[495] b. Treatment of Tax Claims in France

The rules governing priorities and preferences for tax authorities are found in the General Tax Code (art. 1920-1929 septies of the French Tax Code, “FTC”), not in the bankruptcy law. The "general preference" (no matter which tax shall be recovered as opposed to its “special preference” in case of property taxes) afforded to tax claims by the General Tax Code grants priority over other creditors with regard to the proceeds of "movable property," but not immovable property, i.e., real estate, which requires a registered mortgage to obtain priority.[1]

The General Tax Code sets forth the tax preferences. Because these preferences are in derogation of the general principle of equality, they are interpreted restrictively.[2] The “general preference” ends at the same time as the relevant tax claim runs out. The Tax Code includes the following preference for taxes: (1) direct taxes, such as income, corporate income and business taxes (four years);[3] turnover taxes (four years);[4] (3) registration tax, stamp duty and wealth tax (four years);[5] and (5) customs authorities rights of confiscation, penalty, and restitution (three years).[7] Social Security organizations also have a general preference for social security contributions, agricultural social security contributions, and contributions due to holiday insurance schemes.[8]

The Treasury must register unpaid taxes (income tax, corporate income tax, business tax, turnover taxes, indirect taxes) for merchants and companies with the Commerce Court on a quarterly basis within a two months at the end of each quarter, if the debtor ‘s tax liability exceeds €12.200.[9] Registration does not determine rank vis-à-vis other taxes or creditors, but rather the general preference can be relied upon with regard to movables. The Treasury can obtain a statutory lien on immovable property which takes precedence as of the date of registration, but may only make this registration after starting collection proceedings.[10]

The Treasury has another tool not possessed by other creditors. Under the Procedural Tax Law, the Treasury can send out a notice to third parties who owe money to the debtor to withhold the funds due to the debtor.[11] The notice effects an immediate transfer to the Treasury of ownership of the claims owed by the third party to the debtor. The opening of a collective proceeding under the 1985 [496] Law does not stop the Treasury from collecting amounts covered by a notice sent out before the proceeding was opened.[12]

Managers of companies and legal entities may be held personally liable for payment of taxes when they engaged in fraudulent activities or serious and repeated noncompliance, or when tax authorities were prevented from collecting the taxes and tax penalties due by these companies or entities.[13]

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[1]David, *supra* note 6, at 222. These tax preferences come after legal expenses, the "super preference" for employees' salaries which is granted for reasons of social justice, debts arising after the case is opened, and certain "special preferences" in particular things. *Id.* at 227-29.

[2]David, *supra* note 6, at 221.

[3] *Article 1920 and 1924 FTC. Id.* at 222-24.

[4] *Article 1926 FTC. Id.* at 223-24.

[5] *Article 1929,1 FTC. Id.*

[7] *Article 1929 sexies FTC . Id.* at 224.

[8]*Id.* at 229-30.

[9]*Article 1929 quater FTC . Id.* at 225.

[10]CODE GENERAL DES IMPOTS (FTC), art. 1929 ter.

[11]LIVRE DES PROCEDURES FISCALES, art. L262 and L263.

[12]Patrick Serlooten, *le Tresor Public, Creancier de l'Entreprise en Difficulte* [The Public Treasury, Creditor of the Financially Troubled Company], in No. 1-2 LA SEMAINE JURIDIQUE ENTREPRISES ET AFFAIRES 24, 26 (Jan. 6, 2000).

[13]LIVRE DES PROCEDURES FISCALES (PROCEDURAL TAX LAW) , art. L266 and L267.