

W H I T E P A P E R

INVESTING IN FRANCE

LEGAL STRUCTURE
FRENCH TAX SYSTEM
AUDIT
INVESTMENT



Introduction.

Contrary to a certain negative and persistent idea that some have of the attractiveness of France, certain States are at the origin of increasing investments in the French economy. This is particularly the case for the United States. The figures published by the Business France agency are particularly eloquent in this regard.

The 2022 international investment figures show that France has never been as attractive as in 2022. It welcomed 1,725 international investment projects which enabled the creation or maintenance of 58,810 jobs.

If the number of job-creating investment projects identified increased by 7% compared to 2021, the increase in the number of jobs created or maintained is historic, +31% compared to 2021.

These results reinforce the attractiveness of the France site and prove that foreign investors still have confidence in France.

The creation of establishments represents 50% of investment projects.

In the typology of investments, decisions for new establishments in France reach 50% of all investments. The 46% of extensions illustrate, for their part, the renewal of the confidence placed in the France site by foreign groups already established on French territory.

Furthermore, 26% of investment decisions concern production activities, as well as 30% of announced jobs. **Decision centers** are the second most widespread activity among investment projects in France, while 31% of jobs created or maintained correspond to **business services**.

The year 2022 will see an increase of 23% in the number of R&D projects compared to the year 2021 and of 53% in jobs created in this type of project. The number of business service projects identified in 2022 increases by 26% and the jobs generated by 193%, mainly due to job creation by foreign temp agencies.

In this context, **the United States is once again the leading investing country in France** with 16% of projects

and 29% of jobs recorded in 2022. Germany and the United Kingdom follow with respectively 15% and 10% of investment projects. investment recorded in 2022. With 10% of jobs created or maintained, the Netherlands stands out as the 3rd country creating jobs in France in 2022.

Energy and recycling sector (5% of projects), **electrical and electronic equipment** (5%) and the **agri-food industry** (5%) are the **main industrial sectors** of project destination. In 2022, they will experience significant increases in the number of projects received, + 87% of projects in the energy and recycling sector, + 17% for electrical and IT equipment.

The **aeronautics sector** is restarting after 2 years of crisis to reach the historic level of 52 investment projects, an increase of 86% and a number of jobs created or maintained which has more than doubled in 2022. As for the aeronautics sector health, driven by **medical equipment and devices**, it is also having a good year, with 19% additional projects compared to 2021 and + 7% jobs created or maintained.

In this economic context that is particularly favorable to foreign investments, it is appropriate to explain the legal aspects of the investment made in France. This white paper approaches them from a US perspective.

PART 1

ADOPT THE RIGHT LEGAL STRUCTURE

FOCUS. CHARACTERISTICS OF DIFFERENT LEGAL STRUCTURE.

When it comes to investing in France, the choice of legal structure is a crucial decision that can influence the management, taxation, and agility of the company. In France, several legal forms are available, each presenting its advantages and disadvantages depending on the size of the company, its activity, and its long-term objectives. Some of the main social structures will be discussed.

The Limited Liability Company **SARL**

The SARL is frequently chosen for small and medium-sized businesses, making it possible to limit the liability of the partners to the amount of their contributions. This form offers great flexibility in terms of management and is suitable for family or small projects. However, its closed nature (any new partner must be approved by the current partners) and its limited size (100 partners maximum) make the SARL a company with limited growth potential.

The Simplified Stock Company **SAS**

The SAS is appreciated for its great freedom of organization and operation. It allows for a clear separation between investors and managers, which is ideal for business projects requiring significant investments. The liability of shareholders is limited to their contributions, and it is possible, in this company, to very freely organize the management methods of the company, as well as the relationships between partners. It is thus possible to streamline or, on the contrary, to stiffen the situation of associated investors in an SAS. No size limit is also imposed, but the SAS cannot be listed on the stock exchange.

The Limited Company **SAS**

Intended for large companies, the SA is suitable for large-scale projects, with the possibility of welcoming a large number of shareholders and being listed on the stock exchange. However, its structure is more rigid and its management more complex than the SAS.

The European Company **SE**

The SE is a company which also limits the liability of the partners. With a minimum capital of 120,000 euros, it mainly offers easier mobility within the European economic area.

WHAT STRUCTURE ? THE STRATEGIC CHOICE.

The choice of legal structure depends on several factors :

- **The nature of the activity** : certain activities may be better supervised by a specific type of structure due to sectoral regulations.
- **The number of partners** : companies considering a large number of partners may prefer the SA or SAS to facilitate investment.
- **Protection of personal assets** : entrepreneurs wishing to protect their personal assets will opt for an SARL or SAS, offering limited liability.
- **Financing needs** : the ability to raise funds can be facilitated by the choice of a SAS or SA, which are more suited to major investments and the entry of new shareholders.
- **Development prospects** : the company's growth strategy can influence the choice of structure, with certain legal forms offering more flexibility for future expansions.

Finally, note that as part of an investment made in France, the investor benefits from **favorable immigration rules**. There is in fact a system called "Talent Passport", particularly applicable to investors, and allowing them to obtain a multi-year residence permit in France. This advantage is subject to certain conditions, depending on the terms of the investment made in France.

In the case of investment via a company, it must benefit a company that the investor personally manages or in which he holds at least 30% of the capital.

Furthermore, the investor must consider creating or saving employment within the 4 years following the investment in France. Finally, the investment in tangible or intangible assets must represent at least € 300,000.

PART 2

UNDERSTANDING THE FRENCH TAX SYSTEM

FRENCH SYSTEM TAX.

Corporate Tax and VAT

French taxation is characterized by a corporate tax, the rates of which vary between 15 and 25% depending on the profits made.

The companies subject to corporate tax are the main companies used in business life, namely: public limited companies (SA); limited liability companies (SARL); Companies limited by shares (SCA) and Simplified joint stock companies (SAS).

The company is taxable on profits made in France during the annual financial year. Profits made abroad through branches are not subject to corporate tax.

The amount of profit to be declared each year is that made in all of the company's French establishments.

Each company pays corporate tax on its own profits.

However, in the event of opting for the group regime (tax consolidation regime), a parent company can include in its taxable profits those of its subsidiaries of which it controls at least 95% of the capital. The parent company then pays corporation tax on all of the group's profits.

VAT, applied to most transactions, is a tax with a standard rate of 20%. Reduced rates may apply to certain goods and services, for example, 5.5% or 10% for food goods, transport, and certain cultural services.

Tax incentive for investors

The Research Tax Credit encourages R&D by reimbursing part of the expenses incurred in this area. This system is intended to support companies incurring research and development expenses. The CIR allows 30% of R&D expenses to be deducted up to 100 million euros, and 5% beyond this amount. The research tax credit is directly deducted from the corporate tax or income tax of the company requesting it. If it is higher than the tax due, it will be deducted from the amount of tax payable over the following three years. When the three years have passed, if the CIR remains higher than the tax, the remaining amount will then be paid to the company.

Eligible expenses include researcher salaries, operating expenses, depreciation and subcontracting costs, among others.

FRANCO-AMERICAN CONVENTION.

US citizens are subject to the worldwide income tax, which means they must report all income, including income from investments in France, to the US tax authorities (IRS). This includes interest, dividends, capital gains and any other type of investment income.

A US citizen must fulfill the following reporting obligations:

- **Form 5471** : U.S. citizens must complete Form 5471 if they have a significant ownership interest in a foreign company. This form is complex and is intended to inform the IRS of the activities and financial balances of the foreign corporation.
- **Form 8858** : If a US citizen owns a tax transparent entity (such as a sole proprietorship or partnership) in France, they may be required to file Form 8858 to report the activities of that entity.
- **Subpart F Income** : Certain categories of income generated by Controlled Foreign Corporations (CFCs) may be taxed directly to U.S. shareholders, even if the profits are not distributed. This often concerns so-called "Subpart F" income, which can include dividend income, interest income, rental income and certain types of service income.
- **GILTI (Global Intangible Low-Taxed Income)** : introduced by the 2017 US tax reform, the GILTI tax imposes active income from CFCs on US shareholders at a reduced rate, regardless of the distribution of this income. This means that American owners of businesses in France may be taxed on their business income even if they do not receive that income in the form of dividends.

Additionally, the U.S.-French tax treaty has several important implications for a U.S. citizen.

- **Rental income** : income from real estate located in France is taxable in France. This income must also be reported in the United States, but tax paid in France can be credited against U.S. taxes to avoid double taxation.
- **Dividends** : dividends paid by French companies to American residents are subject to 15% withholding tax in France. To benefit from this reduced rate, the US resident must provide the paying agent with a tax residency form.
- **Interest earned** : Interest paid to a U.S. resident from French sources is not taxable in France, but must be reported and is subject to tax in the United States.
- **Royalties** : Royalties are taxable only in the recipient's country of residence, which means that a US citizen will only pay taxes on this income in the United States.
- **Real estate capital gains** : capital gains realized on the sale of real estate in France by American residents are taxable in France at a withholding tax of 33.33%. These gains are also taxable in the United States, but a tax credit is available for tax paid in France.

UNDERSTAND HOW FRENCH AND EUROPEAN WORK.

Goods imported into France from outside the European Union are subject to common European Union customs tariffs. These rights depend on the classification of the product.

VAT is also applicable on imported goods, calculated on the total value of the import, including the cost of the goods, customs duties, and transport costs.

Importers must provide complete documentation, including a commercial invoice, bill of lading, and customs declaration. The procedure can be electronic via the DELTA customs clearance system in France.

Products must comply with European standards and regulations. Some products may require specific certifications to be imported.

Finally, importation involves using the TARIC system to identify the customs duties applicable to a specific product. These codes help determine pricing and regulatory measures for each type of product.

Direct investment in France is all the more relevant , in order to produce directly on French soil and thus overcome customs barriers.

PART 3

BUSINESS AUDIT

CONDUCT A SOCIAL AUDIT OF THE TARGET BUSINESS OR OF THE LEGAL FRAMEWORK APPLICABLE TO THE BUSINESS CREATED

French social law is probably one of the most complex and protective laws in OECD countries.

In order to measure the costs and risks it generates, a social audit must be carried out by the investor before acquiring a stake in a company, in order to evaluate several key aspects linked to human resources and working practices of the target company. The objective is to identify potential risks, hidden liabilities and compliance actions that could affect the value of the investment or result in additional costs after acquisition.

More specifically, it involves examining:

- Employment contracts and remuneration policies: verify compliance of contracts with local legislation, including contract types, salaries, bonuses and allowances;
- Social benefits: evaluate the social benefit programs offered, such as health insurance, retirement plans, and their regulatory compliance;
- Compliance with labor regulations: ensuring that the company complies with labor laws, including working hours, working conditions, and safety standards.
- Union relations and the state of collective bargaining: understand relations with unions, existing agreements, and potentially current or past conflicts.
- Employment disputes: identify the history of disputes, current claims, and assess the potential risks of future disputes.
- Workplace health and safety measures: review health and safety policies and procedures in place, as well as past incidents and corrective measures taken.

PART 4

INVESTMENT CONTROL

PASSING FOREIGN INVESTMENT CONTROL

France benefits from the free movement of capital, on the basis of Article 65 of the Treaty on the Functioning of the European Union. Article L. 151-1 of the Monetary and Financial Code also provides that “financial relations between France and abroad are free”.

By exception, the Minister of the Economy may authorize or prohibit investments made in certain strategic sectors, including “activities likely to undermine public order, public security or the interests of national defense” as well as “activities of research, production or marketing of weapons, ammunition, powders and explosive substances” (art. L. 151-3 of the Monetary and Financial Code). Article R. 151-3 of the Monetary and Financial Code contains a list of sectors specifically concerned.

For the purposes of this system, a foreign investment is the fact:

- To acquire control, within the meaning of Article L. 233-3 of the Commercial Code, of an entity governed by French law or of an establishment registered in the trade and companies register in France ;
- To acquire all or part of a branch of activity of an entity under French law ;
- To cross, directly or indirectly, alone or in concert, the threshold of 25% of ownership of the voting rights of an entity under French law ;
- To cross, directly or indirectly, alone or in concert, the threshold of 10% of ownership of the voting rights of a company governed by French law whose shares are admitted to trading on a regulated market.

PART 5

FINANCING YOUR INVESTMENT

France benefits from a dynamic capital market, providing opportunities for companies seeking to raise funds via the Paris stock exchange or by issuing bonds. This option requires a certain maturity of the company and a solid financial strategy.

The French government and local authorities offer direct aid and subsidies to encourage foreign investment. This aid often targets specific sectors or regional development objectives.

Crowdfunding and venture capital are particularly suitable for startups and innovative companies. These financing mechanisms offer not only financial resources, but also access to a network of experts and potential partners.

Venture capital consists of direct investments in companies with high growth potential, generally in the start-up or development phase. Investors, often specialized funds, provide capital in exchange for an equity stake in the company. This type of financing is suitable for innovative projects requiring significant initial investments, in return offering strategic and operational support.

Participatory financing, or crowdfunding, makes it possible to raise funds from a large audience via online platforms. This method offers great flexibility, allowing a variety of projects to be financed, from business creation to specific development projects. Crowdfunding can take several forms, including donation, loan, or capital investment, thus adapting to the specific needs of each project.

French banks finally offer a range of loans adapted to the needs of foreign companies, with often competitive conditions, as long as the bank debt is secure. France designs a large number of securities, among which we find the trust, which is similar to the Anglo-American trust.

The main objective of the security trust is to provide a guarantee to creditors in the event of default by the debtor. The transferred property or rights serve as security for

the execution of the debtor's obligations. If the debtor defaults, creditors may be compensated through the sale or use of the transferred property or rights.

The security trust offers several advantages, including greater security for creditors thanks to the separation of the transferred property from the rest of the debtor's assets, and a certain flexibility in the management of guarantees.

The tax regime applicable to the security trust may vary depending on the nature of the assets transferred and the operations carried out. It is important to consult an expert to understand the specific tax implications.

The security trust under French law therefore represents an important guarantee tool, offering an alternative to traditional securities such as pledge or mortgage, with specific characteristics which can prove advantageous in certain situations.

Be careful, however, with US Person status in relationships with financial institutions.

U.S. citizens must report their foreign financial accounts if the total value of those accounts exceeds \$10,000 at any time during the year. This declaration is made using the FinCEN 114 form.

The Foreign Account Tax Compliance Act (FATCA) also requires U.S. citizens to report certain foreign financial assets above certain thresholds to the IRS via Form 8938. Additionally, FATCA requires foreign financial institutions to identify their U.S. customers and to report certain information to the IRS, which may affect how banks and financial institutions in France interact with U.S. citizens.

Team.



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Lawyer and Doctor in private law and criminal sciences, Tristan Girard-Gaymard heads the firm's scientific advisory board. As such, he is, from a doctrinal point of view, in support of all the lawyers of the firm. In charge of editorial policy, he also provides valuable insight into corporate law arrangements. His technical knowledge is also acclaimed in the context of the firm's high-stakes litigation activity, particularly for group actions.



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A tax specialist by training, Anthony Roustan hones his knowledge in the field in renowned firms such as PWC and Arsene Taxand. This allows it to acquire unique expertise in wealth taxation (sale of businesses, intergenerational transmission, reorganization of holding and financing structures for heritage assets, etc.). Expertise that he now puts at the service of entrepreneurs and families but also international groups. He won the trophy for Best Young French Tax Specialist 2021 organized by EY.



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Vanille Launay began her career at the Clifford Chance firm, in banking law and financial markets law, mainly on litigation files. In the ranks of the international structure, it develops a significant work force and great precision. It is with the ambition of strengthening the litigation department (mainly on subjects involving financial or regulatory issues) that she joined the Bruzzo Dubucq law firm in 2022. A firm that she already knows, since she completed his end-of-study internship there in 2019.



THANKS

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DEFEND.
INNOVATE.**

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