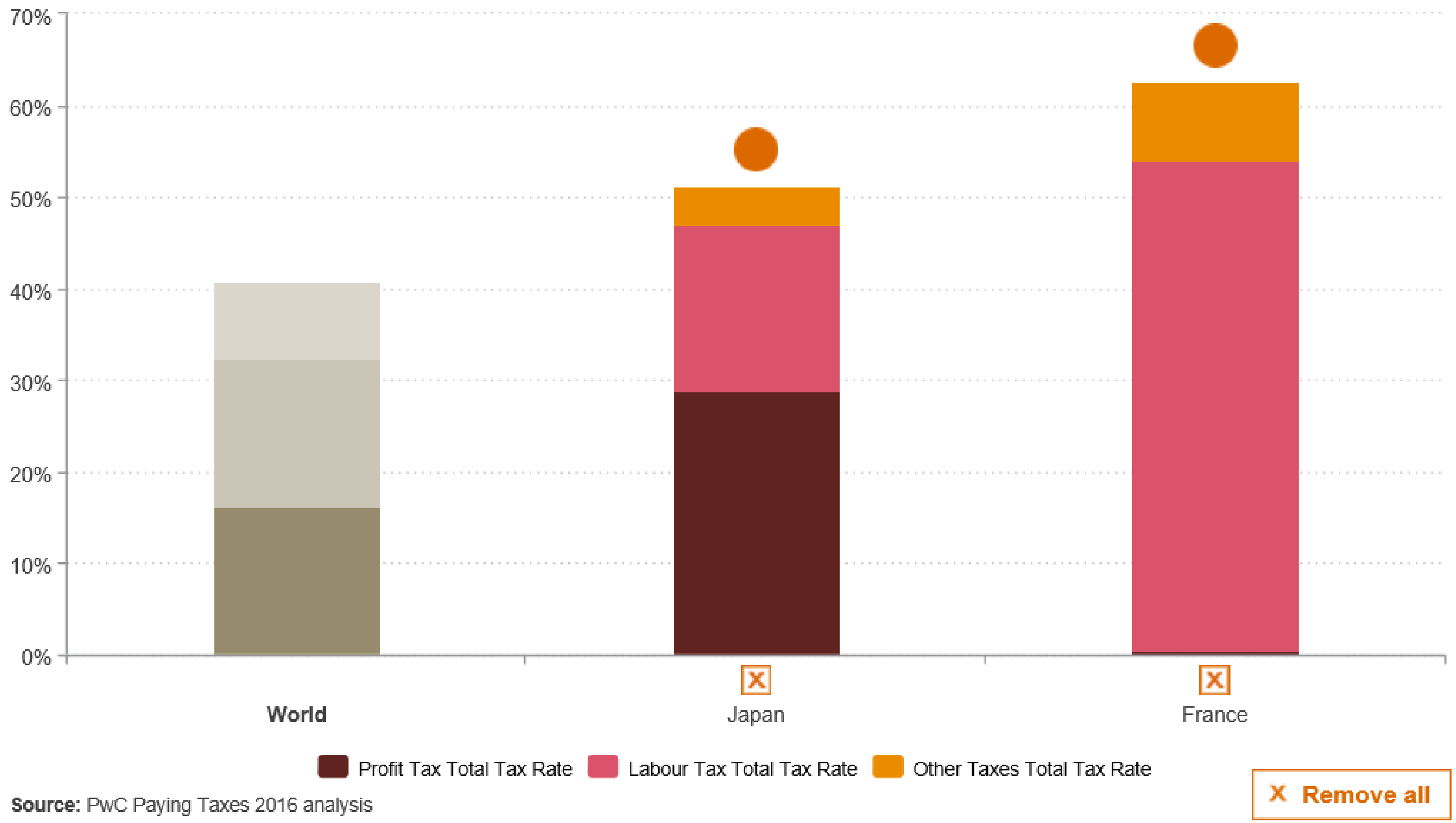
Taxes in France mainly finance social welfare

Beneficiaries of tax and social security contributions (in 2013)

	In €bn	% of total	% of GDP
Central Government	297,5	31,5	14,1
Various Public Bodies	14,3	1,5	0,6
Local authorities	124,5	13,2	5,9
Social Security	507,2	53,6	24
European Union	2,1	0,2	0,1
Total	945,6	100,0	44,7

Source : Insee

Public debt and social welfare 01



Source: PwC Paying Taxes 2016 analysis

Public debt and social welfare 01

- **Social welfare being financed increasingly through higher taxes on capital…**

Tableau 7

Répartition des recettes des administrations de sécurité sociale par type de prélèvement depuis 1980

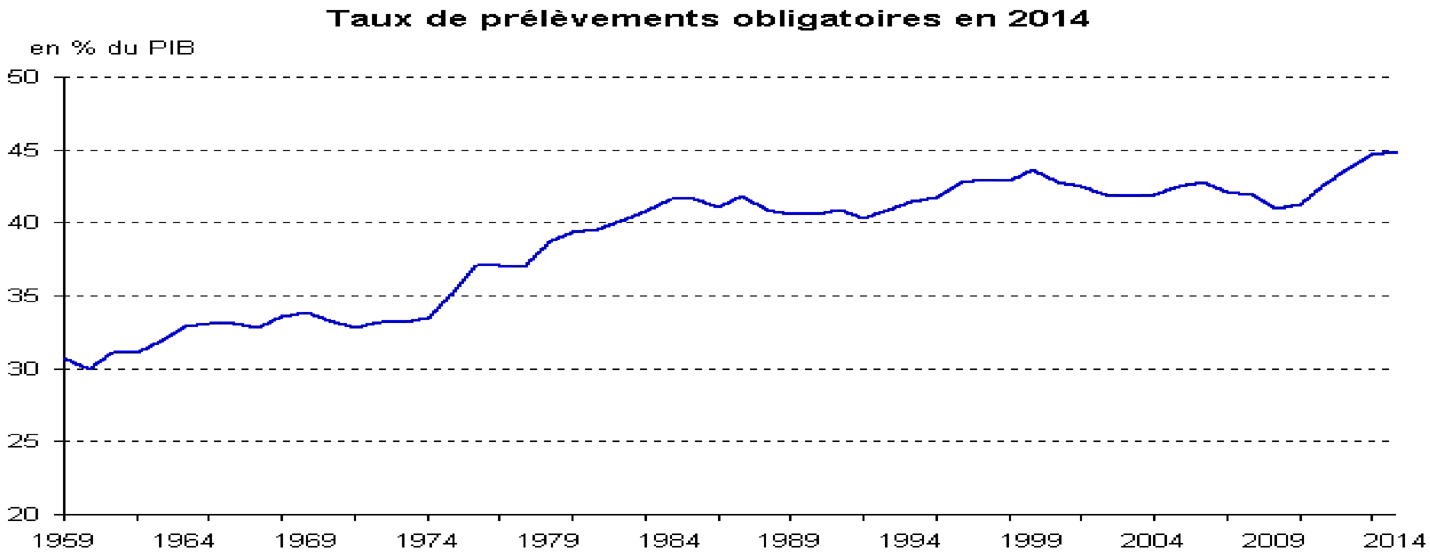
En % des prélèvements	1980	1985	1990	1995	2000	2005	2010
Cotisations sociales	97,9	97,1	96,4	89,9	72,5	74,3	69,6
Impôts	2,1	2,9	3,6	10,1	27,5	25,7	30,4
Dont CSG	*0*	*0*	*0*	*5,9*	*18,8*	*19,5*	*18,5*
Dont autres impôts	*2,1*	*2,9*	*3,6*	*4,2*	*8,7*	*6,2*	*11,9*
TOTAL	**100**	**100**	**100**	**100**	**100**	**100**	**100**

Source : Insee, base 2005.

- **…which is heavily criticized (Coe-Rexecode Report – Feb. 2016)**

Willingness to lower labor costs to boost competitivity of french workforce 01

- **Raise of tax and social security levies : is sky the limit ?**



Note : hors cotisations sociales imputées et crédits d'impôts.
Champ : France.
Source : Insee, comptes nationaux - base 2010

- **Willingness to boost competitivity has led the Government to reduce levies on salaries to increase competitivity since 2013 (Fillon rebate, Employment Competitiveness Tax Credit and Responsibility Pact)**

02

Recent tax reforms in France

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French corporation income tax system

02

CIT rate	Standard rate : $33^{1/3}$ % plus surtaxes Temporary surcharge of 10,7% for companies which turnover exceeds €250 million (Max. effective rate : 38%) *Note: reduced rate of 15% on eligible R&D income*
Tax losses	Carry back : restricted to one year, capped at €1 million Carry forward : capped to 50% of the FY's taxable income (after the first €1 million) No time limit (but change of activity rule)
Tax credits and deductions	R&D (***very attractive*** - + New Competitivity tax credit on low salaries ("**CICE**")
Participation exemption regimes	95% for dividends – 88% for (*gross*) capital gains
Special CIT regimes	Tax consolidation – tax neutral reorganizations (rollover of tax basis - transfer of losses possible upon ruling)
Transfer pricing	"Exit tax" theory (loss of business opportunity theory) – BEPS legislation
Thin cap rules	1,5 to 1 debt-to-equity ratio on related party loans and non related party loans guaranteed by related parties + new limitations (Carrez rule + hybrid mismatches)
CFC rules	Foreign branch or 50% participation in a 'privileged tax regime' country : taxation in France (within the EU, the conditions are more restrictive)
Other anti abuse rules	Abuse of law theory – General "fraud" concept
Withholding taxes	Dividends 30%; Interests 0%; Royalties $33^{1/3}$% 3% tax on distributed profits But **many exemptions** and/or reduced rates are available under tax treaties and/or EU directives and/or domestic law
Other relevant taxes	Transfer tax (goodwill (5%), real estate (circa 5,09%)), business tax and VAT

Reduction of CIT rate

02

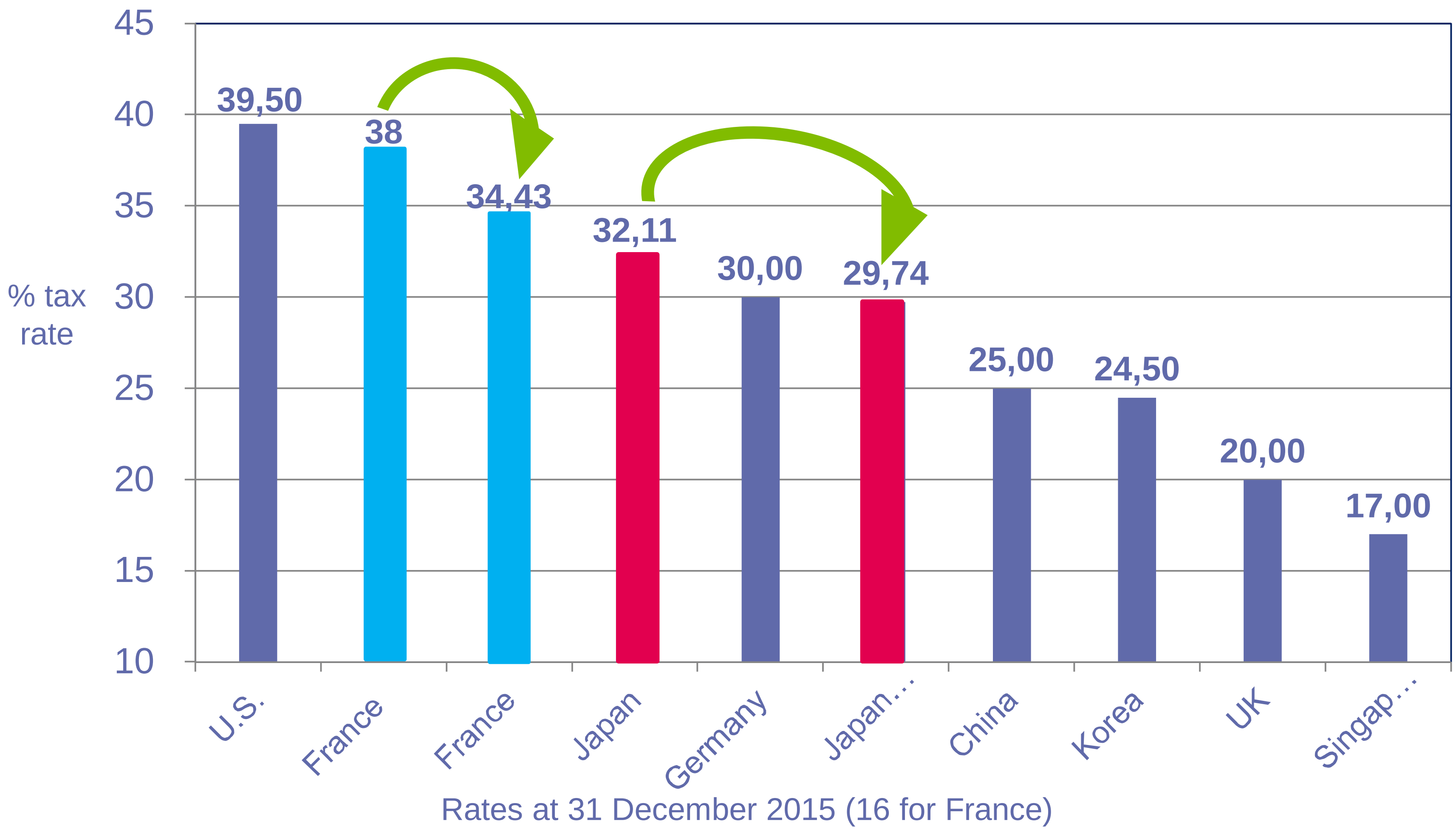
- **Reduction of CIT rate**

  Big companies (>250m€) no longer subject to 10,7% surtax as from Dec 31st 2016

		Fiscal years ended on or before December 30th, 2015				Fiscal years ending after December 31, 2016	
		CA < € 250m		CA > € 250m		Any amount of CA	
		CIT < €763k	CIT > €763k	CIT < €763k	CIT > €763k	CIT < €763k	CIT > €763k
Regular CIT rate (33,1/3 %)	No distribution	33,33%	34,43%	36,90%	38,00%	33,33%	34,43%
	100 % net result distribution	35,33%	36,40%	38,79%	39,86%	35,33%	36,40%
Reduced CIT rate 1 (19%)	No distribution	19,00%	19,63%	21,03%	21,66%	19,00%	19,63%
	100 % net result distribution	21,43%	22,04%	23,40%	24,01%	21,43%	22,04%
Reduced CIT rate 2 (15%)	No distribution	15,00%	15,50%	16,61%	17,10%	15,00%	15,50%
	100 % net result distribution	17,55%	18,03%	19,11%	19,59%	17,55%	18,03%

- **Phasing out of the special social security contribution based on turnover**
- Companies are currently liable for a special social solidarity contribution (CS3) equal to 0.16% of their turnover.
- The government announced in 2015 that it intended to phase out the C3S contribution by introducing a rebate, the amount of which increases annually.
- The rebate, which is EUR 3,250,000 for 2015, has now been increased to EUR 19 million.
- C3S to be abolished in 2017.

Reduction of CIT Rate – International comparaisons



Other recent changes and new trends 02

➢ A series of measures have been enacted or announced

Tense situation / deficit => Enlargement of tax basis

- Restriction on the utilization of **tax losses**
- New rules to restrict interest deduction (Arm's length / thin cap / Charasse rule / Carrez amdement and now **hybrids**)

➢ Trends in tax audits

Full transparency expected

Focus on transfer pricing still high (new TP documentation requirements)

Computerized accounting (SAF-T requirements as from January 1st 2014)

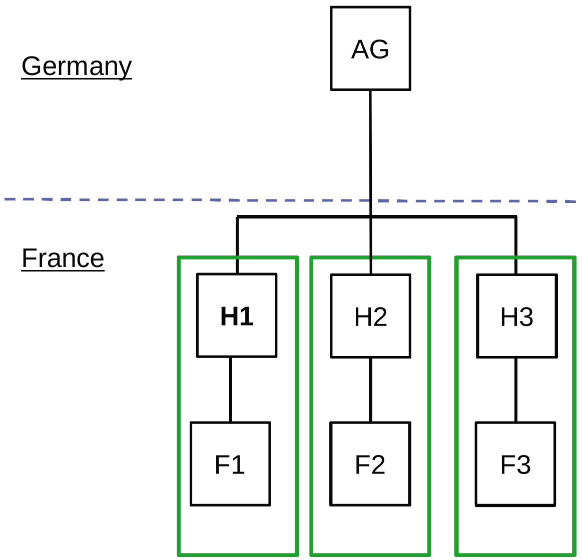
More aggressive tax audits – BEPS now *really* on the agenda

Main targets :

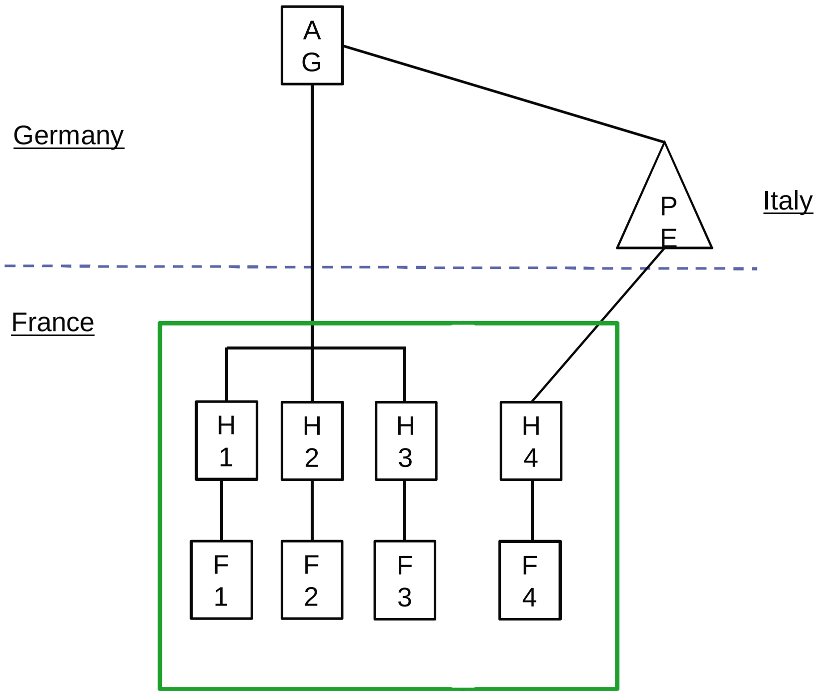
- large corporations with aggressive tax policies
- Financial expenses (as a result of recent BEPs initiative).

Tax consolidation : new opportunities for groups 02

Vertical consolidation



Horizontal consolidation



Horizontal consolidation: Exemple with EU parent

02

Mother company subject to CIT in:

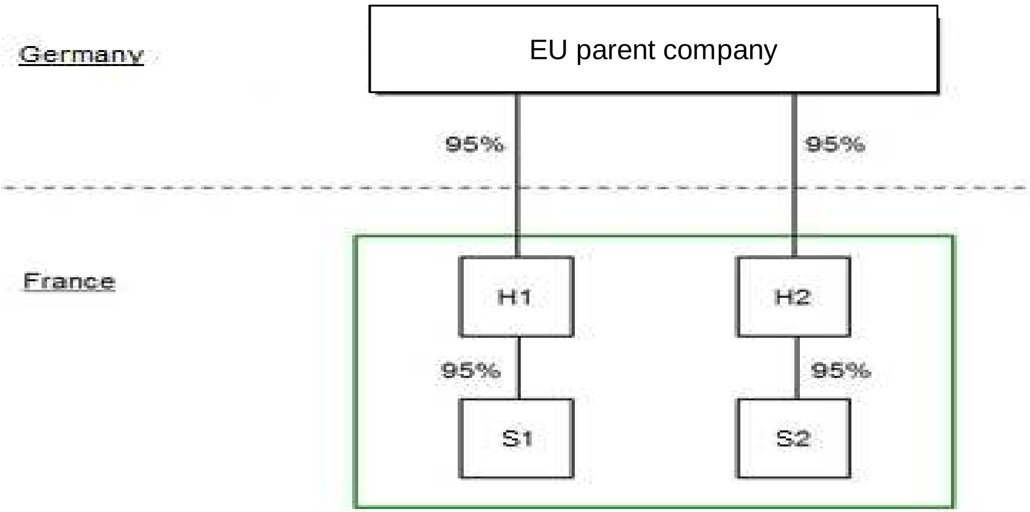
- a member State of the EU; or
- a member of the European Economic Area (EEA), having signed an Administrative Assistance Convention with France to combat tax fraud and evasion (i.e. Norway, Island)

Capital can't be held at 95% or more directly or indirectly by:

- a French company subject to French CIT; or
- a non-resident company subject to equivalent CIT in another EU/EEA country

Other conditions:

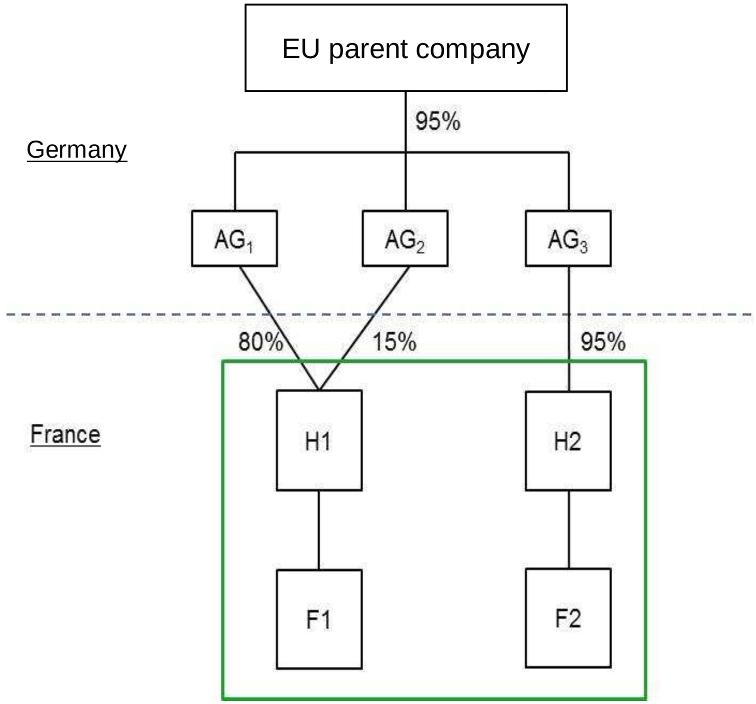
- Corporate tax regime
- Fiscal year alignement
- Agreement



Horizontal consolidation: Exemple with foreign company

02

- **Foreign intermediary company subject to equivalent CIT in:**
  - a member State of the EU; or
  - a member of the European Economic Area (EEA), having signed an Administrative Assistance Convention with France to combat tax fraud and evasion (i.e. Norway, Island)
- **Capital ownership requirement**
  - By the EU non-resident parent company
  - At 95 % at least
  - During the whole fiscal year
- **Creation of the new group**
  - Automatically brings an end to existing groups
  - With a possibility to maintain vertical groups
- **Aptitude to join a horizontal group**
  - Ownership by the same EU parent company
  - Directly or indirectly
  - At 95 % at least
  - During the whole FY

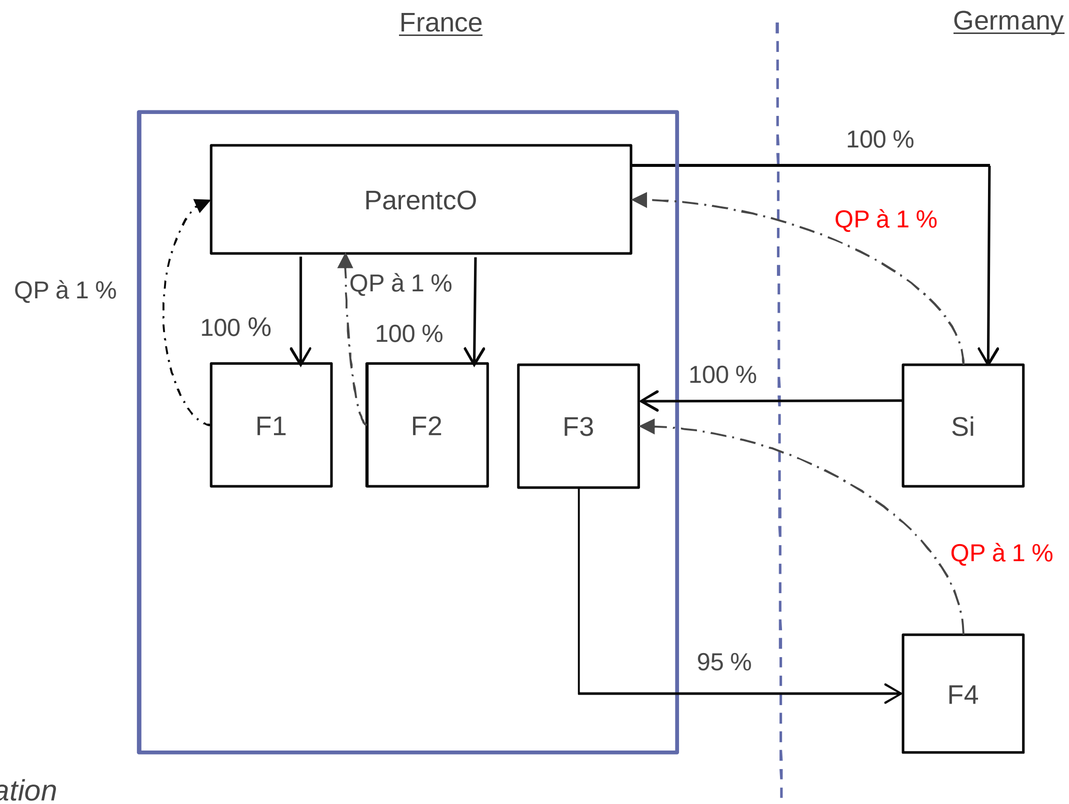


Taxation of dividends : new opportunities

- **Steria case (*CJEU, September 2nd, 2015, C-386/14*) : France tax regime on dividends paid by EU / EEA subs regime not EU compatible**
  - Claims must be lodged before December 31st 2016 to claim back CIT unduly paid in FY14 and FY15 on a fraction of incoming dividends (5%)
- **New regime as from January 1st 2016 :**
  - The full exemption provided for under the existing tax consolidated group regime rules is abolished. Dividends received within a tax group are now entitled to the standard participation exemption under the normal rules, i.e. a fixed percentage of deemed expenses would still be taxable
  - The percentage of deemed taxable expenses is reduced <u>from 5% to 1%</u> if the following conditions are fulfilled
    1. *Distributions among French companies within the same tax consolidation group (i.e. intragroup dividends); or*
    2. *Distributions from EU companies or companies incorporated in the EEA that have concluded a tax treaty with France, if the EU/EEA company would fulfill the conditions for being a member of the French tax group if established in France.*
- **Claims are also possible to challenge the compatibility of the 3% tax on dividends paid by French distributing corporations**

Taxation of dividends 02

Example



Tax consolidation

- **BEPS: the most ambitious project in international tax since the 1930's**
- **The current international tax regime is based upon the work that has been performed by the League of Nation in the 1930's**
- **There has been a growing discontent with the arm's length principle since the 80's**
  - Focus on tax equity rather than pure efficiency
  - Public finance problems in OECD countries
  - Growing importance of non OECD countries (particularly BRICS) who want their share of the tax pie
  - General public awareness on tax optimization
- **BEPS is a project launched by the G20 aiming at coming up to a new international consensus on an international tax framework and avoid a wave of "tax balkanization"**

BEPS Actions : general layout 02

- **Practically BEPS is structured around 15 actions with three main impacts for MNEs**

BEPS Pillar	Actions
Consistency	1. Digital economy 2. Hybrids 3. CFC rules 4. Interest deductions 5. Harmful tax practices
Substance	6. Abuse of tax treaties 7. Permanent establishment 8 – 10 : Transfer Pricing
Transparency	11. Data collection on profit shifting 12. Disclosure of tax planning arrangements 13. TP Documentation 14. Arbitration 15. Multilateral Instrument

3 main impacts

enlarged taxable basis	Increased Compliance	Less security
• Interest • Taxable presence • Profit allocation	• TP documentation • Disclosure of tax information	• GAAR • MAP? • Harmful tax practices? • Abuse of tax treaties?

How will BEPS Actions be taken forward? 02

Minimum standard

Permanent Establishment
Treaty Abuse
Transfer Pricing
Country-by-Country reporting
Dispute resolution
Harmful Tax practices

Best practice

Interest restrictions
Hybrid mismatches
Transfer Pricing documentation
VAT on B2C digital services

Recommendations

CFC rules
Disclosure rules

Multilateral instrument

Impact of BEPS Reports 02

- **French government announced after issuance of the Final OECD Reports on BEPS Actions that it intended to include the minimum standards, best practices and recommendations into its legislation**
- **Some actions have given rise to early unilateral actions already**
  - Action 2 on disallowance of hybrid mismatches
  - Transparency : Country by Country reporting (Action 8-10)
  - Anti treaty shopping rules (Action 6) : restrictions on parent subsidiary exemption
- **Some are broadly aligned so no change is foreseen**
  - Interest deduction limitation rules (action 4)
  - CFC rules especially given lack of consensus among OECD
  - IP box and « nexus approach »

BEPS impact : Action 4 on Financial expense French Specific rules (1/2)

1 **Interest paid to shareholders**: application of a « **tax rate** » : capping of interest rate up to the annual average of average effective tax rates applied by Financial Institutions for variable-rate loans granted to companies, for an initial duration of more than 2 years (art. 39, 1-3 of the FTC).

2 For companies liable to CIT: limitation of **interest paid to related entities** up to the aforementioned rate <u>or to market rate if higher </u>(art. 212, I a of the FTC).

3 **Anti-hybrid legislation :** Interest paid to related entities may be deductible only if the liable company establishes, upon request of the French Tax Administration, that the corresponding income are subject to a **minimal taxation at the level of the lending company** (Art 212, I b of the FTC).

4 **Thin-capitalization rules**: capping of interest paid to related entities (and of interest paid in remuneration of loans, repayment of which is guaranted by a related entity) (art. 212, II of the FTC) :

- 1,5 debt to equity ratio
- interest coverage ratio (25% of adjusted current profit before tax)
- Interest income from related entities

De minimis rule : thin cap legislation not applicable if interest < 150 k€.

Safe harbour rule if the French entity is less leveraged compared to the group to which it belongs

Specific rules apply within tax consolidated groups

Carry-over of disallowed interest (with some limitations)

BEPS impact : Action 4 on Financial expense French Specific rules (2/2)

5

« Carrez rule » : limitation, during 9 FYs, of the deductibility of interest related to the acquisition of equity securities if the company cannot demonstrate that the decisions in respect of these securities are actually made by it or by a company established in France belonging to the same economic group (art. 209, IX of the FTC).

Not applicable if :

- Total value of target < 1 M€ ;
- The company establishes that the acquisition of securities has not been finances with new leverage
- Group's debt/equity ratio > debtor's debt/equity ratio

6

General capping of net interest: ("*rabot fiscal*") reintegration of net interest up to 25% of their value (Art 212 bis of the FTC) in case net interest expense > 3m€

When companies are member of a tax consolidated group, this cap is only applied once for the computation of the group's overall taxable result.

BEPS impact : Action 4 on Financial expense
French Specific in the context of a tax consolidated group

1 **Thin-capitalization rules applied at the level of a subsidiary**: transfer, subject to conditions, of non deductible interest to the parent company (Article 223 B, al 14 à 19 of the FTC)

2 **« Amendement Charasse »** : limitation, during 9 FYs, of the deductibility of interest related to the acquisition of securities, from a shareholder outside the tax group, of a company intended to join this tax group (art. 223, B al. 7 of the FTC)

- In our view, this limitation should not target at interest already reintegrated further to the other mechanisms of deductibility limitation (to be discussed).

3 **General capping of net interest** of the Group (art 223 B bis du CGI)

Implementation of a country-by-country reporting (CbCr) requirement in France (BEPS action 13).

- The precise list of data to be included in the French CbCr will be defined by a further administrative decree, but should include **economic, accounting and tax information of the group within the scope of the measure, and information on the activities of the entities of the latter group and their location**
- French companies with annual consolidated group revenue equal to or in excess of **EUR 750 million**
- Annual filing to the FTA within **12 months after the fiscal year end**
- Automatic exchange of the CbCr between concerned tax administrations in accordance with applicable tax treaties and/or EU regulations under the condition of reciprocity, but should remain confidential
- **Sanction:** failure to comply with this measure will trigger penalties that would not exceed €100,000
- These news provisions are applicable to fiscal years open as of January 1st, 2016

BEPS impact : Country-by-country reporting 02

Global allocation of a group's income and taxes paid together with indicators of the location of economic activity

- From 1 January 2016
- Consolidated revenue of more than €750m/ £586m/ $840m

Table 1 :
Overview of allocation of income, taxes and business activities by tax jurisdiction

- Country
- Intragroup turnover
- External turnover
- Total turnover
- Profit / Loss before tax
- Corporate tax paid (effective payment)
- Corporate tax due (current year)
- Share capital
- Retained profits
- Number of employees
- Tangible assets (excluding cash)

Table 2 :
List of all the Constituent Entities of the MNE group per tax jurisdiction

- Country
- Entity
- Country of the headquarters of the entity (if different of its host country)
- Main business activities (R&D, IP management, Purchase, Production, Marketing & Distribution, Support functions, Supply of services to third parties, Intragroup financing, etc.)

Table 3 :
Additional Information

- Qualitative information allowing to explain the results of the CBC Reporting

BEPS Impact : restrictions on the Parent Subsidiary Directive

• Modification of the Parent / Subsidiary regime

• Measure to combat hybrid loans:

- The EU Parent-Subsidiary Directive, modified last July by the Council of Europe to combat hybrid loans, has been transposed into French Law
- The amended Directive provides that Member States shall refrain from taxing profits to the extent that they are not deductible by the subsidiary, and shall tax profits to the extent that they are deductible by the subsidiary.
- For the FYs opening as of January 1st, 2015, the French Tax Code (FTC) will now exclude from the parent-subsidiary exemption, **distributed profits, deductible from the subsidiary's taxable income.**

• Bare ownership of shares

- Application of the PS regime for the FYs opening as of January 1st, 2015 indifferently to:
  – full ownership of shares; or
  – bare ownership of shares.

- **Finance Bill of 2016 transposes EU Directive parent-subsidiary anti-abuse provisions**
- **Principle**
  - In principle, distributions made to qualifying EU parent companies are exempt from French WHT (domestic rate = 30%) in line with the EU Parent-Subsidiary Directive
  - The exemption is denied where the EU recipient is owned directly or indirectly by a non-EU entity as it is presumed to be an intermediary company for the sole purpose of enjoying the benefits of the PSD
  - EU holding companies currently under increasing challenge from the French tax authorities
- **Introduction of a general anti-avoidance rule (GAAR)**
  - Under the new rule, the WHT exemption will not apply to dividends distributed under an arrangement that has a main purpose of benefiting from the WHT exemption and that defeats the object or the purpose of the exemption regime, if the arrangement is not genuine based on all relevant facts and circumstances (i.e., is not put into place for valid commercial reasons which reflect economic reality).
  - Applies to distributions made during FY16 onwards

Various actions in European to counter tax evasion 02

Attacks against European Union members based on forbidden State aids

- Two condemnations already disclosed:
  - The Netherlands (Starbucks)
  - Luxembourg (Fiat Finance)

- Concerned entities are obliged to reimburse the undue tax savings (between € 20 and € 30 m per company)

- Other inquiries in progress, covering a large number of member states. In particular:
  - Ireland (Apple)
  - Luxembourg (Amazon, McDonald's)
  - Belgium (Excess profit rulings)
  - Ikea now under pressure

Action Plan for Fair and Efficient Corporate Taxation in the EU launched in June 2015

- Re-launching the Common Consolidated Corporate Tax Base (CCCTB)
  - Definition of a Common tax base as a first step
  - A consolidated tax base remains the ultimate goal

- Ensuring Effective Taxation, based on the idea that companies should pay a fair share of tax in the country where they make their profits. This could include measures to close legislative loopholes, improve the transfer pricing system and implement stricter rules for preferential tax regimes

- Increasing Transparency, through the publication of a pan-EU list of third countries and territories blacklisted by Member States.

- This action plan is complementary to the tax transparency package, which foresee the exchange of information regarding rulings between member states

03

Tax competition : what tax incentives are available in France ?

• Super amortization: new measure to encourage industrial investment over a 12-months period

- For qualifying investments made between 15 April 2015 and 14 April 2016
- Companies may deduct 40% of the cost of acquiring or manufacturing such equipment from their tax base, spread over the life expectancy of the concerned asset
- It only applies to **industrial investments** that are already eligible to accelerated depreciation, such as, inter alia, material and equipment used for industrial manufacturing or processing; handling equipment; installations for water treatment; and material and equipment used in scientific or technical research.
- Super deduction is available even if the taxpayer does not effectively apply accelerated depreciation on the eligible investment
- **No claw back** even in the case of a disposal of the qualifying investment before 100% amortization (but super deduction would be stopped as from the disposal date)

• New exceptional depreciation allowance

- **Industrial robotics** manufactured or purchased by certain companies between 1 October 2013 and 31 December 2015 can be amortized over 24 months starting from the in-service date.
- This exceptional depreciation allowance has been extended for an additional year, until 31 December 2016.
- This benefit remains subject to compliance with the EU de minimis provisions

R&D Tax credit in France

03

- **The French R&D tax credit is :**
  - the number 1 public subsidy in France (circa 4,5 billion €)
  - One of the most generous / favorable R&D tax regimes in the world
- **R&D tax credit = 30% of eligible costs (if costs < 100 M€), and 5% above 100 M€**
- **Eligible costs :**
  - Depreciation + operating expenses (75% of depreciation)
  - **Research staff costs** + operating expenses (50% of staff costs)
  - R&D Subcontracting (French and European accredited research contractors)
  - Other expenses (costs of patent filing and protection, standardization costs and technology watch, etc.)

- **Use of the R&D tax credit**

- **Corporate tax deduction**
  - The R&D tax credit is first deducted from the annual corporate tax
  - Deduction occurs when paying taxes outstanding
  - The remaining credit constitutes a claim on the State and may be deducted during the three following years from the payment of corporate tax

- **Reimbursement**
  - The part of the R&D tax credit that could not be deducted over the three fiscal years following its occurrence is reimbursable (the claim has the nature of a legal proceeding)
  - Special treatment = immediate reimbursement for:
    - Innovative start-up companies (*Jeunes Entreprises Innovantes*)
    - New companies
    - Companies suffering financial difficulties
    - SMEs (according to EU definition: 250 employees max. and a turnover under €50M or a balance sheet total under €43M)

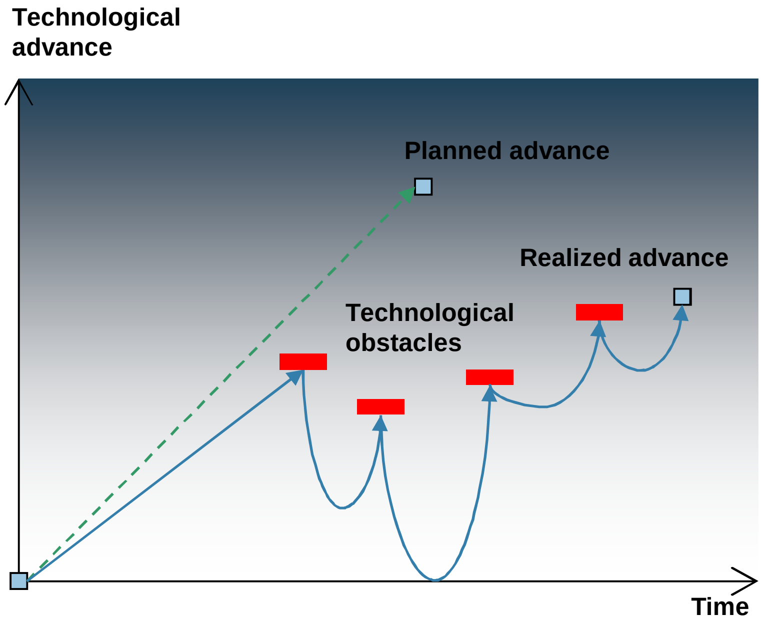
Tax audit of R&D tax credit

- **Supervision of the R&D tax credit**
  - Control is exercised by :
    - the tax authorities and
    - the services of the French Ministry for Higher Education and Research
- **Justification statement is evidence-based :**
  - Technical descriptions to prove R&D tax credit eligibility of the R&D projects :
    - Individual project report
    - Based on Quotations for studies, test results, lab files, records of activities undertaken, timesheets, work reports…
  - Financial and accounting elements justifying the computation of the RTC (depreciation, wages, social contributions, etc.)
    - Data tables
    - Based on Resumes, diplomas, pay slips, annual social security statements, service contracts, bills, order forms…

R&D Tax credit in France: eligible projects 03

- **Eligible projects for the R&D tax credit**
- **The international definitions provided by the Frascati Manual are used if they are not in contradiction with the law**
- **Eligible R&D activities**
  - Basic research
  - Applied research
  - Experimental development:
- **New products or substantial improvement of products**
- **New processes or substantial improvement of processes**

Eligible projects for the R&D tax credit: an intuitive approach



The three pillars of eligibility

Technological advance

- *What is brought as regards to the current practice?*
  - Quantify at best the advance
  - Putt the stress on the gap regarding the state of art
  - This is not “innovation” in the broad sense

Technological uncertainties

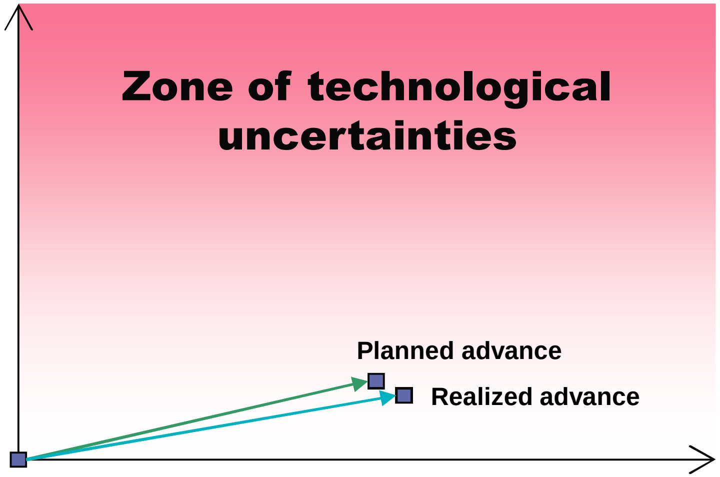
- *In what way such an advance is not obvious for « the man of the art »?*
  - Justify why we do not now whether it can be done, or why we do not know which way to take

Scientist process

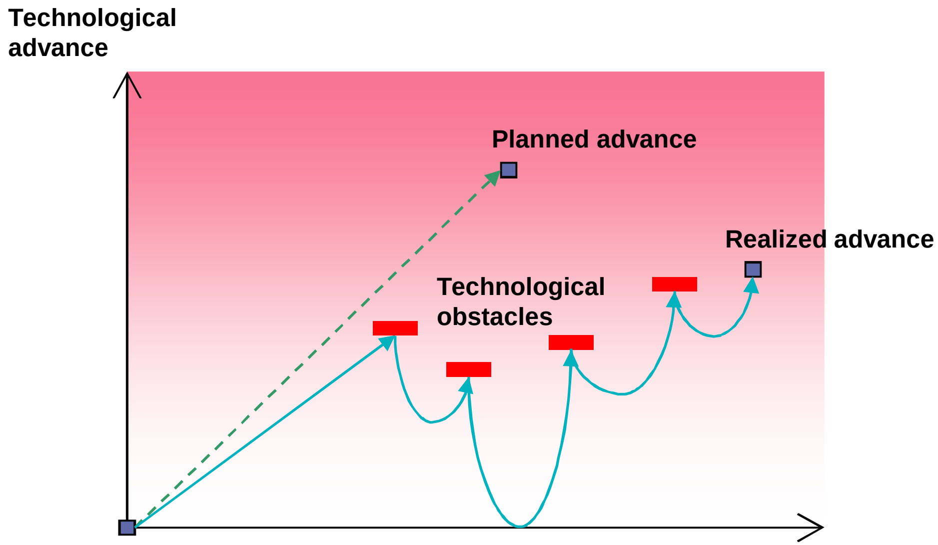
- *Did we use a systematic approach?*
  - Describe the iterations / experimentations
  - Did we use unusual means in the case of a routine development (prototypes, simulations, experimentation plan, alternative valuation)

The R&D eligibility perimeter

« Routine » development (*not* eligible)



Eligible R&D



Employment Competitiveness Tax Credit tax credit or "CICE"

- **Introduced by the third Amended Finance Bill for 2012 (the so called "Employment Competitiveness tax credit" ("*crédit d'impôt pour la compétitivité et l'emploi*" or "CICE")**

- **Applies as from 1 January 2013**

  - All entities subject to corporate tax or income tax on actual income, regardless their legal form may benefit from the new tax credit. The nature of the activity of the taxpayer is irrelevant.

  - Calculated on the portion of the gross payroll of employees paid during the civil year which do not exceed 2.5 times the national minimum wage (i.e. gross annual wages higher than 3,708 € for 2013 – are excluded for their whole amount).

  - The rate of the CICE is **6% for wages paid as from 2014**, with no cap on the total amount paid.

    - *Can be offset against the CIT liability during three years, and any excess is reimbursed by the FTA.*

    - *This tax credit must be used for specific purposes (mainly, investment, research, innovation, training, recruitment, etc.) and should not be used to increase dividend distributions or salary package of employees carrying on managerial functions.*

- **For tax consolidated groups, the tax credit should be first assessed entity by entity, the total amount of tax credits being then transferred to the parent company of the group liable for corporate tax on behalf of the whole tax group.**

Fillon rebate

CICE

	Simulations au 1er janvier 2014				Simulations au 1er janvier 2015			
	Entreprises de moins de 10 salariés							
	1 x SMIC	1,5 x SMIC	2,4 x SMIC	2,7 x SMIC	1 x SMIC	1,5 x SMIC	2,4 x SMIC	2,7 x SMIC
SB	1 445,41	2168,15	3 469,00	3 903,00	1 457,55	2 186,00	3 498,00	3 936,00
Taux de charges patronales	41,66%	41,66%	41,57%	41,47%	39,55%	39,55%	41,31%	41,27%
Taux de réduction Fillon	-28,10%	-3,12%	0,00%	0,00%	-27,95%	-3,11%	0,00%	0,00%
CICE	-6,00%	-6,00%	-6,00%	0,00%	-6,00%	-6,00%	-6,00%	0,00%
Taux de cotisations patronales net des réductions	7,56%	32,54%	35,57%	41,47%	-5,60%	30,44%	35,31%	41,27%
Taux de reduction total	34,10%	9,12%	6,00%	0,00%	33,95%	9,11%	6,00%	0,00%
	Entreprises de plus de 20 salariés							
	1 x SMIC	1,5 x SMIC	2,4 x SMIC	2,7 x SMIC	1 x SMIC	1,5 x SMIC	2,4 x SMIC	2,7 x SMIC
Taux de charges patronales	44,76%	44,76%	44,68%	44,59%	43,15%	43,15%	44,86%	44,76%
Taux de réduction Fillon	-26,00%	-2,89%	0,00%	0,00%	-28,35%	-3,16%	0,00%	0,00%
CICE	-6,00%	-6,00%	-6,00%	0,00%	-6,00%	-6,00%	-6,00%	0,00%
Taux de cotisations patronales net des réductions	12,76%	35,87%	38,68%	44,59%	8,79%	33,99%	38,86%	44,76%
Taux de reduction total	32,00%	8,89%	6,00%	0,00%	34,35%	9,16%	6,00%	0,00%
Taux accidents du travail	1,20%	1,20%	1,20%	1,20%	1,20%	1,20%	1,20%	1,20%

(Ces simulations n'intègrent pas de prévoyance ni de mutuelle)

Source : Doing Business in France, Ed. mars 2015

SMIC (French minimum wage) as at January 2016 = € 1,467 (monthly gross for 35 hours of work per week)

04

New trends in tax audits

Société d'Avocats Taj

Member of Deloitte Touche Tohmatsu Limited

Most commonly observed challenges 04

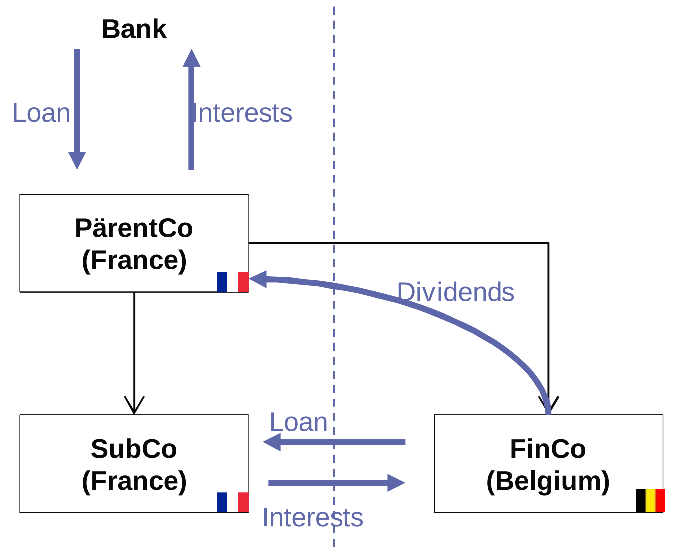
- **Publication by the FTA of 19 tax fraud schemes**
- **French Tax Authorities published on April 2nd, 2015, 17 examples of arrangements that were deemed abusive**
  - http://www.economie.gouv.fr/dgfip/carte-des-pratiques-et-montages-abusifs
- **2 more examples of tax fraud schemes were published on October 21st, 2015**
  - The FTA stated that this kind of arrangements will be challenged after careful consideration given to the facts and circumstances, with application of the suitable penalties
  - Taxpayers that have been using such tax schemes shall regularize their situation by filing a corrective declaration to the tax authorities
  - The list of fraud schemes is not exhaustive, and thus shall be often completed by the FTA

Most commonly observed challenges 04

• Example 1 : French double dip

- This scheme enables the (tax consolidated) group to maximize interest deduction
- Abusive use of the participation exemption
- According to the FTA, the sole purpose of such a structure is to avoid French tax

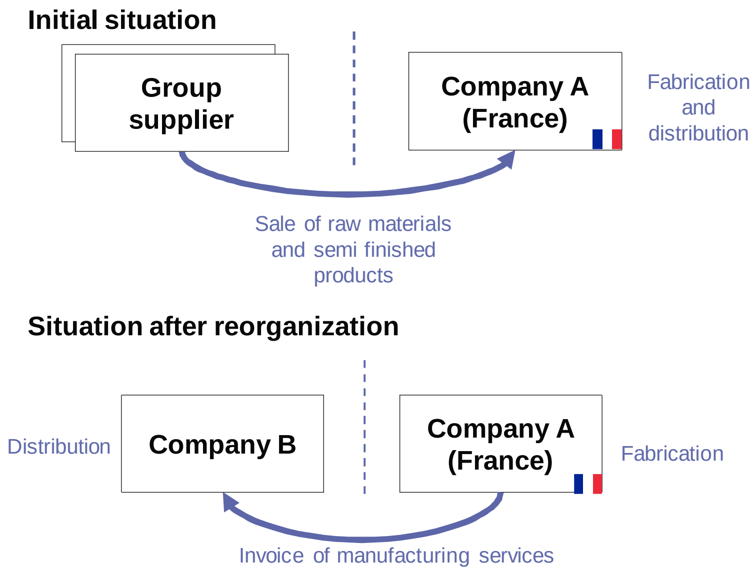
- **Tax reassessments:**
  - Challenge of the PS exemption
  - Application of a penalty amounting to up to 80% of the evaded taxes



Most commonly observed challenges 04

- **Example 2 Relocation of profits in a country with a more favorable tax regime in the frame of a reorganization**

- **Principle:**
  - At the end of the reorganization among the group with transfer of activities between two companies member of this group, the price paid must reflect the nature of the risks carried and the functions operated by each entity
  - In virtue of article 57 of the FTC, the profits unduly transferred abroad by an enterprise to other enterprises of the same group must be added back to its taxable result



- The remuneration and the result of A have decreased a lot, whereas those of B have increased. The reduction of A's result is not proportionate to the risks and functions transferred to B.
- B benefits from a favorable tax regime
- The physical flows have not been modified, only the invoice circuit has changed
- This scheme leads to move the profits in a country where the tax burden is lighter
- **Tax reassessments:**
  - Analysis of the functions and the risks of A before and after the reorganization + analysis of B's activity
  - In case of abnormal transfer of profits, reassessment of A's taxable result

Most commonly observed challenges 04

- **Transfer pricing**

- **French Tax Authorities are becoming more demanding in terms of TP documentation quality and justification of low or negative profitability from manufacturers or distributors**
  - Very low profitability is challenged based on new comparable search
  - Determination of « cost » in any “cost plus” remuneration should be reviewed carefully in line with the contract
  - Tentative adjustments may in certain circumstances include a constructed profit split for certain deemed French intangibles
  - Tax consequences include corporate income tax adjustment, additional local business tax based on value added, WHT (depending on treaty provisions) and 3% distribution tax on hidden distributions.
  - Further, it becomes common practice for the tax authorities to apply willful default penalties in case adjustments are regarded as significant (40%).
  - Relationship with works’ council to be borne in mind

- **Application for APA is encouraged by the tax authorities**

Most commonly observed challenges 04

- **WHT exemption to EU intermediate companies**
- Tax Authorities review carefully structures of non-EU groups including an EU-based holding company
- Adjustments based on PSD anti-abuse clause on the grounds that the intermediate EU holding company is not the beneficial owner of the dividends, or lacks sufficient substance
- Recent jurisprudence not favorable to the taxpayers but decisions are based on disputable arguments: French Supreme Court level not yet reached
- **Business purpose and substance level to be reviewed in the meantime if traditional safe harbor clauses not applicable**

Most commonly observed challenges 04

- **R&D tax credit**
- **Tax credits can be audited even after a repayment has been granted**
- **Most common areas of risk include:**
  - Definition of eligible projects – especially if lack of contemporaneous documentation
  - Follow-up of time spent by eligible personnel on the eligible projects (lack of supporting documentation)
  - Definition of remuneration of eligible personnel and more precisely which contributions to include in the gross salary
- **Early involvement of R&D team to support eligibility of projects is strongly encouraged as it may prevent the tax authorities to submit the cases to the Ministry of Research**
- **Advance review of processes to select and document projects and associated costs highly recommended**

Most commonly observed challenges 04

- **Others**

- **Electronic bookkeeping files**
  - Mandatory for tax inspections starting 1st January 2014 or after
  - Often not tested during FY or at year-end
  - Missing information may be treated as misfiling and subject to penalties
  - Files are not allowed in a foreign GAAP or in a foreign language
  - Reconciliation with annual tax returns not always possible, therefore triggering a risk

- **Property tax – assessment of nature of buildings and equipment included in the assessment base**
  - Warehouses or other sites with limited machineries may be disqualified into industrial buildings, triggering higher assessments
  - Equipment to be included in the assessment base is often an area for dispute – but may also be an area for opportunities

05

Questions / answers

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