

BNP Paribas case (CFC)

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Tax Haven panel

Conseil d'Etat, 28 November and 26 December 2012, BNP Paribas

- French bank sets up subsidiaries in Hong Kong (case Nr 338682, 28 November 2012) and the Bahamas (case Nr 349070, 26 December 2012)
- CFC adjustment against BNP for subsidiaries in tax havens
- Safe harbor clause in French CFC: exemption if taxpayer proves that operations were not principally motivated by the transfer of profits to a low-tax jurisdiction

Conseil d'Etat, 28 November and 26 December 2012, BNP Paribas

- 28 November 2012 (landmark case): taxpayer must prove that operations are not principally motivated by the avoidance of French taxes
- Wording of French CFC does not distinguish between French and foreign taxes
- Precedent Conseil d'Etat 2 February 2012 Sonepar, case Nr 351600 (constitutional challenge against French CFC): objective, rational and proportionate tests, including safe harbor clause regarding avoidance of French taxes, therefore no breach of equality

Conseil d'Etat, 28 November and 26 December 2012, BNP Paribas

- 26 December 2012: subsidiary in the Bahamas
- Subsidiary collects funds from North American customers (individuals) willing to invest in the Bahamas
- These funds would not have been invested in France
- Therefore no main purpose of avoiding French taxes: taxpayer wins