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Audit, Accounting, Tax, Consultancy
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« 21% of the cases brought before the Court of Justice of the European Union relate to tax exemptions »

ROMANIA—VAT CASES AT COURT OF JUSTICE OF THE EUROPEAN UNION (CJUE)

About the CJUE

The CJUE gives rulings on cases brought before it. Its three main roles are:

1. Interpretation of EU Law (preliminary rulings)
2. Enforcing the Law (infringements procedures)
3. Sanctioning EU institutions (actions for damages).

You have two ways of action in case of damage from action or inaction caused by an EU institution or its staff:

1. Indirectly, through national courts
2. Directly, before the General Court, if a decision by an EU institution has affected you directly and individually.

The CJEU cases depend on topics, as per instance abuse of rights, deduction, liability, VAT rates, place of supply, special arrangements. The main topic that concerns 21% of the cases brought before CJEU is tax exemptions.



C-257/11 Gran Via Moinesti

Legal base

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (VAT).

Article 167, 168 & 185 on the right of deduction .

Facts

Gran Via Moinesti (GVM) bought land and buildings constructed on it, with the evidenced intention of demolishing the buildings and to develop a residential complex in their place.

GVM deducted input VAT, which was challenged by the Romanian tax authorities , as the input VAT was for acquisitions of buildings intended to be destroyed.

Questions

If the building is destroyed and replaced by another one, should such changes lead to an adjustment of VAT?

VAT Directive impose an adjustment to be made if after the VAT return is submitted, some changes occur in the factors used to determine the amount of VAT deducted.

CJEU Conclusions

The purchase of the buildings was a preparatory act for the intended economic activity (the construction of a residential complex in their place).

Such intention was supported by objective evidence (demolition permit soon after the acquisition and a building permit).

The act of demolishing could not be considered a change in circumstances.

Legal base

Eight Council Directive 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes. Person residing in another Member State—Refund of VAT charged on imported goods.

Facts

SMS Group GmbH (SMS) a company established in Germany that sells and erects steel processing systems, entered into a contract with an Austrian company. Since the purchaser failed to make payments, the performance of contract was suspended.

For the purpose of the contract, SMS imported goods from Turkey into Romania and paid the VAT charged on those goods in the amount of €327,500; following importation, those goods were stored in a warehouse located in Romania.

SMS applied to the Romanian tax authority for a refund of the VAT paid to the Romanian State upon importation of the goods at issue. The Romanian tax authority asked SMS to present supporting documents demonstrating the subsequent movements of the goods at issue and their final recipient. Since SMS had not provided any, the VAT claim was denied.



Questions

The referring court asked ECJ, in essence, whether the Eighth Directive, must be interpreted as precluding a refusal by a Member State to refund the VAT paid on the importation of goods in circumstances such as:

- at the time of importation, the performance of the contract in connection with which the taxable person purchased and imported those goods was suspended;
- The transaction for which they were intended to be used was in the end not carried out;
- The taxable person did not provide proof of the subsequent movements of goods.

CJEU Conclusions

Where the taxable person has been unable to use the goods which gave rise to a refund by reason of circumstances beyond his control, the right of refund is retained since, in such a case, there is no risk of fraud or abuse justifying a refusal to refund.

Requiring SMS to produce proof that the goods at issue were ultimately exported from Romania is equivalent, in reality, to adding a substantive condition to the eligibility for refund, which is not provided for by the VAT system.

SMS acquired the right to a refund of the VAT paid on importation of the goods at issue into Romania.



C-249/12 Tulica & C-250/12 Plavosin

Legal base

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

Determination of the VAT when the parties have made no provision for it at the time of conclusion of the contract.

Facts

Mrs Tulica and Mr Plavosin have concluded various agreement for the sale of immovable goods during 2007-2009, without making any specific VAT references in relation to the contractual price.

The Romanian tax authority considered that Mrs Tulica and Mr Plavosin performed economic activities, and, as such they were deemed as taxable persons. The Romanian tax authority imposed the payment of the VAT related to the supplies of immovable goods, added to the selling price.



Questions

The referring court asked CJEU, in essence, whether when the price of a good has been established by the parties without any reference to VAT and the supplier of that good is the taxable person:

- the price agreed must be regarded as already including the VAT

OR

- The price agreed must be regarded as not including the VAT .

CJEU Conclusions

VAT is by its very nature a tax on consumption which must be borne by the end consumer and which must not therefore be borne by a supplier.

The VAT should therefore be a component of the price and not an additional component added to the price.

Where the parties have not come to an agreement regarding VAT, the output VAT related to taxable supplies of goods is determined by applying the gross-up method, if the supplier cannot recover the VAT from the client.

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More than 20 years of experience on the Romanian market allows JPA Romania to deliver a fresh and adapted service to its clients and the professional community.

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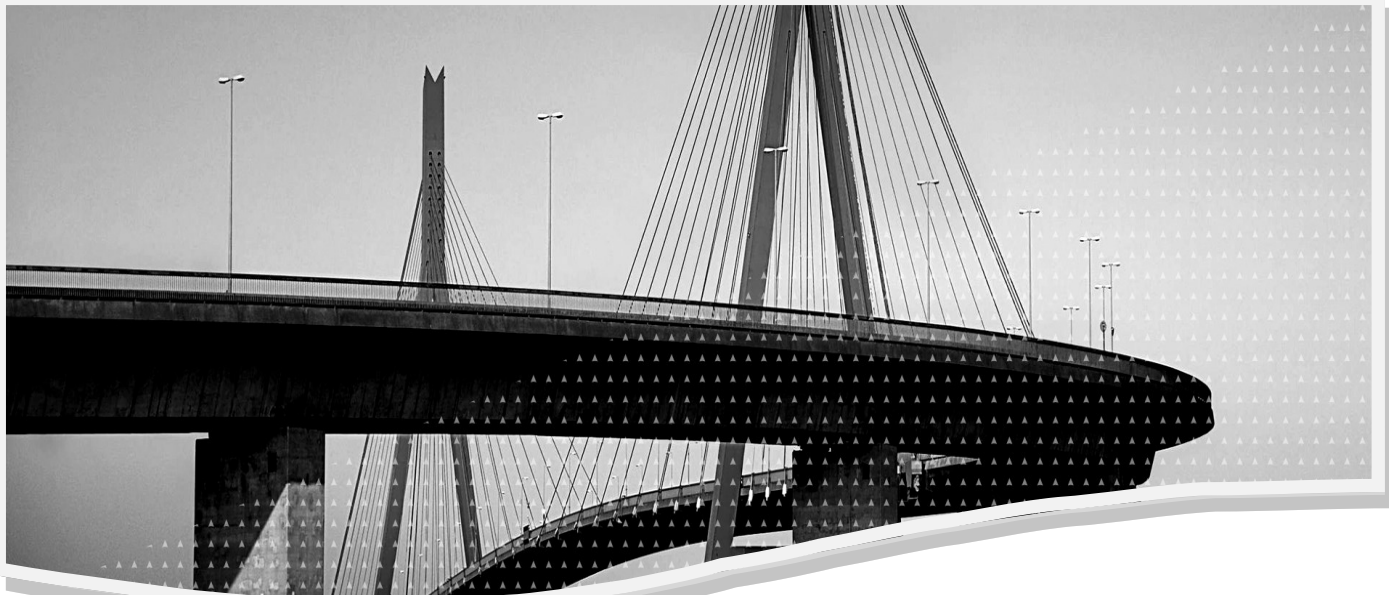


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« For most countries, a group relief is available and unlimited losses can be carried forward if specific conditions are fulfilled»

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RENTROP & PARTNER is one of the founding members of JPA INTERNATIONAL starting from its head office in Bonn to expand the network all over Germany where at present six different member firms are situated in eight different cities. Nearly all German members have joined JPA Audit AG, a company for common purposes and especially common audit work.

RENTROP & PARTNER, a medium sized company of about 30 people, 10 of them professionals, is serving its clients for more than 50 years with a focus on tax services, consulting and auditing. Hans Ronneberger Wirtschaftsprüfer and Steuerberater, the leading Senior partner, chairman of JPA Audit AG, started his career in PWC as auditor for airline businesses. He is very much engaged now with his team of different professionals to find the right way for medium sized clients in a world of accelerating globalization.

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JPA International Tax Game—Stage 9

« Loss compensation in group companies »

The results of stage 9 of our international Tax Game was presented by Hans Ronneberger during our meeting in Paris October 2017.

The treatment of corporate losses in group companies can be an important tax issue. Many countries do not grant such a group relief but when they do, it is bound to specific conditions. The facts of the case study are as follows:

One of your clients (A-company) is an automotive supplier in the legal form of a corporation. He intends to supply next year (2018) an American automobile manufacturer for electric vehicles. With respect to his existing customers, who are mostly producing diesel cars, he wants to do the business through a new company (B-company) as subsidiary of his main company.

However, for the first 5 years, he is expecting big losses in this new company. He asks you if there is a way to offset the expected losses for tax purposes against the high profits of the parent company.

What is a tax group in general:

1. Saving corporation tax in the first year but no losses to carry forward;
2. A way to offset the full amount of losses even in countries where there is a minimum taxation or limited period of absorption;
3. Specific conditions need to be fulfilled as tax group.

16 countries of our members participating to the game, making the comparative analysis relevant.

The results showed that for most countries a group relief is available (75%) and unlimited losses can be carried forward (60%). The main differences between the countries are the specific conditions to be fulfilled to be considered as a tax group, to obtain the group relief or to carry the losses forward. Obviously, for a same level of conditions, the national corporation tax rate will distinguish the countries at the end.

We have identified some special features that might interest you:

1. In Belgium, there is **no group relief available at the moment**. However, from year **2020** on, it is planned that companies can choose for **fiscal consolidation within a group**. The conditions are not yet known.

Moreover, in **2018 a limited use of losses carried forward deduction** will be introduced:

- up to €1.00 million: fully deductible;
- above: only 70% of the excess profit can be offset;
- no time limit.

2. In Germany, companies can form a **tax group** (Organschaft) with conditions:

- Company A must dominate Company B (**more than 50%**)
- A profit and loss transfer **agreement** must be settled for minimum **5 years**.

With regards to the losses carried forward, the **same application as Belgium** is already made in Germany.

3. In Italy, there are two different possibilities:

- Companies can form a **tax group** if company A dominates company B (more than 50%);
- **Intragroup transfer of tax losses**. In the start-up phase (first 3 years) a company can sell its tax losses to intercompany if three conditions are fulfilled:

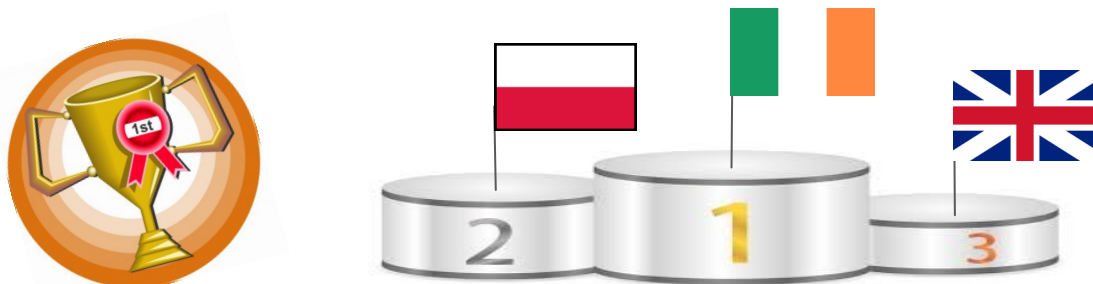


- A. One of the companies must be listed on an European stock exchange;
- B. A participation of 20% or more;
- C. The price of the sale equals the tax advantage gained by the transferee and is not subject to tax.

The winner of stage 9 is Ireland as in this country group relief is available, losses can be carried forward and the corporation tax rate is 12.5%.

	Group Relief	Losses carried forward
Austria	Yes	Unlimited
Belgium	Yes from 2020 on	Limited from 2018 on
Brazil	No	Limited
China	No	Limited
France	Yes	Unlimited
Germany	Yes	Limited
Italy	Yes	No answer
Ireland	Yes	No answer
Lebanon	No	No answer
Luxembourg	Yes	No answer
Netherlands	Yes	No answer
Poland	Yes	Unlimited
Portugal	Yes	Unlimited
Spain	Yes	No answer
Slovenia	No	Unlimited
UK	Yes	Unlimited

JPA International - World Tax Game - Stage 9



« Autumn 2017 winners of the tax game on loss compensation in group companies »



«SII will impact 63,000 taxpayers, which represents 80% of the total Spanish business invoicing more or less»

SPAIN—IMMEDIATE VAT INFORMATION SUPPLY SYSTEM

JPA INTERNATIONAL IN SPAIN

MARTINEZ COMIN is a professional firm providing, since its foundation in 1948, *full-service* of Business consulting and Corporate law.

We have taken part in the birth and development of successful business projects, providing not only legal, tax and economic advice, but also supporting clients in making strategic and organizational decisions.

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Introduced by the Spanish Royal Decree 596/2016 of December 2nd, it establishes an online and almost immediate system of the listing reports submissions. It is a new system marking the split between the past 30 years and the future of VAT supply systems.

What is SII?

- Online monthly submission of VAT books/returns to provide information to the tax authorities.
- Term of 4 natural days (extended to 8 days in 2017)
- No concrete invoice submission.

Who is concerned?

1. Obligated users

- large taxpayers (turnover > €6.00 million in the prior years);
- VAT groups;
- those who are registered in the REDEME system (specific VAT monthly register) .

2. Voluntary basis users

- any other taxpayers can voluntary ask for this regime;
- For 2017, the request had to be made in June. In the next years, it must be done in November prior to the year it would be effective.

Application on a voluntary basis

The obligations for those who voluntarily ask to be included in SII system are:

- Monthly basis (compulsory monthly submission of VAT returns)
- Permanence clause (obligation to remain at least the natural year in which the option has been exercised).

SII Mechanism



The SII mechanism can be summarised as follows:

- Online submission of the listing reports of Register books for VAT;
 - Listing details by XML messages or by specific online form;
 - VAT books will be updated and submitted almost in real-time;
- Submission term for 2017 is between July 1st and December 31st;
- In the case of “simplified invoices”, possibility to group them;
- The information is available to all taxpayers implied in transaction and registered in the SII system.



Not to submit invoices but to provide the relevant information of listing reports to the tax authorities.

Deadlines

1. Sales invoices

- Within 4 natural days after their issuance;
- In any event, before the 16th of the following month.

2. Purchases invoices

- Within 4 natural days since the accounting's date or the customs documents;
- In any event, before the 16th of the following month.

3. Intracommunity transactions

- Within 4 natural days since the beginning of the expedition or shipping of the goods

4. Investment goods

- Within the submission term of the last settlement period (until January 30th)



Deadlines and Penalties

For 2017, the submission deadline is 8 natural days.

The deadline to submit VAT returns to SII is extended to the 20th day of the following month.

The delay in the submission of VAT books is punished with a 0.5% fine on the amount of invoice, with a quarterly minimum imposed of €300 and a maximum of €6,000.



Advantages of SII

- Quality information;
- Tax data collection;
- Decrease in the number of information requirement of the tax authorities;
- Modernize and standardize VAT bookkeeping;
- Reduction of formal obligations;
- Reduction of the deadlines to refund (real time system);
- Extension of 10 days in submissions.

Disadvantages of SII

- Short deadlines to report the information (4 natural days) so an increase in administrative personnel;
- Difficulty to follow for non-established companies;
- Huge IT expenses in software.

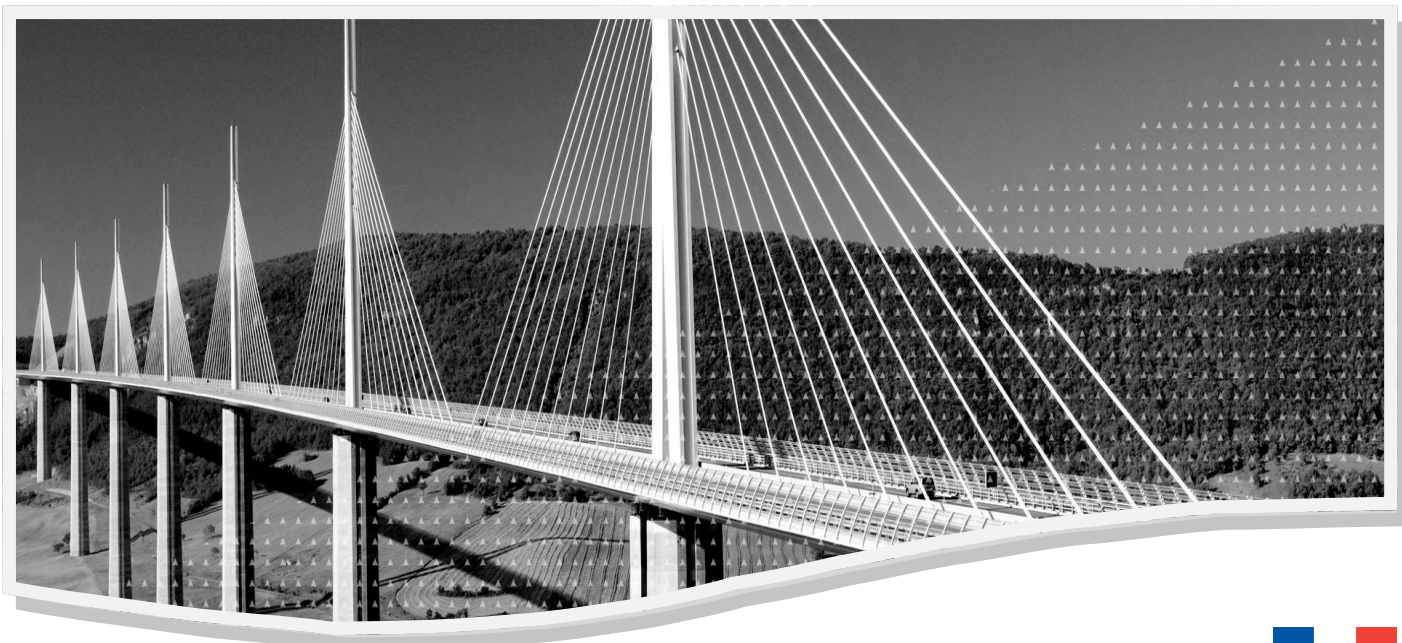
Conclusion

SII will have an impact on 63,000 taxpayers (more or less 80% of the total Spanish business invoicing).

It offers a two-way relationship, automated and almost instantaneous between tax authorities and taxpayers.

In practice, it is very hard to implement for VAT professionals.

This is an area that many countries are working on at the moment.



«The 2018 French Bills were presented to the French Ministers on the 27th of September 2017 and will be voted by the end of the year»

2018 French Finance Bill

2017 French Amended Finance Bill

2018 French Finance and Social Security Bill

Bellow are the main measures of the French Finance Bills for 2018 and Amending Finance Bill for 2017.

I. Corporation Tax

1. Reduction of corporation tax (CT) rate and updating of withholding tax (WHT)

The CT applicable to taxable income would be gradually reduced to **25% by 2022**:

- 2018—28% up to €500,000, 33.33% beyond
- 2019—28% up to €500,000, 31% beyond
- 2020—28%
- 2021— 26.5%
- 2022—25%

The reduced rate of 15% applicable to SMEs would be maintained on taxable income up to €38,120.



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BDA always seek to enhance its clients benefits, strategies and security.

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2. Abolition of the 3% surcharge on distribution and introduction of additional contributions to CT

The **3% surcharge levied on dividends** paid by French companies would be **abolished**, effective 1 January 2018. For prior years, taxpayers could claim **refund** of the 3% surcharge paid.

In order to finance the potential refund, **two additional contributions to CT of 15% each** should be introduced for companies with taxable income exceeding €1.00 billion or €3.00 billion.

3. Abolition of “Carrez” rules

The “Carrez” rules **restricting debts’ interest deduction on acquisition of shares** would be **abolished** for financial years ended 31 December 2017.

4. Reduction before abolition of CICE (tax credit for competitiveness & employment) replaced by a reduction of social contributions

CICE tax credit would be reduced to **6%** for salaries paid during calendar year 2018 (now 7%).

CICE would be replaced by a **permanent reduction of social contributions due by employers**, effective 2019.

5. Abolition of the 20% rate of payroll tax replaced by a 13.6% rate

The marginal rate of 20% of payroll tax applicable to entities that are not fully subject to VAT would be replaced with a **13.6%** rate.



6. New determination of CVAE (contribution on added value) for groups

The rate of CVAE would be determined based on the **global turnover of companies** meeting the conditions to join a French tax group, even if they are not members of a such group, instead of their stand-alone turnovers as it was done previously.

7. Extension of the “regime micro”

The “regime micro” allows simplified taxation on benefits in certain cases. Thresholds would be increased to **€170,000** for sales activities and **€70,000** for services and non commercial activities (now respectively €82,800 and €33,200).

II. Personal Tax

1. Flat tax of 30% on financial income and reduction of WHT

A **flat tax of 30%** would be applicable to all **financial income** (dividends, interest, capital gains) earned by individuals, effective 1 January 2018. The reductions applicable to dividend and capital gain would no longer apply, except if option for taxation at the progressive tax rates rather than flat tax.

The rates of WHT applicable to dividends distributed to non-residents would be reduced to 12.8%.

2. New tax regime for AGA (Awarding of free shares)

For AGA granted after the publication of 2018 French Finance Bill, the tax rules will remain the same but a unique 50% rebate should be applicable to acquisition gains up to €300,000 no matter what the holding period is, instead of the 50/65/85% rebates applicable today according to the holding period.

The employer contribution should be reduced to **20%**.

3. Increase of CSG rate (Universal Social Contribution) by 1.7% and abolition of some employee contributions

As a consequence of the abolition of some employee contributions, the rate of CSG would be increased by 1.7%, effective 1 January 2018.

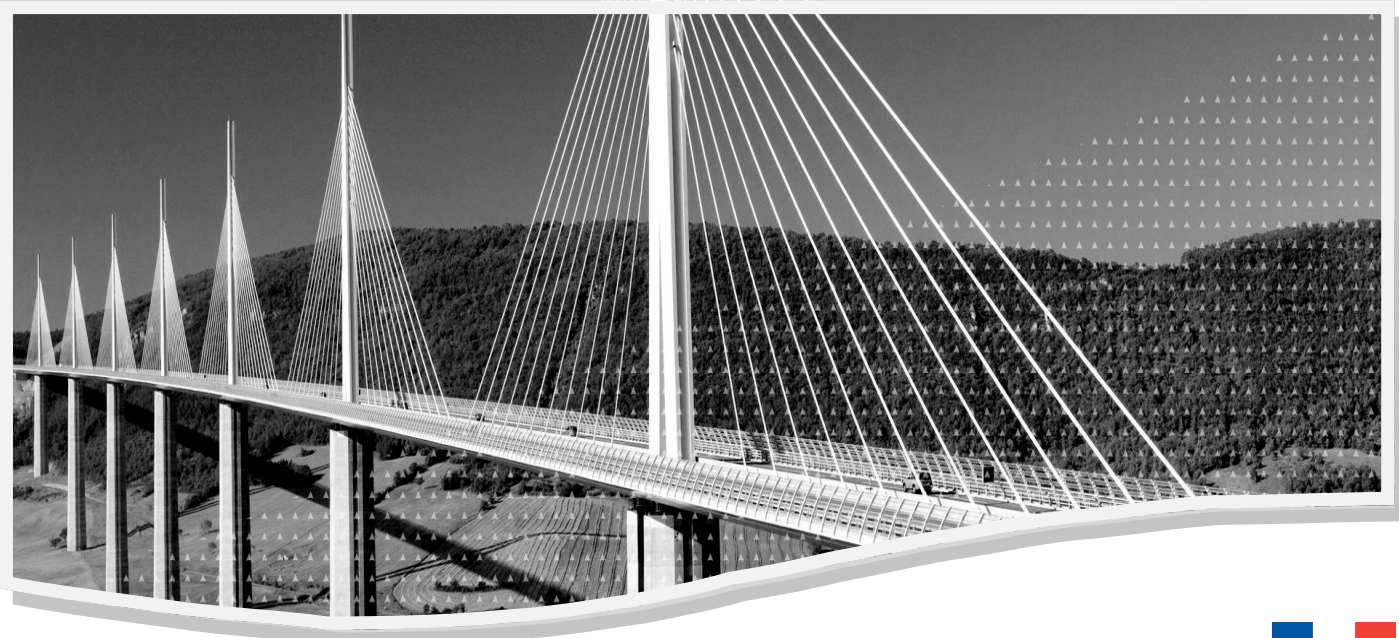
4. Replacement of ISF (French Wealth Tax) by IFI (Real Estate Wealth Tax)

Effective 1 January 2018, ISF would be replaced by IFI.

IFI would apply to real estate property held by individuals except the assets used within the framework of a professional activity. All other assets would no longer be subject to IFI.

IFI would work similarly to ISF, i.e. same taxation threshold of €1.3 million and same progressive rate scale.

Tax credit for investments in SMEs should be abolished.



JPA International Real Estate Tax Game – Presentation

H

ere it is! The new JPA International Tax Game has finally arrived and you will not be disappointed. Indeed, it deals with international taxation on real estate, so it will be a good complement of our traditional tax game.

Presented by Alain Jacob during the Tax club of Paris in October 2017, the concept is simple: for each tax club, one volunteer will present one to four scenarios on a real estate situation in his country, with an international matter. The stage 1 of this game was presented by Alain Jacob as a way of introduction. He will answer in Cannes, during our Tax Club in January 2018. You can find his real estate problem on the following chart.

Alain will pass the torch in Cannes on to **one of our members**. Everybody is more than welcome to volunteer giving his application in Cannes.

Thank you all for your participation!

Scenario	Question
Mr & Mrs Jack WINEPOT (British nationality and resident in London) have acquired an apartment in Cannes in 2001 for their personal use (second home). They have carried out various works during these years. They decide to sell the property in 2018.	What is the taxation applicable: <ul style="list-style-type: none"> during the detention (Wealth Tax) At the time of the sale (CGT)
Mr & Mrs Jack WINEPOT decide to rent this apartment on a seasonal basis in 2017.	What is the taxation applicable to this income in 2017?
Same scenario as the second one but in the context of an unfurnished rental.	Same question as the second one.
The property had been acquired by a company governed by British law and owned by Mr & Mrs Jack WINEPOT, both during the holding (with or without lease) and at the time of the transfer.	What would have been the applicable taxation?

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...you might be interested ...



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... explaining your point of view about a crossborder project and having **no idea of the regulatory consequences** of your choices ?

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