

# Doing Business in France

2009



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## 1. Introduction

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in over 70 countries throughout the world. Business partners work together through the network to conduct trans-national operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in France has been provided by the office of UHY representatives:

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GVA is a medium sized firm of Chartered Accountants located in Paris in the Place de l'Etoile area.

GVA is part of DIFFERENCE, an expanding national network of accounting and consulting firms with offices in Auxerre, Avignon, Bordeaux, Cambrai, Cannes, Dijon, Lyon, Montpellier, Nîmes, Nice, Perpignan, Saint Amand-Les-Eaux, Saint Etienne, Strasbourg and Valenciennes. (See map page 5 for more details). DIFFERENCE has joined UHY. In order to contact these firms, please refer to UHY's Global Directory.

We have the experience and the connections to assist you in setting up a business in France and to provide accounting, legal, fiscal and social services, management consulting services, computer and organisational services.

Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at April 2009.

We look forward to helping you do business in France.

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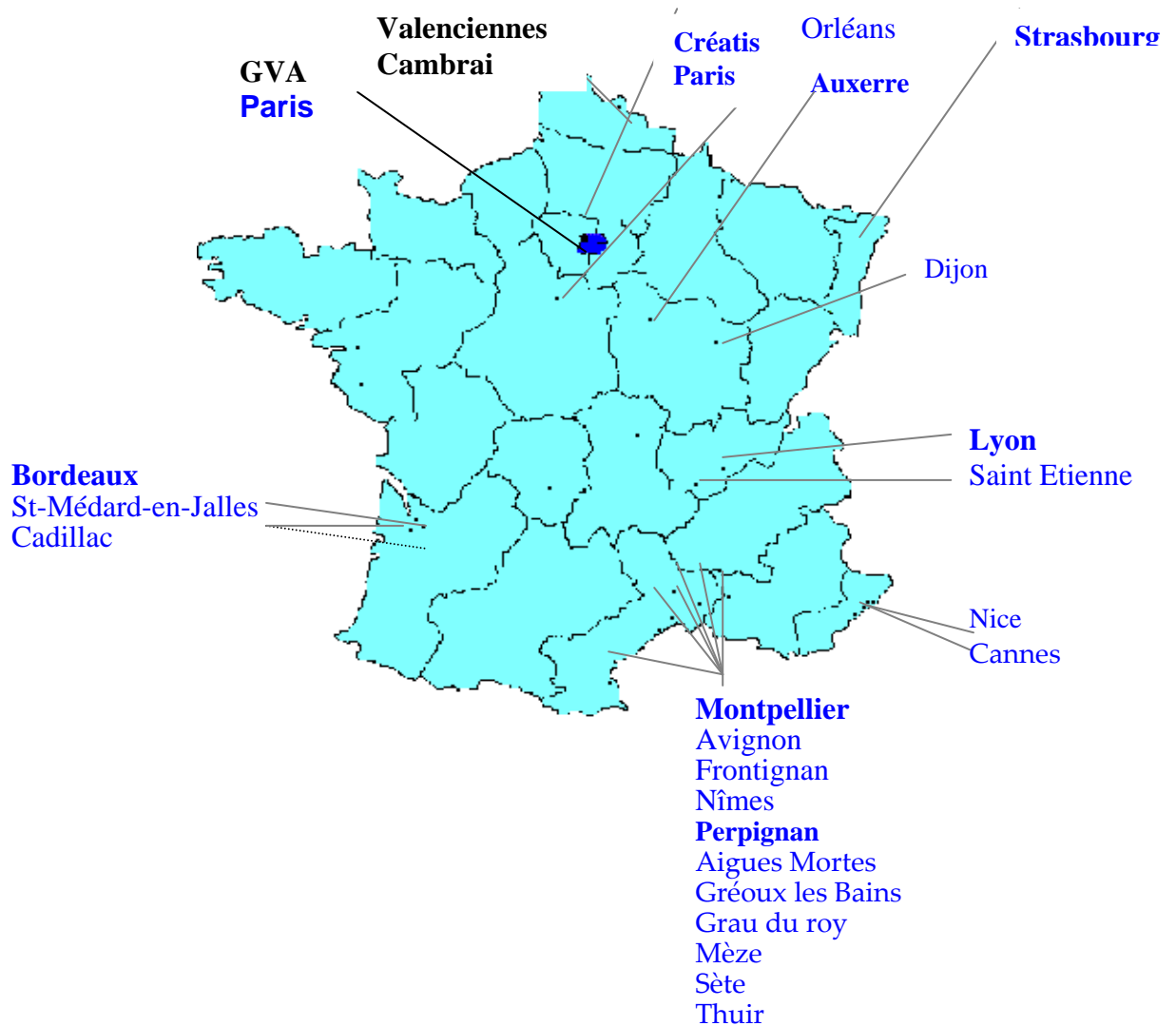
## 2. Business environment

### The French Constitution and Government

Under the 1958 Constitution, France is a parliamentary republic. The President is the Head of the State and he monitors the functioning of the democratic institutions in accordance with the Constitution. The Prime Minister is in charge of the day to day policy.

The country is governed by a bicameral parliament. This comprises a House of Representatives (*Assemblée Nationale*) elected every five years by universal suffrage and a Senate (*Sénat*) of directly elected representatives from the regions and departments.

Metropolitan France comprises twenty-two regions with a total of ninety-six departments. The regions, departments or communities share in the centrally collected tax revenues.



### The Domestic Market

**Population:** As of December 2007, France had 63.6 million inhabitants, making it the 20<sup>th</sup> most populated country in world and the 2<sup>nd</sup> in the European Union after Germany. Three quarters of the population live in the cities.

**Area (Metropolitan):** 547,000 sq. Km. including Corsica.

**Population density:** 98 inhabitants per square kilometer in metropolitan France.

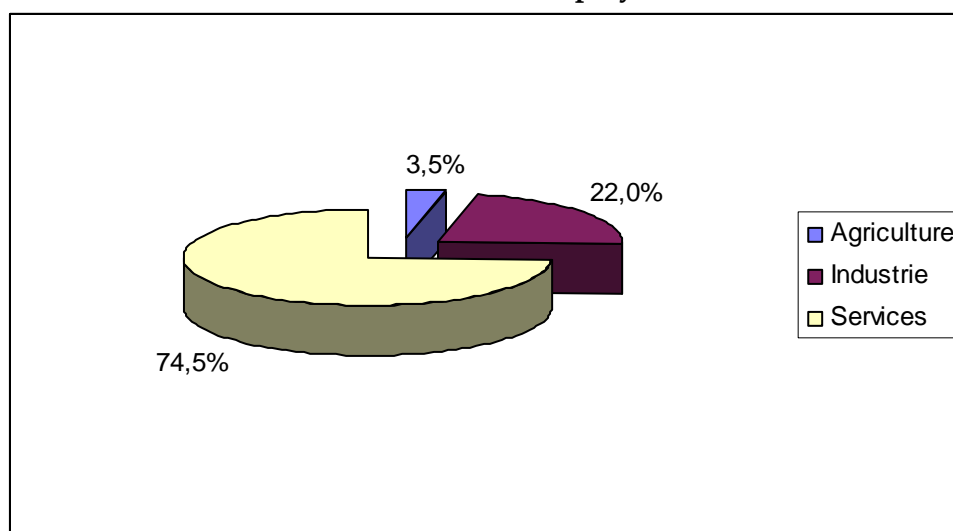
**Currency:** Euros

**Language:** The most common and prime official language is French.

### The Economy

The service sector accounted for 74.5 % of total employment in 2007 compared with agriculture with 3.5%. The industrial sector has suffered an important deficit in foreign trade due to the increased competition of Far East. The reaction to this has been increased specialisation in industrial production.

**Economic sectors (in % of employment)**



The total Gross Domestic Product is 1,892 billion Euros for 2007.

Its growth rate of 4.7 % in real is below the Eurozone average (2.7 %) and the US figure of 2 %.

In 2007, in spite of the restarting of the growth in middle of year, gross domestic product increases on average annual by 2.2 % in volume, after 2 % in 2006. The external balance continues to slow down the activity and the public spending remains important. On the other hand, the effective household consumption and the investment of the companies remain strong.

### **Unemployment**

Unemployment has decreased (7.8 % in fourth quarter 2008) of the active population and remains higher than the European average.

### **Prices and Interest Rates**

In spite of France's efforts to meet the Maastricht convergence criteria for the European Monetary Union, the financial worldwide crisis has resulted in an increase in interest rates. For the year 2008, the official interest rate has been stated at 3.99% against 2.95 % for the year 2007,

The inflation rate for 2008 from 2007 was 2.8 %.

### **Foreign Trade and the Balance of Payments**

In 2007, the exchanges still progress in France as well as in the European Union. The exports have increased by 3.4% and the imports by 6.0%.

The three best "clients" of France are Germany, Spain and Italy.

Germany is also the best supplier of France ahead of Italy and Belgium.

In 2007, The French commercial deficit is amounting to €38.4 billion compared to €26.6 billion for 2006.

The tourism balance is improving exceeding 11 billion Euros (10 Billion Euros in 2006); France still remains the world's most popular tourist destination, having welcomed 79 million visitors from abroad.

### **The Financial System**

#### **Central bank**

On 1 June 1998, a new institution – the European Central Bank (ECB) – was set up to implement the single monetary policy in Euros. Its headquarters is in Frankfurt. The ECB and the national central banks of all the EU member States together form the European System of Central Banks (ESCB).

The basic tasks of the ESCB are to define and implement the monetary policy of the Euro area, conduct foreign exchange operations under the Community's foreign exchange policy and hold and manage the official foreign reserves of the Member States. It should be noted that, in the field of foreign exchange policy, there is shared responsibility.

In addition to the single monetary policy, the ESCB is also responsible for ensuring the smooth operation of payment systems and for contributing to the effectiveness of the policies implemented by the competent authorities for prudential supervision of credit institutions and for the financial system stability.

The Banque de France is an integral part of the European System of Central Banks defined by the Maastrich Treaty. It participates in the performance of tasks and achievement of objectives assigned to this system by the treaty.

### **Commercial banks**

The country's commercial bank category now includes a wide range of institutions:

- Major deposit banks, (banques de depots), with extensive domestic and international networks
- Former merchant banks, (banques d'affaires), with fewer branches in France but strong links with industry, and a strong international orientation
- (Credit Agricole), the largest institution providing banking services and other cooperative and mutual services
- Foreign banks, numbering generally through local branches.

### **Other financial institutions**

A number of financial institutions in France offer a wide variety of financial services. These include:

- Savings banks
- Leasing companies
- Venture capital firms
- Government-sponsored financial institutions, which provide credit facilities to exporting companies and to small-and medium-sized businesses for fixed assets financing.

### **Short-term finance**

- Short-term finance is easy to obtain from specialised institutions such as banks: discounting of bills ("escompte") is the most commonly used method of finance in France; overdraft or loan facilities are sources which are used less frequently in France than in other countries.
- Other methods of financing are available such as: assignment of debts, factoring.

### 3. Foreign investment

#### Exchange Controls

The acquisition and creation of a French business by a French non resident (EU resident or not) has been free of exchange control since 1996.

However, foreign investments in France by non residents must be reported to the French Treasury when they are earned out.

Foreign investors should be aware that the French Exchange Control authorities have a wide control over the types of investments in existing French enterprises which may be considered as direct investments and therefore subject to the above reporting requirements.

Transactions subject to exchange control formalities may consist of loans or financial guarantees. In general, however, a foreign investor will only be deemed to be making a direct investment in France when he acquires at least 20% of the capital of a quoted French company. The acquisition of 33.33% is deemed to be controlled for these purposes.

Investments in economic sectors that are considered sensitive (public health and security, manufacturing or trade in weapons or military equipment) are still subject to a prior authorisation even if they originate from the EU.

#### Mergers And Other Reorganisation Schemes (spin off)

Reorganisations and acquisitions can be effected through mergers. Even though it is a relatively complex and time-consuming procedure, it has the advantage of falling within well-defined tax rules and allowing a comprehensive transfer of assets and liabilities, generally with a retroactive effect going back to the beginning of a fiscal year.

Such a scheme is applicable to straightforward mergers, with liquidation of the absorbed company, as well as to partial contribution of assets where the contributing company remains in existence. This latter scheme is often utilised to transfer a division.

The Tax Code provides what it terms a favourable system (option).

Since January 1<sup>st</sup>, 2005, the contributed assets have to be registered in the beneficiary company in accordance with the French accounting regulation (Accounting standard CRC 2004-04):

- Merger between affiliated companies and option to the favourable system: the contributed assets are registered at the net book value.

In this case, the favourable system consists in the temporary exemption for the absorbed company of the net capital gains.

In return, the beneficiary has to fulfil some obligations to allow the future taxation of the capital gains (such as specific declaration of exempted assets to join to the annual tax return and covenant in the merger agreement).

- Merger between non affiliated companies and option to the favourable system: the contributed assets are registered at the real value.

In this case, the beneficiary company has to reinstall in its annual taxable income capital gains spread over a five year period (15 years for building, plantation or fittings of lands).

The cumulative deficits of the absorbed company are now transferred with no limitation to the beneficiary company if the following conditions are met:

- previous approval (automatic right) by the tax authorities
- option to the favorable system
- undertaking to keep the absorbed company going during 3 years.

After the option to the favourable system, contributions to the absorbing company are subject to a fixed registration duty of 375 Euros (capital < 225 000 Euros) or 500 Euros (capital  $\geq$  225 000 Euros).

If the favourable system does not apply, the absorption of one company by another would be considered for tax purposes as a winding-up of the target company resulting in the immediate taxation of all deferred income and unrealised capital gains.

Legal considerations for a merger may be complex, sophisticated and expensive. Investors have to consider how they will properly discharge their contractual obligations. Yet the most difficult part of a merger process is appraising the value of contributed assets, as well as the trading value of the absorbing company. For this purpose, one or several merger appraisers, who are third party experts, are appointed. It is essential to consider their findings before proceeding with any merger process.

In general, French appraisers are reluctant to certify any value for goodwill and other intangible assets. In addition to this difficult valuation process, mergers require a thorough review of accounting and legal issues, which usually takes an average of over two months.

Due to the 1992 EU Directive on mergers, if either the absorbed or the contributed company is located in France, no French tax will be levied on capital gains obtained from cross-border reorganisations. However a better approach is available. It consists in purchasing all the shares of a subsidiary and winding it up.

As a result of the wind-up, all assets and liabilities will pass to the sole shareholder, without a merger process. The main disadvantage though is that there is no retrospective effect and adverse tax consequences may result.

## 4. Setting up a Business

Foreign investors who intend to conduct commercial activities in France can choose from a wide range of legal entities. The choice will depend on business priorities.

### **Sole Trader**

There are three possible ways for an individual to go into business

- as a sole trader “entreprise personnelle”
- as the sole partner of an EURL “Entreprise Unipersonnelle à Responsabilité Limitée”
- as the sole partner of a SAS (called SASU “Société par Actions Simplifiée Unipersonnelle” (see more details p 15).

### **The sole trader**

A sole trader is considered to be an individual who carries on a business on a regular basis. The sole trader is wholly responsible for his/her business and even his/her personal possessions may be used as a guarantee in case of financial difficulty.

### **EURL (Entreprise Unipersonnelle à Responsabilité Limitée)**

The EURL is a “SARL” (Private Limited Company) with only one partner. The legal requirements are basically the same as for the “SARL” and are described below.

The liability of the single partner is limited to the amount of its investment.

### **Common French Limited Companies**

#### **Public limited company (“Société Anonyme - S.A.”)**

The French legal form closest to a US corporation is the “Société Anonyme”. The incorporation of a “Société Anonyme” requires a minimum of 7 shareholders and a minimum capital of 37,000 Euros (225,000 Euros if the shares are to be quoted on the Stock Exchange).

At least 100% of the share capital must be subscribed at incorporation; only 50% must be paid at the set up.

The liability of shareholders is limited to the amount of their investment. The shareholders meet at least once a year to approve the annual financial statements and to decide whether profits will be distributed or retained.

Directors or members of the supervisory board (“Conseil de surveillance”) and statutory auditors (“Commissaires aux Comptes”) are also appointed and dismissed by shareholders in general meeting. Statutory auditors are engaged for a six financial year period.

Simple majority rules apply at annual shareholders’ meetings. If major decisions have to be made, such as a merger or a change in the articles of association, an extraordinary shareholders’ meeting must be held and qualified majority rule apply (two-thirds).

## **Management**

Day-to-day management can be structured in two different ways.

An S.A. may either have a Board of Directors, a Chairman (“Président du conseil d’administration”) and a Chief Executive (“Directeur général”) or an Executive Board (“Directoire”) working under the control of a supervisory board (“Conseil de surveillance”).

## **Board of Directors**

The Board of Directors must be composed of a minimum of three and a maximum of eighteen members (Administrators). They are appointed for 3 years for the first ones designed by the articles of incorporation. Their tenure can be extended up to a maximum of 6 years when they are appointed during the course of the business.

Since January 1<sup>st</sup>, 2009 a new law (“loi pour la modernisation de l’économie”) cancel the obligation for directors to have at least one share of the company except if it’s laid down by the memorandum and articles of association.

The Board of Directors appoints the President (who must be an individual), who is in charge of the management, the organisation and the presentation of the Board activities to the shareholders’ meeting.

The President and the Chief Executive have broad powers to act on behalf of the company. The Chief Executive can be elected among the board members, but may not be a board member of the company. The Chief Executive is responsible for the company’s management and can be assisted by one or more deputy managers.

## **Executive Board and Supervisory Board**

The Executive Board (“Directoire”) has a maximum of five members (seven in quoted companies) who are not necessary shareholders. They are generally appointed for 4 years by the Supervisory Board (“Conseil de surveillance”) which is composed of three to eighteen members who are elected by shareholders at a general meeting.

The Supervisory Board has permanent control over the Executive Board and defines major business goals.

## **The SAS**

SAS is a specific simplified type of SA set up by a minimum of one shareholder (individual or corporation). Since January 1<sup>st</sup> 2009, no legal minimum capital is required. SAS may prove useful in setting up a joint venture because its articles may be less onerous than those that normally apply to traditional SA’s.

The shareholder(s) is (are) free to choose in the articles of association the structure of management and its functions. Nevertheless, a President must be appointed to represent the company.

Since January 1<sup>st</sup> 2009, no statutory auditors are required in small size SAS (turnover < € 2 million, balance sheet < € 1 million, staff < 20)

## **Private limited company (Société à responsabilité limitée or SARL)**

SARL may have no more than 100 shareholders. Shareholders are liable for their capital contribution. As a common practice, standard share capital is 7,500 Euros, 20 % must be paid up at the set up. From August 1<sup>st</sup>, 2003, it could be reduced at only 1 €.

SARL is run by one or more managers (Gérants), who may be appointed by the articles or by a majority decision of shareholders. They may be chosen among the shareholders themselves or among third parties. If the manager is a non EU citizen, he/she must obtain a residence permit or receipt of statement at the “prefecture” (administrative authority). The manager makes all management decisions on behalf of the company and he/she may be held personally liable under civil and criminal law.

The shareholders exercise their rights at shareholders’ meetings to approve the conduct of the business and to make management decisions.

Shareholders’ resolutions require a simple majority vote for approval unless they change the articles of association, in which case a sixty six percent majority is required.

No statutory auditors are required in small size Sarl (turnover < € 3.1 million, balance sheet < € 1.55 million, staff < 50)

### **Partnerships**

#### **General Partnership** (“Société en nom collectif” - SNC)

A general partnership is a commercial company form in which all of the associates are considered as merchants and jointly and severally liable for the partnership’s liabilities.

Despite this significant drawback, SNC’s are often used because of their flexibility (no minimum share capital, no Board of Directors, minimum of two partners, possibility of dividend rights existing independently of voting rights and capital contributions).

The SNC is not directly subject to income tax. Profits are taxable as part of each member income in proportion to his/her interest in the partnership.

#### **Limited Partnership** (“Société en commandite simple” - SCS)

The SCS structure, seldom used in France, includes:

- one or more general partners (called Commandités) who manage the company and are responsible for debts incurred by the company;
- one or more limited partners (called Commanditaires) whose liability is limited to their capital contribution. Limited liability partners are not allowed to participate in the management of the company. Their legal status is similar to the one of a partner of an SARL. There is no legal minimum capital.

#### **Limited Partnership by shares** (“Société en commandite par actions” - SCA)

Similar to the previous category except that the shares are negotiable and that the status of the limited liability partners (Commanditaires) is similar to the one of shareholders in an S.A.

A minimum capital of 37,000 Euros or 225,000 Euros if the SCA is quoted is also required.

## **Other Forms Of Business Organisation**

### **Inter-company Partnership** (“Groupement d’intérêt économique”, or GIE)

A GIE is not a company but an association of companies wishing to develop certain of their activities together (e.g. research, marketing, joint sales and exports) whilst retaining their individuality and independence in other areas. A GIE has a legal personality and may be created with or without capital. Its objectives may be civil or commercial. A GIE is flexible and members are free to define its internal regulations. A GIE is transparent for tax purposes. Its members are liable for its debts.

### **Joint Venture** (“Société en participation” - SEP)

A joint venture is not ordinarily disclosed to third parties. The partners make all management decisions.

Partners are individually liable to third parties and share the operating results.

A SEP is required to register each active partner with the Trade Register. It can be a civil or a commercial entity.

### **Branch of a foreign enterprise** (“Succursale”)

Branches (“Succursales”) are preferred by some foreign investors because of their less onerous legal requirements (one manager, no minimum capital, no articles of incorporation). Some investors also feel that the procedures involved in setting up a branch are easier. In practice however, it is neither easier nor quicker to form a branch than to set up a limited liability company.

Because it has no separate identity, the branch is subject to all laws applicable to the foreign company to which it is related.

Before opening a branch in France, a foreign commercial company must file two certified copies of its articles of incorporation, translated into French, with the Commercial Court and the files must be kept up to date. The branch must also be registered with the Trade Register.

Each year, the foreign company has to publish to the Commercial Court its own accounts translated into French and certified by the representative as a true copy.

### **Liaison office** (“Bureau de liaison”)

The liaison office is not a separate and distinct legal entity with respect to the foreign corporation of which it is a part. Its sole purpose being to collect information on the market and promote the corporation’s business, it is not allowed to deal with commercial activities. However, liaison offices must be registered with the Trade Register and their managing directors must have residence permit or receipt of statement at the “prefecture” (administrative authority).

### **Civil Company** (“Société Civile”)

This kind of company is empowered to take on civil that are non-commercial operations. The members are liable indefinitely for the company’s debts.

### **Business Incentives** **Financial incentives**

Foreign companies starting a business in France are eligible for financial assistance under the same conditions as French companies. This assistance is offered as an incentive to encourage regional development and to avoid over-industrialisation in certain areas.

Therefore it is essential to choose the right location. Various incentives are offered to companies including:

Regional grants and/or subsidies

- for starting a company
- for job creation.

Loans, advances and reduced interest rates offered by various regions.

### **Tax incentives**

#### ***Corporate tax exemption***

Until December 31<sup>st</sup>, 2009, new industrial, commercial or non commercial companies controlled above 50% by individuals may, if located in certain **specified areas**, benefit from a corporate tax exemption for two years and benefit from gradually reduced levels of tax exemption for the subsequent three years (i.e. respectively 75%, 50% and 25% of the exemption) to a maximum tax of 200 000 € for a period of 36 months.

For companies created from January 1<sup>st</sup>, 2007 in specified areas (AFR Aide à finalité régionale, ZRR Zone de Revitalisation Rurale and ZRU Zones de Redynamisation Urbaine for small and medium sized companies), a new exemption has been settled

Companies locating their investment in the above areas may also benefit from other tax breaks such as:

- reduced rates of transfer duties,
- exemption from business tax,
- tax credits.

From January 1<sup>st</sup>, 2004, the new start-up firms ("Jeunes Entreprises Innovantes JEI") created for less than eight years and which spend each year more than 15% of their expenses in research and development, and controlled by more than 50 % individuals or specific companies, are tax exempt. This tax exemption consists in 100% free for three years of taxable profit and then, in 50 % reduced levels of tax exemption for the two taxable profit year. This tax exemption is strictly applicable to the medium-sized firms (i.e. less than 250 employees, and income below € 40 million or total of balance sheet below € 27 million).

They also benefit from a total exemption of minimum annual company tax (IFA) during their JEI period. They can also ask for an exemption of business tax and real estate tax for 7 years.

These tax benefits are limited to 200, 000 Euros for each period of 36 months ("minimis" ceiling).

These start-up firms may also benefit from "Crédit d'Impôt Recherche CIR" (see p.20) and "Crédit d'impôt pour dépenses de prospection commerciale" (see p.21)

#### **PME de croissance** (growing small and medium-sized companies)

A new tax reduction has been created for the period January 1<sup>st</sup> 2006 to January 1<sup>st</sup>, 2009, for companies meeting the following criteria:

- employees: 20 to 249
- plus turnover: maximum 50,000,000 Euros or total balance sheet: maximum 43,000,000 Euros
- and increase of payroll of minimum 15% during the last two years.

This tax benefit is limited to 200,000 Euros for each period of 36 months ("minimis" ceiling).

Until December 31, 2013 companies created to take over other enterprises which are nearly or effectively bankrupt are entitled to a two year corporate tax exemption.

Auto-Entrepreneur (very small size activities called micro-enterprises)

Since January 1<sup>st</sup>, 2009, French government has decided to make easier the foundation of small size companies including legal and fiscal provisions:

- Registration to the business court is not necessary
- Payment of income tax with deduction at source
- Payment of social contribution with deduction at source
- Exemption from business tax during two years after foundation of the company.

This fiscal plan is reserved to the “micro-enterprises” which turnover has to be under € 80,000 for commercial business and under € 32 000 for services. These companies are not liable to VAT.

The payment of income tax is deducted at source as follows:

- Commercial activities : 13% of annual turnover
- Services activities: 23 % of annual turnover.

### *Tax credits*

#### **On R&D expenses: Crédit d'impôt recherche (CIR)**

Commercial and industrial companies which are involved in R&D programs could obtain the benefit of a tax credit on option. Since January 1<sup>st</sup>, 2008 it represents 30% of the part of yearly R&D expenses under €100 millions and 5% for the part of expenses more than €100 million. For companies which benefit from this tax exemption for the first time or which have not benefited from it for 5 years, the CIR represents 50% of the R&D expenses for the first year and 40% for the second year.

This tax credit on R&D expenses has a ceiling of € 16 million for each company.

Since 2009, if the tax credit CIR can't be charged on the income tax (for example, negative income tax), it will be paid immediately to the company.

We can imagine that the tax authorities would audit companies applying for this tax credit.

***On commercial prospect expenses: Crédit d'impôt pour dépenses de prospection commerciale***

From January 1<sup>st</sup>, 2006, small and medium sized commercial and industrial companies could obtain the benefit of a tax credit on their commercial prospect expenses.

Companies are concerned if they recruit one employee who is dedicated to the development of export business.

The credit tax represents 50% of the allocated expenses spent during 24 months after this employment with the ceiling of € 40,000. This credit tax may be refundable.

***On apprenticeship program expenses: Crédit d'impôt apprentissage***

From December 31<sup>st</sup>, 2005, commercial and industrial companies, which incur apprenticeship programs, could obtain the benefit of tax credits. These companies receive 1 600 € per training person with a ceiling of the wage of these apprentices.

***On business sponsoring: Mécénat d'entreprise***

From January 1<sup>st</sup>, 2003, donations to specific works (as charity or NGO) give right to tax credit, which represents 60% of the donation, with a ceiling of 0.5 ‰ of the annual turnover. The tax credit may be carried forward to the next five following fiscal years.

***Other credit***

- On cinema or audiovisual expenses (cinematographic production firms)
- On training expenses for the managers/ Directors
- On “family” expenses engaged by the companies on behalf of their employees
- For investment in non pollutant vehicles etc.

**Accelerated depreciation:**

To encourage investments in France, exceptional accelerated depreciation has been put into place. But, to avoid any fiscal risk, a previous agreement

must be requested to the tax authorities. Those exceptional accelerated depreciations on twelve months are as follows:

- on software;
- on expenses for acquisition or creation of a web site ;
- on low energy powered equipment;
- on environmental investments as :
  - on anti-pollution building
  - on soundproof equipment
  - on non pollutant vehicles
- on research equipment for specific diseases.

Companies building business properties in certain specific areas may depreciate 25% of the cost in the first year after completion.

### **Contracts**

The most frequently encountered types of marketing agreements can be split into two categories:

#### **1) Commercial agents**

A commercial agency is the most common mean of distribution used in France.

A commercial agent can be either a statutory sales representative (“VRP”); he/she is considered as an employee for labour law purposes; he/she must fulfill a certain number of conditions or a common law employee commercial agent. He/she is not considered as a statutory sales representative but is an employee under French labour law.

A commercial agent can also be an independent commercial agent. He/she must be registered with the competent Commercial Court and must hold a commercial license. A commercial agent is an independent contractor for labour law purposes but he/she is not a merchant for commercial law purposes.

Unless dismissed for a professional fault, VRP and independent commercial agents are legally entitled to a severance indemnity in consideration for the increase which they are deemed to have created in the value of the goodwill in the business.

## **2) Distribution arrangements**

A distribution arrangement is, in fact, a purchase and sale agreement whereby the distributor is compensated for its services by a gross margin on sales.

Three main types of distribution arrangements are considered by French commercial law:

### ***a) Supply, purchasing, or selective distribution arrangements***

A supplier arrangement (“contrat de fournitures”) is a contract by which a supplier agrees with its distributor on the conditions for subsequent deliveries of goods.

A purchasing arrangement (“contrat d’approvisionnement”) is an agreement under which a distributor agrees with the supplier on the conditions for subsequent purchases of relevant products.

Under a selective distribution arrangement (“contrat de distribution selective”), a supplier which wishes to maintain the reputation of its products arranges to supply only those distributors selected and approved by its own entity as worthy to distribute the relevant products.

Essentially, the parties have to determine whether the agreement is on an exclusive or non - exclusive basis, for a specific or undetermined territory or for a limited or unlimited period of time.

### ***b) Exclusive distribution contracts***

Under French law, an exclusive distribution arrangement (“contrat de concession”) is an arrangement under which a supplier agrees to deliver specified products only to a single distributor in a given geographic territory and the distributor agrees to purchase these products only from the said supplier and not to sell competing products.

### ***c) Franchising agreement:***

Franchising is a method of close collaboration between the owner of a marketing process and products known as the franchiser and several retailers, franchisees.

The contract generally includes:

- distributorship of products by franchisees
- licensing of marketing, trade name and/or trademark

- marketing services and other relevant sales
- if a contract provides for the assignment of a trademark, this must be registered with the National Institute for Industrial Property (INPI).

Copyright, patents, trademarks and intellectual and industrial properties are fully protected in France. In this respect, France adheres to most relevant international treaties and provides for comprehensive protection through its domestic regulations and legislation.

Royalties are paid for the use of intangible assets recognised as the licensor's property, as follows:

- by contract for know-how
- by legal registration for trade-marks, patents and copyrights.

When a royalty agreement is signed with a foreign licensor, there is no need for any prior approval. However, a copy of the agreement must be registered with INPI.

All these commercial agreements must also be cleared from an EU law standpoint.

## 5. Labour

### **Employer / Employee Relations Legislation**

Relations between employers and employees are governed by the French Labour Code, collective bargaining agreements, company regulations and individual employment contracts. Employment contracts must be drawn up for each specific job category, according to employment legislation and collective agreements in force.

French law distinguishes between two categories of employment contract:

- permanent contract, i.e., concluded for an indefinite term
- temporary contract, i.e., concluded for a specified period of time.

Temporary contracts can be created in the following circumstances:

- for a permanent employee on leave or absent
- for a temporary and occasional increase in business,
- for seasonal activities
- as part of government job-creation schemes to fight against unemployment.

### **Working Conditions**

#### **Wages and salaries**

A minimum monthly salary (SMIC) must be paid to all employees. The present minimum rate is €1,321.04 Euros per month (July 2008).

#### **Working hours, holidays and vacations**

As from January 1st, 2002 the legal working week is 35 hours for all businesses. The 35 hour working week can be arranged to take into account the organisation needs of the employer, according to the following schemes:

- variable working week (must reach an average of 35 hours)
- working cycles
- supplementary days off to compensate hours worked beyond 35 hours.

This arrangement has to be decided between the employer and the employees' representatives.

According to the law, each employee is entitled to two and a half working days' paid leave for each month worked or five weeks per year.

*The legal period for taking four weeks of paid vacation runs from May 1st to October 31st but under certain conditions other arrangements are possible.*

The only public holiday that the employer is legally obliged to grant with pay is May 1st and most businesses close for other 10 national public holidays. Monthly paid employees are paid for these holidays. Other employees need not be paid unless, as it frequently happens, a collective agreement provides otherwise.

### **Retirement and pension**

For employees covered by the general scheme, the retirement pension system is a two-tier one with a basic scheme and supplementary cover

The general social security scheme has funds federated as the CNAVTS (National Employees' Old-Age Insurance Fund). The supplementary cover is provided by funds belonging to two federations: for executives, the AGIRC (General Association of Pensions Institutions for Management Staff), established in 1947, and for non-managerial employees, ARRCO (Association of Supplementary Pension Schemes), set up in 1961. In the case of employees covered by special schemes, these most often combine the basic and compulsory supplementary tiers in a single scheme.

There are two main types of pension scheme:

1. Schemes based on the number of contribution years (calculated in years and quarter years). Almost all the basic schemes and the special schemes for public sector employees operate in this way.
2. Schemes based on the number of points obtained. In this case, contributions corresponding to a salary fraction are paid in annually and transformed into units of account which are credited to an employee's individual account. The amount of the pension at the end of an employee's working life depends on the number of points credited to his/her account and the value of the point at that time. Almost all the supplementary schemes operate in this way.

Under both schemes, the statutory retirement age is 65. However, a wage earner may claim an early retirement pension as early as 55. In this case, a reduction coefficient is applied to the pension: 7% per year between ages 55 and 59. 5% per year and between 60 and 62 and 4% per year thereafter.

In some cases it is possible to receive a full-rate supplementary pension before 65, without any reduction: when a full-rate pension is awarded

under the basic scheme, no reduction coefficient is applied to the supplementary pension.

### **Profit sharing plans**

Businesses employing at least 50 people must set up a statutory profit sharing plan.

### **Training Individual Right (Droit Individuel à la Formation DIF)**

With this new method of access to training, each employee could constitute a quota of training hours, to use after agreement of the employer on the choice of the theme.

To each full-time employee in a permanent contract and having more than one year seniority, 20 hours credit per year for training is allocated. Those hours could be cumulated over 6 years with a maximum of 120 hours.

The employee must follow a training defined as priority by the company or the branch of activity. If these trainings are carried out apart from the working hours, an allowance equal to 50% of the net remuneration of the employee is paid by the employer.

### **Termination of employment**

Permanent employment contracts can be terminated either by the employee or by the employer. Dismissing an employee is always possible, provided that the employer has a just and proper reason to justify it.

In cases of individual dismissal, for whatever reason, employers must strictly adhere to established procedures.

Collective dismissal can be justified only when severe economic upheaval affects a company's structure or its day-to-day operations. A plan must be drawn up in collaboration with workers' representatives to minimise the impact of such a dismissal on employees.

### **Income Support (RSA : Revenu de Solidarity Active)**

On June 1<sup>st</sup> 2009 a new minimum subsistence income for unemployed persons with no un-employment benefit and without means of support will be implemented.

In order to finance the "RSA", an additional social contribution of 1.1% will be applied on capital gains, profit of short-term investments dividends.

### **Trade Unions**

In France, the union (syndicat) is a local unit, not a national body. A local unit is usually affiliated to a national federation of unions, which in turn is linked to one of five national confederations. Unions are mostly based on industry sectors rather than on particular crafts. There may be several different unions in each place of work because each of the confederations has a different ideological outlook even though none is formally linked with any individual political party. Trade unions are powerful despite the fact that only a low percentage of the working population are union members.

### **Employees' Influence On Management**

French law provides for several systems of representation for employees of a company:

- companies having more than 10 employees must appoint personnel delegates (“délégués du personnel”). Delegates take care of individual and group complaints about working conditions.
- companies of more than 50 employees must form a Works Council (comité d’entreprise). The Works Council’s role is essentially consultative. Representatives elected to the Works Council have no power of veto. However, they do have the final say in a company’s social and cultural activities.

The Works Council must be provided with the same information as that made available to shareholders.

### **Employment Of Foreigners**

Foreign workers are entitled to the same protection under the law as French citizens, provided they reside in France. Otherwise their rights are restricted unless there is a treaty between France and their country of origin. Specific laws exist for members of the EU. Every foreign worker residing in France and intending to seek employment must obtain a resident card.

Members of the EU are entitled to certain administrative privileges (simplified formalities in applying for a resident card and exemption from obtaining a work permit).

Executives who are not EU residents acting as legal representatives of a French company must ask for a foreign trader card (“carte de commerçant étranger”).

### **Social Security And Fringe Benefits**

The social security system, which is financed by taxation and by contributions paid by companies and employees, provides sickness, disability, maternity and paternity pay, retirement pensions, compensation for work-related accidents or sickness, and family allowances. Substantial allowances are also distributed for medical expenses.

Charges paid by the employer are equal to approximately 45% of gross salaries.

Since 2007, an obligation of internet teledclaration and telepayment for social security contributions has been set up.

Foreigners working in France are entitled to French social security benefits.

Special pension programs and additional health insurance complement the State system. The choice is up to each company and can also depend on an individual employee status within the firm.

A new contribution called "forfait social" has been brought in January 1<sup>st</sup>, 2009. This contribution represents to 2% of the amounts paid to employees on which social contributions have not been paid.

For example, the contribution will be applied to Profit sharing plans ("participation") paid in 2009.

### **Golden parachutes**

In the listed companies, Golden parachutes (severance pay) given to directors or president must be previously allowed by members of directors.

Since, the TEPA Law, golden parachutes have to be based on directors and companies performances.

5 days after the authorisation of the members of directors, the information relating to the golden parachute must be available on the web site of the company.

Shareholders' general meeting must approve these golden parachutes.

## 6. Taxation

### The Tax System

#### Principal taxes

The central government levies taxes at national and local levels. The main national taxes are corporate income tax (“impôt sur les sociétés”), personal income tax (“impôt sur le revenu”), a number of withholding and flat-rate taxes on special categories of income and value added tax (“taxe sur la valeur ajoutée”).

Other national taxes include inheritance and gift taxes, registration and transfer taxes and minor duties and fees. The principal local taxes are business license tax (“taxe professionnelle”), dwelling tax (“taxe d’habitation”) and real estate tax (“taxe foncière”).

#### Basic legislation

Taxation laws are enacted by Parliament and then consolidated into the General Tax Code (Code Général des Impôts - CGI). Appendices to the CGI include decrees and regulations that have the force of law. Notes, instructions and circulars interpreting the tax laws are published by the tax authorities in bulletins, most of which are available to the public. These bulletins provide guidance in understanding the interpretations and practices of the tax authorities. The Council of State (“Conseil d’Etat”, the highest court in tax matters has a significant influence on tax legislation through its decisions in legal cases).

#### Administration

A division of the Ministry of Economy and Finance, headed by a commissioner, administers tax law. Tax inspectors located in tax offices throughout the country, issue and review assessments. Payments of tax are made to collectors, not necessarily located in the same offices as the inspectors.

Tax rulings are only obtained in exceptional circumstances from the tax authorities.

### **Taxes On Business**

The taxation of business profits is guided by the major basic concept of territoriality.

In accordance with Article 209 of the French General Tax Code and the provisions of most tax treaties signed by France, corporate tax is usually assessed on French profits of companies registered in France and on the profits of French permanent establishments of foreign companies.

### **Taxable Income**

The company's profits, as determined in accordance with generally accepted accounting principles, are subject to few adjustments for tax purposes in France. Items such as non-allowable expenses on excess depreciation are added back, while others are deducted. It is worth noting that some specific tax deductions are only granted if recorded in the books: for such items no adjustments need to be made to book income.

This is the case for the excess of declining-balance over straight-line depreciation, as well as for reserves for cost increase of inventories, which is a provision designed to replace the LIFO method (presently prohibited for both tax and book purposes).

Tax credits, either French or foreign, may be offset against corporate tax but cannot be refunded.

### **Deductions**

To be deductible, business expenses must meet the following criteria:

- They must be certain in amount and must be incurred by the end of the relevant year
- They must be entered in the accounting books for the relevant year
- They must be related to business operations.

### **Non-deductible expenses**

The following expenses are not deductible:

- dividends
- personal expenses
- corporate tax
- income tax
- liquidation surplus tax
- company car tax

- fines and penalties
- interest paid to shareholders over certain limits
- gifts over certain limits
- certain profit transfers (for example, excessive royalty or interest payments made between related parties)
- excessive depreciation.

In addition, certain reserves are allowed for tax purposes only when the charge is actually incurred and paid.

### **Long term capital gains**

Long term capital gains were taxable and applied to financial assets (investment) held for more than two years used to be taxed at a reduced rate of 19% until distributed, at which time only the excess part of the standard rate over the reduced rate was paid. Since 2007, **these capital gains are now exempted from tax** after reinstatement in the income tax basis of 5% of the capital gain.

### **Losses**

#### **Carry forward**

Losses incurred in one year may be offset against profits of the following years with no time limit.

Long-term capital losses may be carried forward for ten years but may be offset only against long-term gains.

#### **Carry back**

A loss may be carried back and set off against a company's undistributed profits of the three years preceding the loss-making year, setting off the loss first against undistributed profits of an earlier year before those of a later year within the three years. This set-off results in a direct refund of the tax payable in earlier years.

### **Corporation Tax Rates**

The current global tax rate amounts to 33 1/3 % of business profits for 2008.

For the small and medium size companies, a reduced tax rate of 15 % is offered on a maximum base of 38,120 Euros of taxable benefit for twelve months period profits. Two conditions are required: the turnover must be lower than 7,630,000 Euros and the share capital must be owned in a proportion of more than 75% by individuals.

Companies which corporate tax is more than €763 000 are liable to a social contribution amounting to 3.3% of corporate tax.

This contribution is not applicable to small and medium size companies as defined above.

### **Groups Of Companies**

Under the fiscal integration provisions (“intégration fiscale”), a group consisting of a French holding company (including sub-holdings of foreign groups) and its French resident 95%-owned subsidiaries may consolidate its results for corporate income tax purposes, thereby offsetting current profits and losses. The group assessment is made on the parent company as the only taxpayer liable for corporate income tax due on the consolidated results. Only companies that have consented to fiscal integration and whose results are subject to corporate tax can be members of the group. All the group companies must have the same financial year-end.

### **Taxation Of Branches Of Foreign Companies**

Profits of a branch or of another permanent establishment of a non-resident company are normally subject to corporate income tax in the same way as those of a resident company. A reasonable allocation of head office expenses relating to world-wide operations may be charged to the French branch and deducted in computing its taxable income but the tax authorities may require the production of the books of the parent company before allowing this deduction. However, if the tax authorities consider that the profits computed from the branch financial statements do not properly reflect the profits earned from operations in France, they have power to attribute part of the profits of the parent company to the branch, by reference to the profits earned by similar entities in the same line of business.

The conversion of a branch into a subsidiary company is treated as a sale of the business and the creation of a new company. Unrealised capital gains will normally become subject to tax. Losses incurred by the branch may not be carried over to the company.

### **Headquarters’ Operations Of Foreign Enterprises**

Headquarters’ operations of foreign enterprises and international groups may be granted favourable tax status in France. To qualify, the headquarters must act solely for the benefit of either the foreign enterprise or the group in the areas of management, control or co-ordination.

Corporate income tax is charged on a deemed profit equivalent to a prescribed percentage of headquarters’ expenses (cost-plus basis). The percentage of the cost (“the plus”) may range from 8% to 12% depending

on the nature of functions carried out by the headquarters. This arrangement applies whether the headquarters are organised as a branch or as a French subsidiary company.

Withholding taxes are levied on after-tax profits when distributed (subsidiary) or realised (branch) at the tax treaty rate.

Headquarters services are subject to VAT at the standard rate of 19.6%. However, they are considered as immaterial services benefiting from a zero-rate treatment when invoiced:

- to any non-EU company
- to an EU company that is itself subject to VAT in its own country.

In fact, only services invoiced to a French operating company are actually subject to VAT. Because of the zero-rate benefit, all input VAT incurred by a headquarters office is fully recoverable (subject to exceptions provided by law).

Headquarters' operations are subject to business tax ("Taxe Professionnelle") just like any other company.

### **Repatriation Of Pre- Or Post-Tax Profits**

Repatriation of pre-tax profits (in the form of payments representing interest, royalties or fees) is allowed without prior approval. However, attention must be paid to the arm's length principle which, if not met, could lead to a reclassification of these payments as dividend income. OECD commentaries, published in « Multinational Companies and Transfer prices », are often used by the authorities to determine if the above principle is met.

Some categories of pre-tax profits are subject to a withholding tax when remitted abroad. This is particularly true in the case of royalties (0% or 5% depending on the treaty). The payment of interest abroad is exempt from any withholding tax, provided that there is a genuine loan contract with a foreign-resident person.

Post-tax profits may also be transferred abroad without prior approval from the authorities. Dividends from subsidiaries are subject to a withholding tax.

The EU directive on parent company regimes came into effect as from January 1st, 1992. As a consequence, no withholding tax on dividends is levied on the remittance of dividends abroad.

Branch profits may also be subject to a branch-level tax, whether or not they are remitted to the head office.

However, a recent law has cancelled withholding tax on branch proceeds of EU companies.

### **Indirect Taxes**

#### **Value-added tax** (“Taxe sur la valeur ajoutée” - TVA)

Value-added tax or VAT is charged on all economic transactions, sales and services carried out in France. VAT is a tax on consumption, not a corporate tax. Companies collect VAT on transactions and remit it to the Treasury.

VAT applies in principle to all transactions made in France with very few exemptions (among them interest payments and insurance premiums).

Businesses such as banks that acquire both exempt and taxable supplies must apportion their input tax to compute a non-recoverable amount attributable to the exempt outputs (recovery ratio). VAT is calculated as follows:

The company collects VAT from its clients, less the amounts billed by suppliers to the company.

VAT incurred on certain expenses is not deductible. These include certain goods and services (dwelling-facilities, entertainment, gifts, some petroleum derived products).

VAT is added to the VAT-exclusive sales price. The rate applied depends on the goods and services in question.

The standard rate is 19.6%.

The reduced rate of 5.5% applies to food products (except for alcoholic drinks) medicines, theaters, books, passenger transportation, hotels (except de luxe).

VAT returns are normally filed on a monthly basis. They record all input and output VAT, as well as the net tax due to the Treasury. Should input exceed output, taxpayers may file a claim for a refund of the excess.

Since January 1<sup>st</sup> 2007, all companies realising a turnover exceeding €760 000 have to teledeclare and to telepay the monthly VAT on internet.

As from September 1<sup>st</sup> 2006, the “reverse-charge” mechanism, previously reserved to “intangibles services” has been extended to all deliveries of goods or services by VAT liable persons established outside France.

### **Registration duties**

Traditionally, the registration formality consists in analysing a deed by a civil servant who assesses and collects the duties provided for by law.

Registration has a tax purpose, but the formality also has a civil consequence: it gives the deed a legal date; in certain cases, it determines the validity of legal deeds.

Normally, the presentation of deeds to the formality is accompanied by the payment of duties. However, in certain cases, payment may be in installments or deferred.

The rate of registration duty applying to a transfer of goods depends on the nature of the transfer and the type of goods transferred.

The main registration duties are as follows:

*Sale of real property:*

Duties on sales of real property are collected when the property is transferred. In addition to tax on the registration of real property transactions, such a transfer gives rise to additional local taxes.

- Initially collected for an appropriation to the State, tax on the registration of real property transactions has become a department resource for all real property transactions other than exchanges conducted since January 1<sup>st</sup>, 1985. Its rate is now single one at 3.6 % (\*);
- Apart from the tax on the registration of real property transactions, there is an additional tax of 1.20% collected for appropriation to the municipality or to a department equalisation fund,
- There is also a tax of 0.2% collected for the State.
- There is also another levy of 2.50% collected for appropriation to the state, assessed on the amount of the department duty in respect of “assessment and collection costs”.

(\*In each department, the rates of the tax on registration of real property transactions may be modified between 1% minimum and 3.6% maximum.

*Sale or transfer of goodwill*

Transfer of businesses is taxed according to a band scale and the goodwill value. It is subject to transfer duties at the rates of:

- 3% to the fraction of price included between € 23,000 and € 200,000
- 5 % to the fraction of price over € 200 000.

In transfers made in specific zones, the rates are as follows:

- 1% to the fraction of price included between € 23,000 and € 107,000
- 3% to the fraction of price included between €107,000 and € 200,000
- 5 % to the fraction of price over € 200,000.

If the transfer is a contribution to a company, a fixed amount of € 375 or € 500 usually applies (the same as for a cash contribution), if the contributor makes the commitment to keep the shares during five years.

An increase in capital by way of a cash contribution or through capitalisation of reserves is subject to the same registration duty rules as if that capital contribution had been made at the company's incorporation, (€375 or €500).

#### *Transfers of Corporate Rights:*

A straight 3% registration duty since August 6<sup>th</sup> 2008 will be charged when a document recording a transfer of shares (actions or "parts sociales") is executed, the duty has a €5 000 ceiling for any transaction. It is possible in certain circumstances to avoid this duty.

When the transfer of shares concerns a company specialised in *real property transactions*, this registration duty is amounting to 5%.

#### **Business tax ("Taxe Professionnelle")**

Business tax (Taxe Professionnelle) is chargeable annually to corporate bodies or individuals regularly carrying on business in France as self-employed.

Various exemptions are available. The assessment of the business tax consists on 16 % of the rental value of tangible fixed assets available for professional requirements. This includes both fixed assets liable to real property tax and other fixed assets (machinery, movables etc.). Tax is charged on the actual or deemed annual rental value of the tangible fixed assets of the enterprise (less a general deduction of €3, 800 and other specific deductions in particular circumstances). A general reduction of 16% is then made in this tax base. Tax rates vary widely from one local authority to another but the tax payable may not exceed 3.5% of the added value of the business (since 2007).

Finally, a minimum business tax contribution of 1.5 % of the added value is payable by enterprises in which the turnover is higher than €7, 600, 000.

### **Other Taxes On Business**

**Payroll tax:** Employers who are not subject to VAT on at least 90% of their income are subject to a payroll tax at varying rates from 4.25% to 13.6%.

**Apprenticeship tax:** Employers are subject to apprenticeship tax. It is levied at the rate of 0.68 % of annual salaries.

**Training tax:** Employers are subject to this tax at a rate of:

- 1.6 % since January 1<sup>st</sup> 2006 if they employ at least twenty people
- 1.05 % if they employ at least ten people, but less than twenty
- or 0.55% if less than ten people are employed.

**Compulsory housing investment:** Employers employing at least twenty people must allocate to a housing program an amount equal to 0.45% of annual salaries paid.

**Company car tax:** Companies are liable for an annual tax on automobiles that they (or their employees) own, rent or use. From October 1<sup>st</sup> 2005, for vehicles dated before June 2004 and owned or used before January 1<sup>st</sup> 2006, the annual rates per car range from €750 for smaller vehicles to 4 500 €. And for vehicles owned, rent or used since June 1<sup>st</sup>, 2004 and owned or used since January 1<sup>st</sup>, 2006, a new table based on the rate of emission of dioxide of carbon was set up.

Since January 1<sup>st</sup> 2006, this tax has been extended to personal cars used for professional purposes by employees and managers.

Exemptions are applicable for some non pollutant vehicles

**ORGANIC (social contribution of solidarity):** Companies having a turnover higher than €760, 000 must liquidate this tax equal to 0.16% of the sales turnover declared.

Declaration and payment of this tax must be done via internet.

**IFA (Minimum annual corporation Tax):** Since 2009, this tax is due for all the company in which the turnover is higher than €1, 500, 000. The annual tax ranges from €3, 750 to €110 000.

### **Taxes On Individuals**

#### **Territoriality**

French residents are taxed on their world-wide income, subject to certain treaty exceptions, whereas foreign nationals in France are only taxed on their French-source income.

Residence is usually determined under the tax home test (“foyer fiscal”) or the 183-day rule. A French “foyer fiscal” is established if an individual and his family (if any) moves their household to France. Under the 183-day rule, residence is established if the individual spends over 183 days in France in any calendar year.

If an individual is a French resident under French law and, concurrently, a resident of another country under the laws of another jurisdiction, tax treaties provide “tie-breaker” rules so that the individual will only be deemed a resident of one country at a time. The tie-breaker tests include the location of a permanent home, the center of economic (“vital”) interests, the location of an habitual abode and the citizenship of the individual.

### **Taxation**

French residents are subject to progressive tax rates ranging from 0 to 40 % (on 2008 income). However, certain adjustments to income ensure a more moderate average rate of taxation.

French taxes are mitigated for families by the “family quotient” system, which allows a household to divide its income to reflect the numbers of dependants (“parts”) before progressive rates are applied.

The first two children count as one-half of a part each, while each additional child is counted as a full part.

Since 2007, a “fiscal shield” has been implemented in order to limit to 60 % of the total income the maximum taxation in France.

This “fiscal shield” has been now recently decreased to 50% (starting date: January 2008) and its basis extended to social taxes on specific revenues by a recent law on purchasing power.

A net wealth tax is levied on individuals whose net worth exceeds € 790,000 € (for January 1<sup>st</sup>, 2009). The tax is due on the whole of an individual’s net worth as at January 1<sup>st</sup> of each year. It does not matter whether it is located in France or not.

However, several items are exempted from taxation, in particular professional properties, works of art and patent rights.

Non-residents are also affected by the net wealth tax but only on properties located in France. Their financial investments are specifically exempted. Double tax treaties may affect these provisions. Otherwise, the net wealth tax is applied at a progressive rate as follows:

Value (€)	Rate
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<b>Between</b>	790,000	1,280,000	0.55%
	1,280,000	2,520,000	0.75%
	2,520,000	3,960,000	1.00%
	3,960,000	7,570,000	1.30%
	7,570,000	1,480,000	1.65%
<b>Above</b>	16,480,000		1.80 %

## 7. Accounting & reporting

### Accounting principles

French accounting principles are set up in the Law of April 30th, 1983 (individual companies' financial statements), text revised in 1999 with the Règlement 99-03 and the Law of January 3rd, 1985 (consolidated financial statements) text revised in 1999 with the Règlement 99-02, in the opinions and interpretations of the National Accounting Board ("CNC") and in recommendations made by various professional organisations.

Fundamental accounting concepts, such as prudence, going concern, accruals and consistency, have a legal basis in France.

As from January 1, 2005, new rules apply to the accounting principles.

**Convergence** of the French accounting rules towards IFRS will be concretised by:

#### The transposition of IFRS in Règlement 99-03 (Individual Accounts):

- In 1999: rewriting of the PCG "Plan Comptable Général" (the French General Chart of accounts) annexed to the Règlement 99-03
- From 1999: transpositions of IFRS in the PCG annexed to Règlement 99-03:
- Long-term contracts: Règlement 99-08 / IAS 11
- Changes in accounting methods : Règlement 99-09 / IAS 8
- Retirements and long-service medals: Règlement 99-03 / recommendation of the CNC / IAS 19
- Liabilities: Règlement 2000-06 / IAS 37
- Assets: Règlement / IAS 16 / IAS 38 / IAS 40 / IAS 36.

#### The transposition of IFRS in Règlement 99-02 (Consolidated financial statements):

- Leasing: Règlement 99-02 / IAS 17
- Deferred taxes: Règlement 99-02 / IAS 12

### **Form and content of financial statements**

The form and content of financial statements are defined in the General Chart of Accounts (“Plan Comptable Général 2005”). The basic financial statements included in annual reports to shareholders are:

- A balance sheet, where headings are classified by function (e.g. finance and customers etc. rather than by liquidity)
- An income statement, where revenues and expenses are classified by origin, and are systematically analysed under three overall categories :
  - operating revenues and expenses
  - financial revenues and expenses
  - exceptional revenues and expenses
- Explanatory notes.

From January 1st, 2005, the listed companies have the obligation to present their consolidated financial statements according to IFRS.

The statutory auditor’s opinion and the directors’ report must also be included in the annual report.

The financial statements and the statutory auditor’s and directors’ reports must be filed with the Commercial Register and are available for inspection by the public.

### **Auditing**

French companies (Sociétés anonymes - SA and Sociétés en commandite par actions - SCA) are required to submit their financial statements for auditing. However, other companies (e.g., SNC, SARL) are only subject to this requirement if they exceed certain thresholds (in terms of total assets, number of employees, level of sales, etc.).

Audits are conducted by professionals (statutory auditors – “commissaires aux comptes”) registered with the Institute. Statutory auditors are appointed by the shareholders for a period of six financial years.

The statutory auditor issues two formal annual reports to shareholders:

*General report:*

The general report must include an opinion with appropriate justification on the financial statements and on legal compliance.

*Special report:*

The special report contains disclosures of those transactions between a company and its directors that either lie outside the normal course of business of the company or are not at arm's-length.

*Internal control report (only for companies quoted on the Stock Exchange):*

This report presents the observations of the statutory auditors on the report of the President concerning the internal control procedures regarding the development and the treatment of the accounting and financial data processing. The purpose of the statutory auditors is to secure that this information contained in the report of the President must be presented in a sincere way, be relevant and no likely to be badly interpreted.

## 8. UHY firms in France

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## 9. UHY offices worldwide

For contact details of UHY offices worldwide, or for details on how to contact the UHY executive office, please visit [www.uhy.com](http://www.uhy.com)