

*Partnerships:*

*French domestic and international  
tax law perspective*

Master II DFA – Rennes Law School

1 May 2018



# *Introduction*

# French distinction between corporations and partnerships

- Two tax and legal approaches of partnerships coexist:
  - **Common law:** partnerships do not have necessarily legal personality
  - **Civil law:** partnerships are usually a legal entity separate from their partners' legal personality
- French (civil law) distinction (subject to some exceptions):
  - **Partnerships (“sociétés de personnes”)**
  - **Corporations (“sociétés de capitaux”)**

	PARTNERSHIPS	CORPORATIONS
LEGAL	<ul style="list-style-type: none"> <li>• Partners' person is fundamental (intuitu personae)</li> <li>• Shares are not freely transferable</li> <li>• Partners liabilities are unlimited</li> </ul>	<ul style="list-style-type: none"> <li>• Capital contribution is fundamental</li> <li>• Shares are freely transferable</li> <li>• Partners liabilities are limited</li> </ul>
TAX	<ul style="list-style-type: none"> <li>• Partners are liable to CIT following the French concept of “semi-transparency”</li> </ul>	<ul style="list-style-type: none"> <li>• Corporations liable to CIT</li> </ul>

- Most of French partnerships may opt for the corporate taxation regime and become taxpayers. Conversely, some corporations may opt, under some conditions, for the partnership regime.

## ***French concept of semi-transparency***

- French concept of “semi-transparency”: partnerships are not as such taxpayers, but are tax “subjects”
  1. Tax base is determined at the level of the partnership
    - Tax base determination rules depend on the tax status of the partners and the activity of the partnerships
  2. Taxable results so determined is deemed to be attributed to the partners up to the proportion of their shares held in the partnership.
  3. Each partner is liable to tax on the results allocated
    - The partners can in some circumstances offset the tax losses generated by the partnership against their own income

# *An isolated interpretation raising difficulties*

- French tax treatment raises several issues, specially in a cross-border context:
  - **Applicability of a DTT**
  - **Characterization and treatment of flows**
  - **Tax consequences (e.g. location of the partnership, location of the partners)**

**→ Risks of double taxation or double non taxation**

# ***Agenda***

## **1 – The treatment of French partnerships**

1.1 – French domestic rules and territoriality principle

1.2 – Application of Double Tax Treaties to French partnerships

## **2 – The treatment of foreign partnerships**

2.1 – Treatment of French source income from a French perspective

2.2 – Treatment of foreign source income through a foreign partnership

# *1- The treatment of French partnerships*

---

## ***Issues considering taxation of non resident partner of a French partnership***

- These questions revolve around the determination of the applicable DTT:
  - The DTT between France and the State of source of the income
  - The DTT between France and the State of residence of the partners
- Some issues have been solved by the *Conseil d'Etat* but others remain unsolved

## *1.1- Domestic rules and territoriality principle*

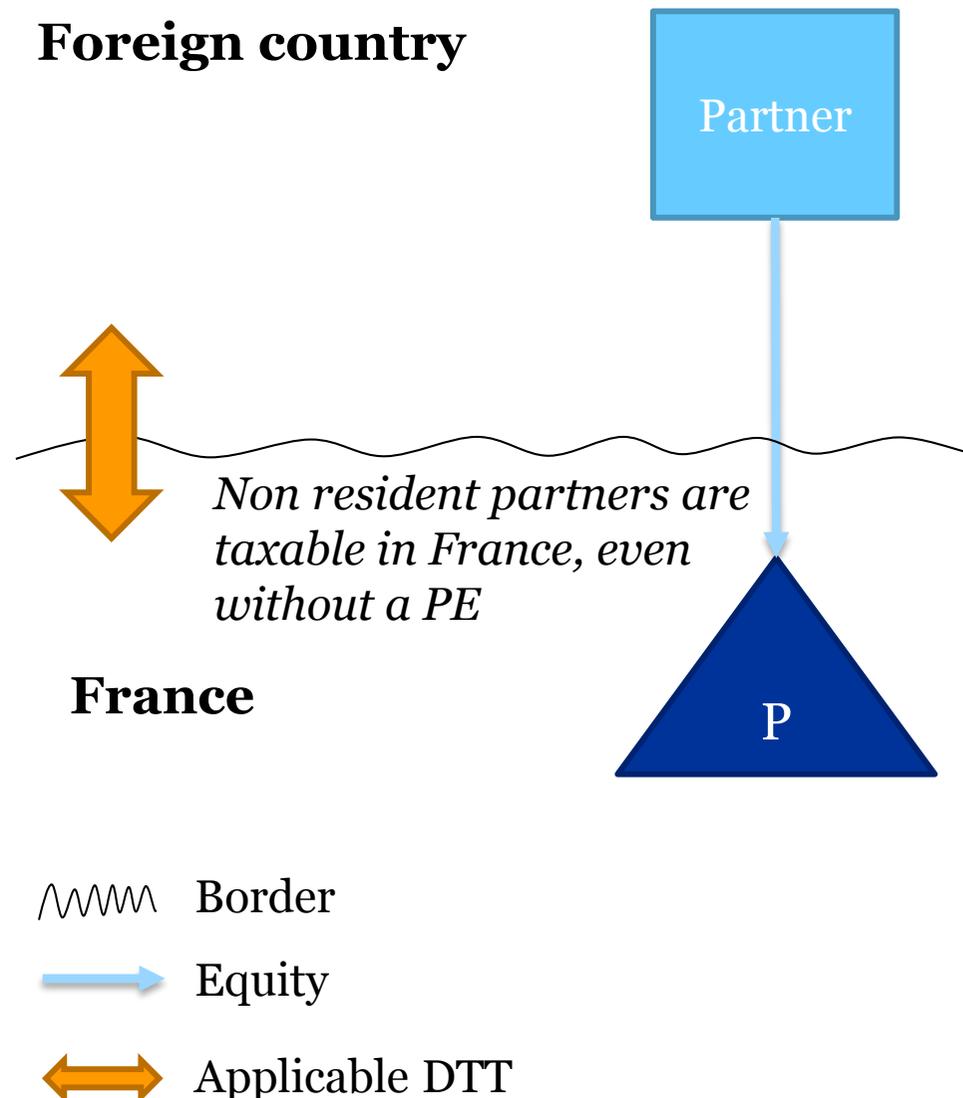
## 1.1- Domestic rules and territoriality principle

- **OECD Position:**

- OECD position: DTT does not apply to partnerships but may be, in some circumstances, applicable to partners

- **French position:**

- Profits generated by French partnerships are taxed in France at the level of its members whether the partners are residents or not
- No PE in France (*Conseil d'Etat, Société Kingroup Inc. case*)
- In a DTT context : the *Conseil d'Etat (Quality Invest case)* considers that the French partnership is a resident in light of the DTT
- Only French partnerships can benefit from treaty provisions



## *1.2- Application of DTT to French partnerships*

## 1.2- Application of DTT to French partnerships

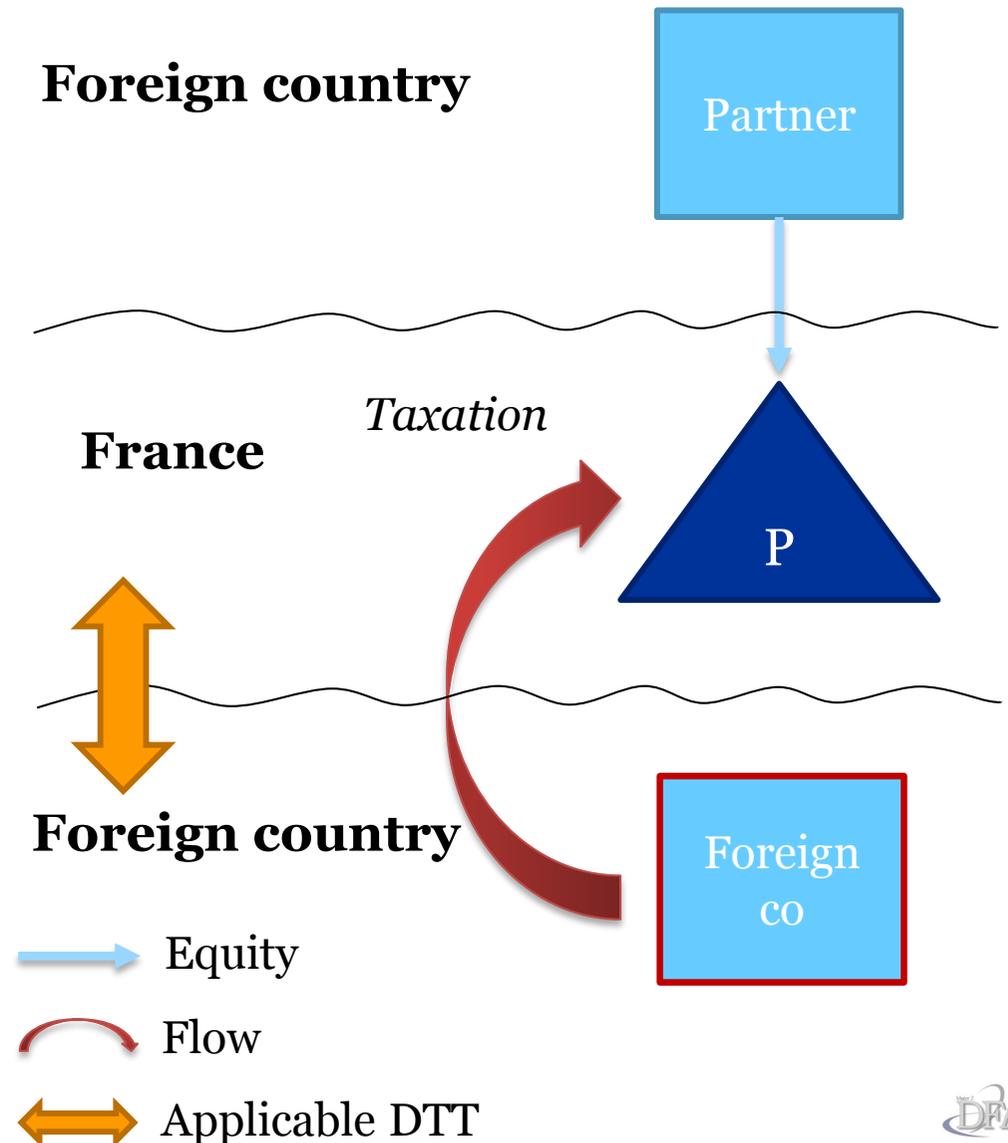
- **Inflows:**

- **Active income realized in France:**

- Taxable in France, in the hand of the partner, whether it is a French resident or not

- **Passive income:**

- Taxable in France whether the partner is a French resident or not
- Tax credits? Problem unsolved at this stage. Arguably, if France considers French partnerships as residents, a tax credit should be granted



## 1.2- Application of DTT to French partnerships

### • The France/US DTT example

(considering the US as the State of source)

#### • **Withholding tax:**

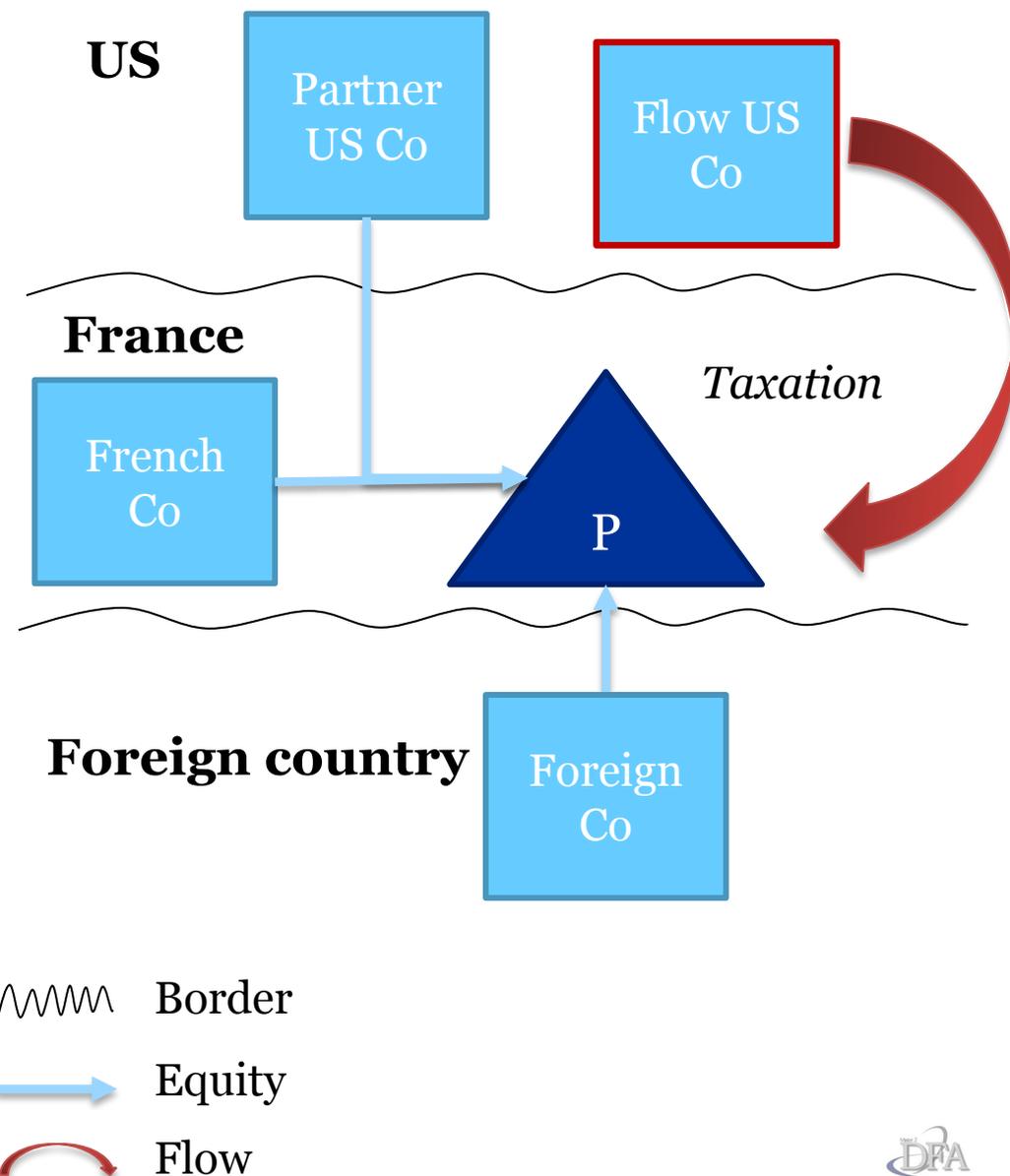
- French resident partners of a French partnership: The DTT is applicable (US withholding tax might be applicable)
- Foreign partners of a French partnership can not benefit, as such, from the France/US DTT provisions

#### • **Taxation:**

- France retains the right to tax the profits of the partnership whether or not the partners are residents in France
- US partners of a French partnership are taxed in France

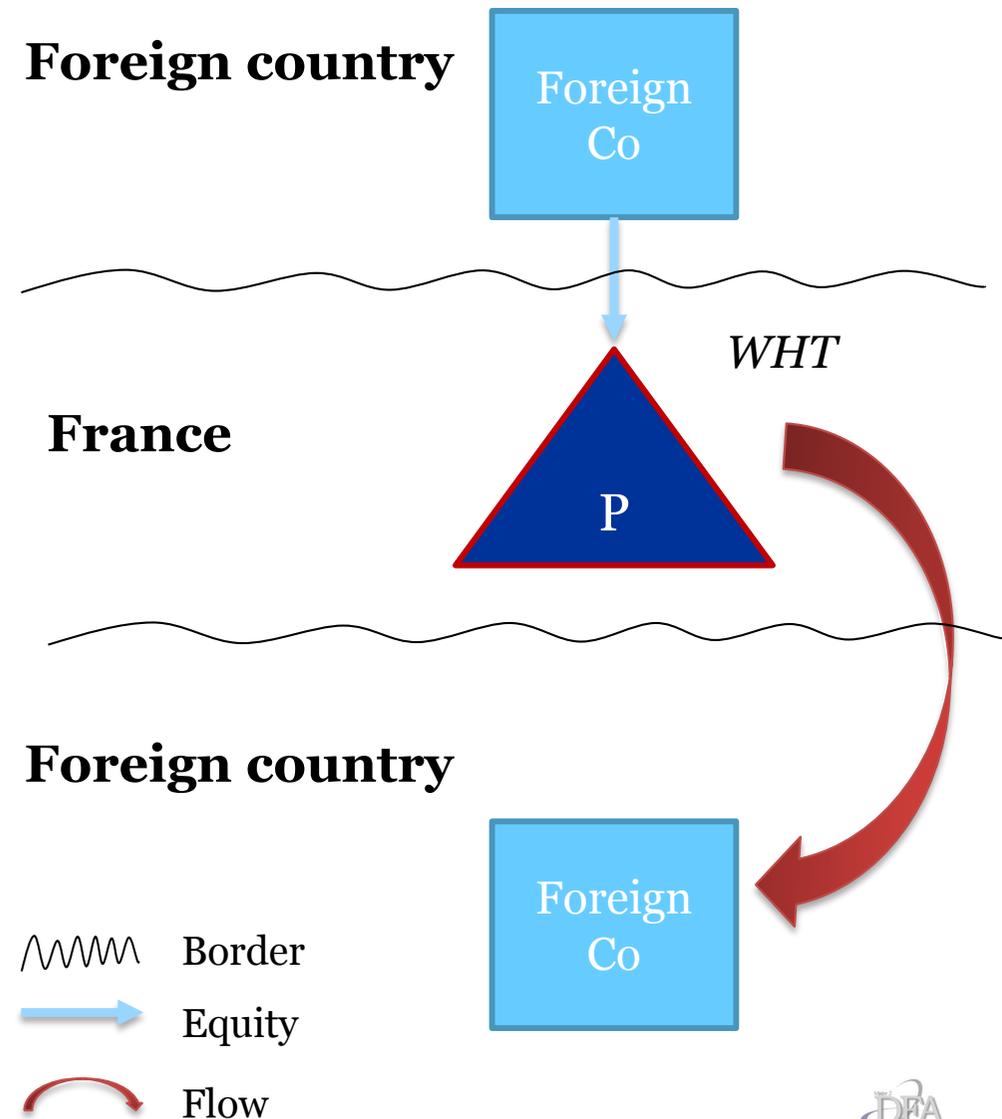
#### • **Tax credit:**

- France only grants a tax credit for withholding tax levied by the US for French resident members of a French partnership
- Double taxation might occur for foreign partners of a French partnership



## 1.2- Application of DTT to French partnerships

- **Outflows:**
  - If the partnership is **explicitly considered as a resident** by the DTT:
    - Provisions on each income category fully apply
  - If the DTT is **not explicit**: the solution remains unclear. Two possibilities:
    - France might apply the withholding tax based on domestic law; or
    - Such withholding tax might be reduced by the application of the DTT. This approach seems sustainable in light of the *Quality invest* and *Kingroup case*.



## *2-French treatment of foreign partnerships*

---

## ***Issues considering taxation of foreign partnerships in France***

- These questions revolve around the determination of the applicable DTT:
  - The DTT between France and the State of residence of the partnership
  - The DTT between France and the State of residence of the partners
- French case law have had a significant impact on that matter over the years and lots of situations seem to be settled now.
- Two issues regarding characterization of foreign partnerships have to be considered:
  - Treatment of French source income from a French perspective
  - Treatment of foreign source income through a foreign partnership

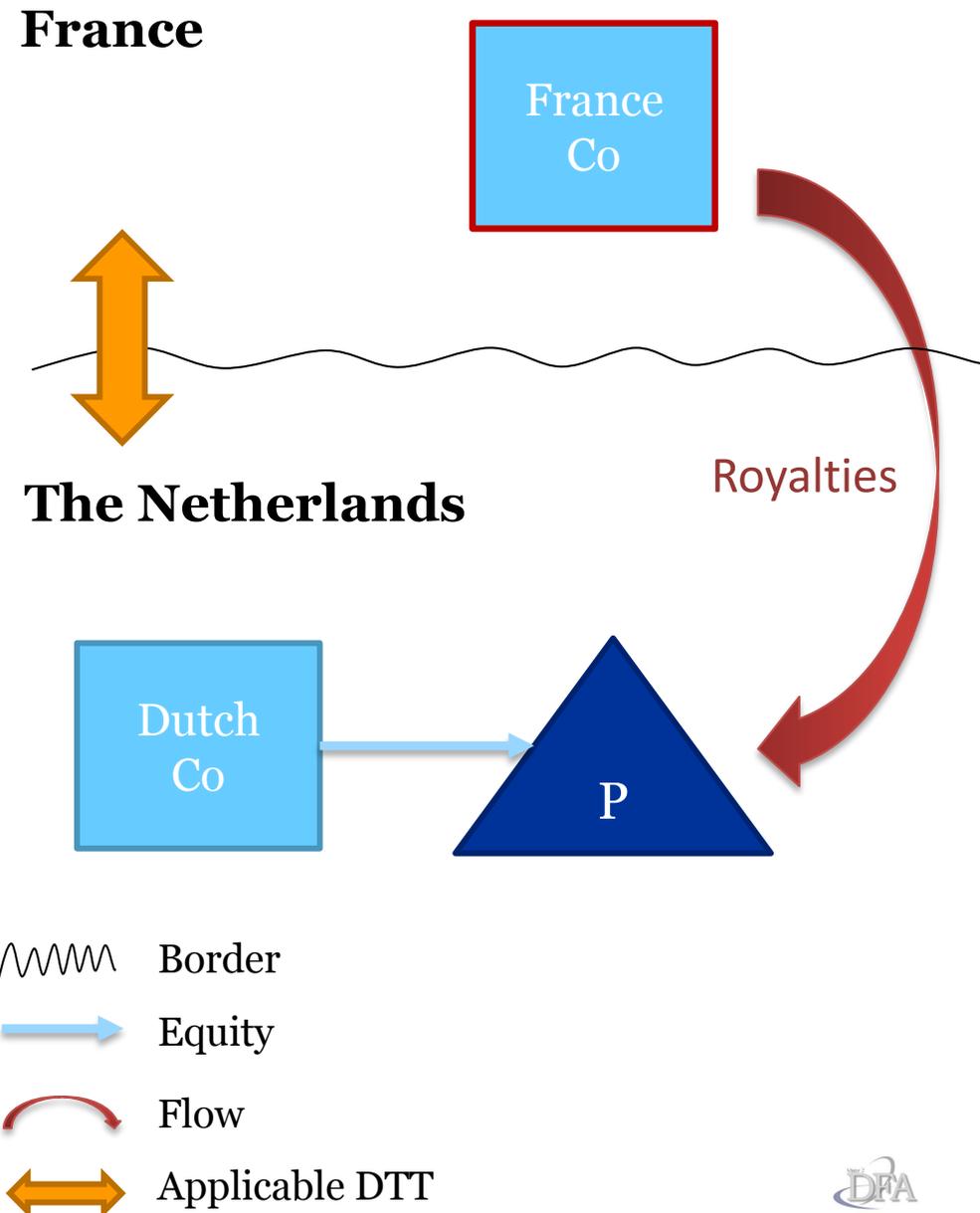
## *2.1- Treatment of French source income from a French perspective*

## 2.1 – Treatment of income from a French perspective

The DTT does not contain any provision dealing with partnerships:

### Jurisprudence

- The *Conseil d'Etat* (*Diebold Courtagage case* of 1999) resolved the question of the treatment of French passive income
- A partnership located in the Netherlands received royalties from a French company
- The Court analyzed the characteristics of the Dutch partnership:
  - Transparent for both legal and tax purposes
  - The partners were residents of the NL
- Ruling: the DTT between France and the Netherlands is applicable to the partners of the Dutch partnership

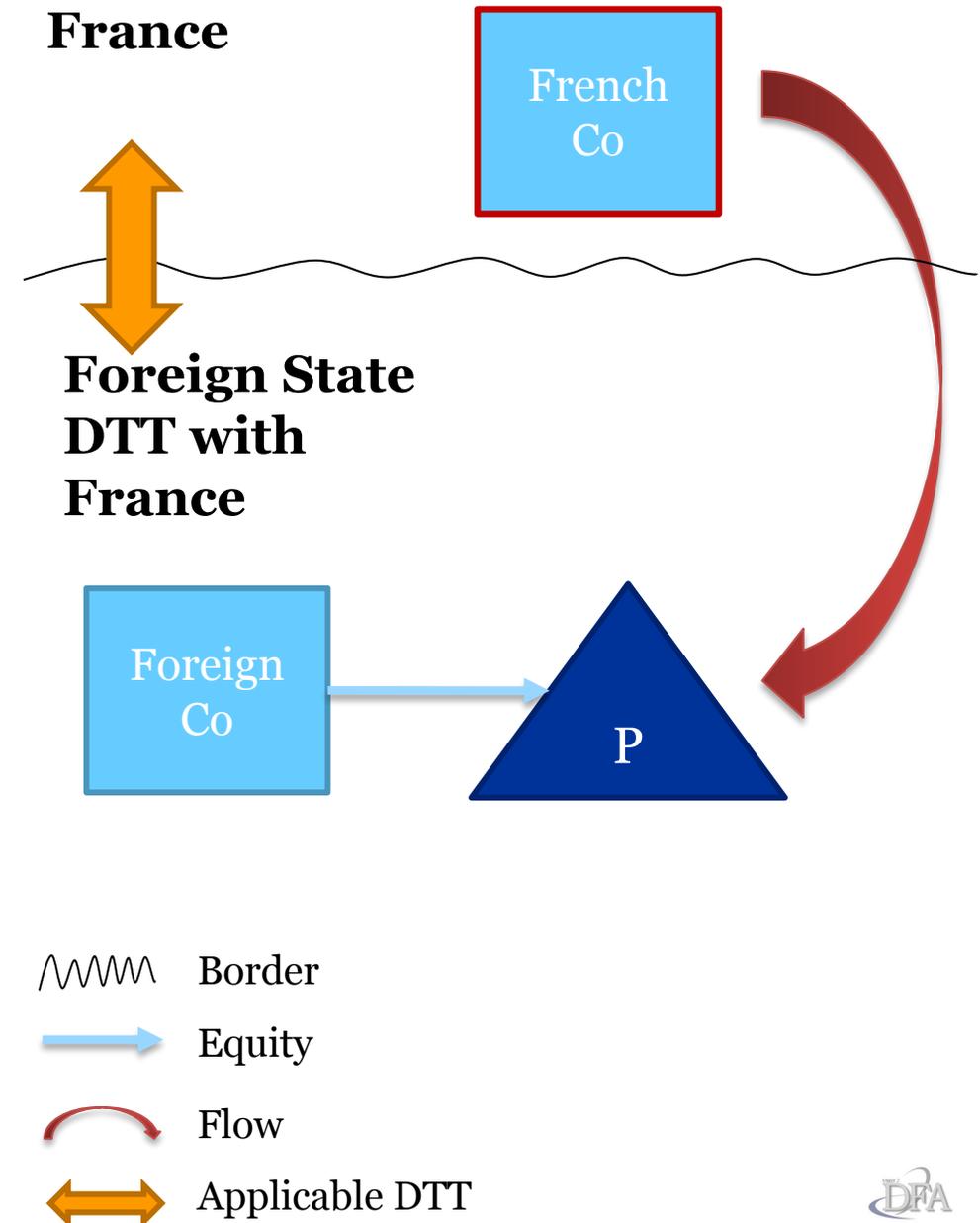


## 2.1 – Treatment of income from a French perspective

The DTT does not contain any provision dealing with partnerships:

### Tax authorities' position

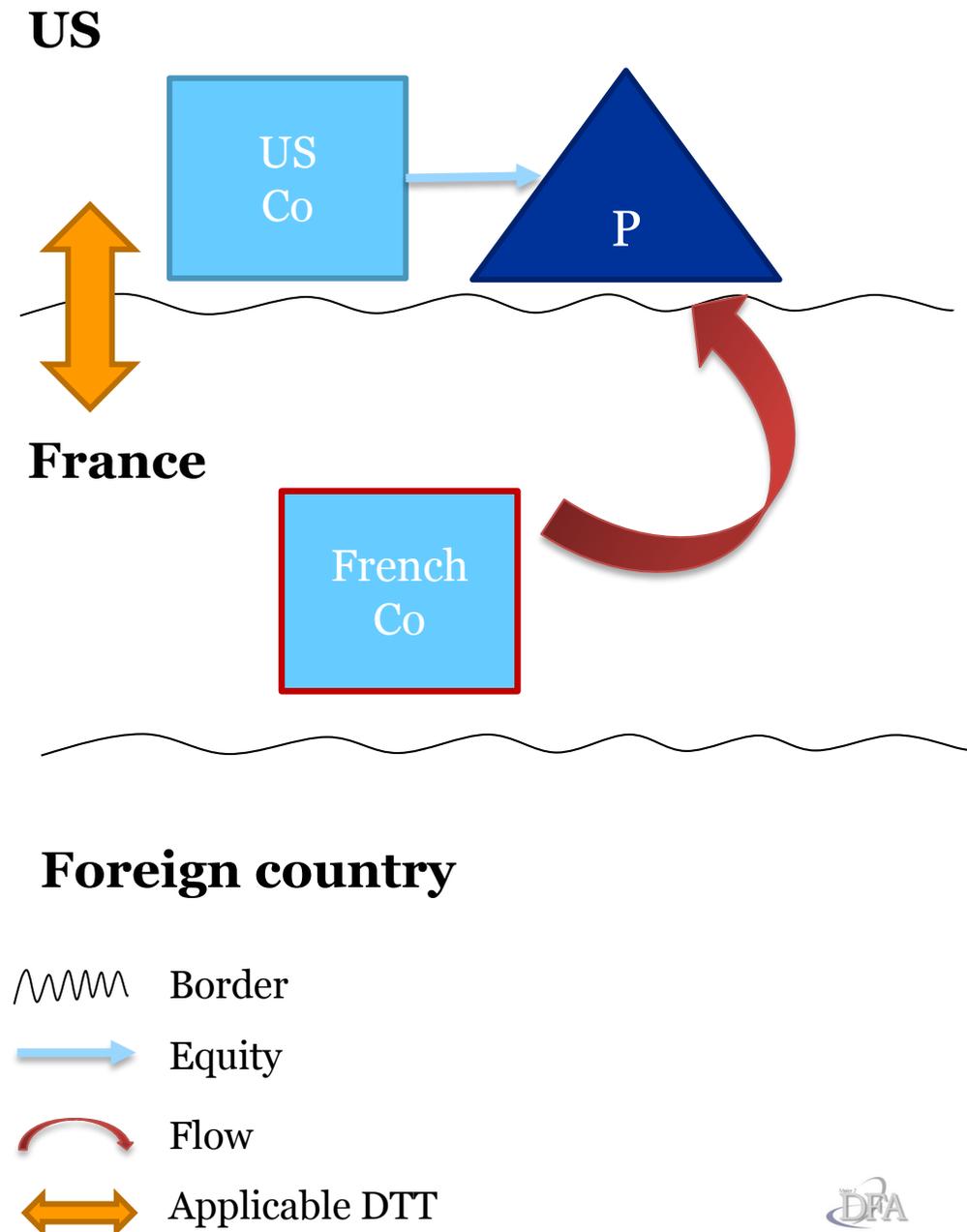
- Full transparency:
  - The partnership is located in a State that has a DTT with France
  - The partners are residents of a State that has a DTT with France
  - The income is considered as the partners' income by both the partnership and the partners' States
  - The partners are not transparent entities
- Consequence: The DTT with the partners is applicable



## 2.1 – Treatment of income from a French perspective

The DTT contains provisions dealing with partnerships (the France/US DTT example):

- Active income: France has no right to tax the profits generated at the level of the partnership
- Exception: the partnership has a PE in France
- Passive income: application of the FR/US DTT in proportion to the partner's share in the partnership

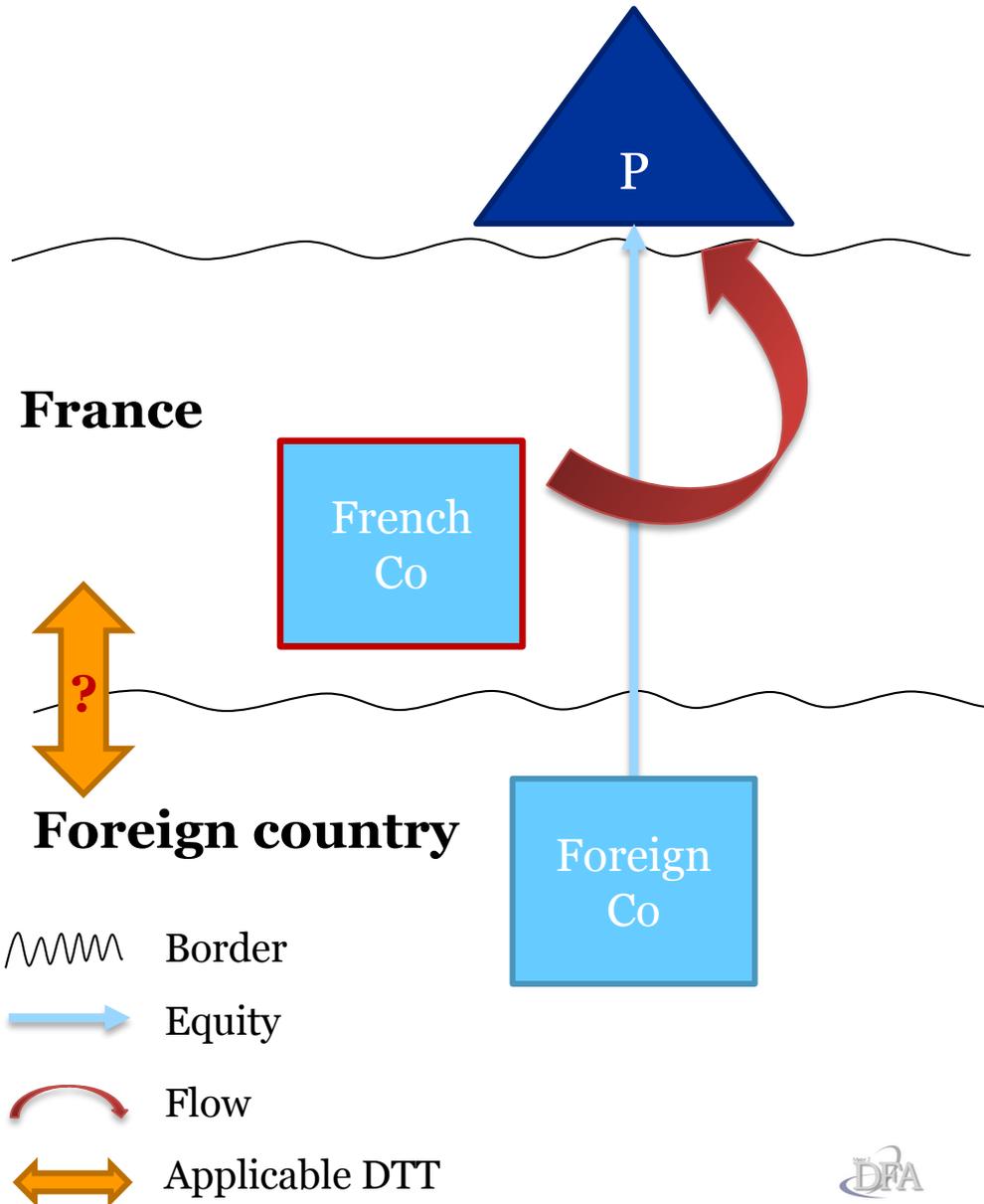


## 2.1 – Treatment of income from a French perspective

The DTT contains provisions dealing with partnerships (the France/US DTT example):

- The FR/US DTT does not cover situations where the partners are not US resident
- The treatment depends on its characterization from a French perspective:
  - Opacity: No DTT applicable (i.e. French domestic WHT)
  - Transparency: the DTT between France and the State of residence of the partners should apply provided that the FTA's conditions are fulfilled

US



*2.2- Treatment of foreign  
source income through a  
foreign partnership*

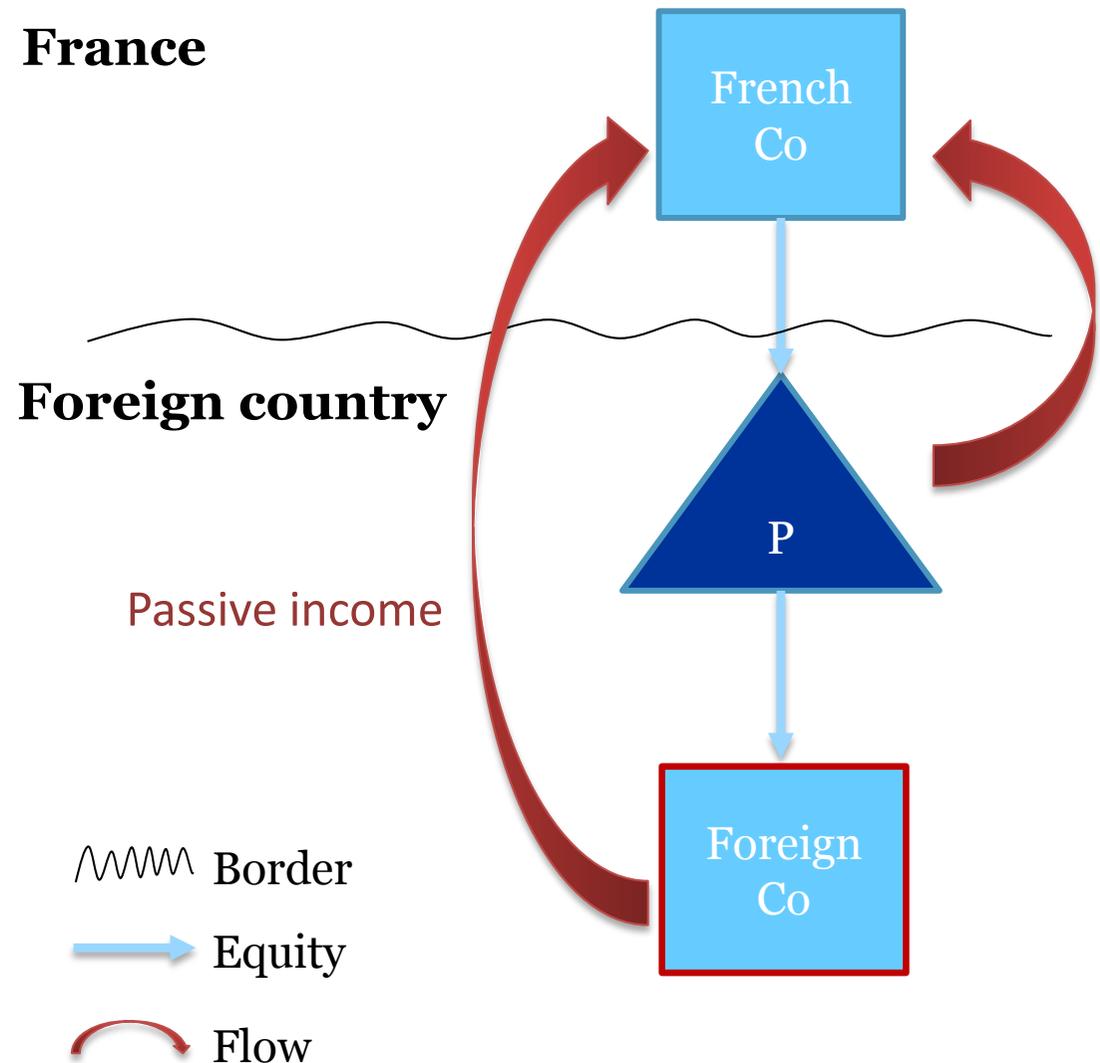
## 2.2- Treatment of income through a foreign partnership

### Applicability of the DTT

- The applicability of the DTT depends on the State of source characterization of the partnership

### Taxation

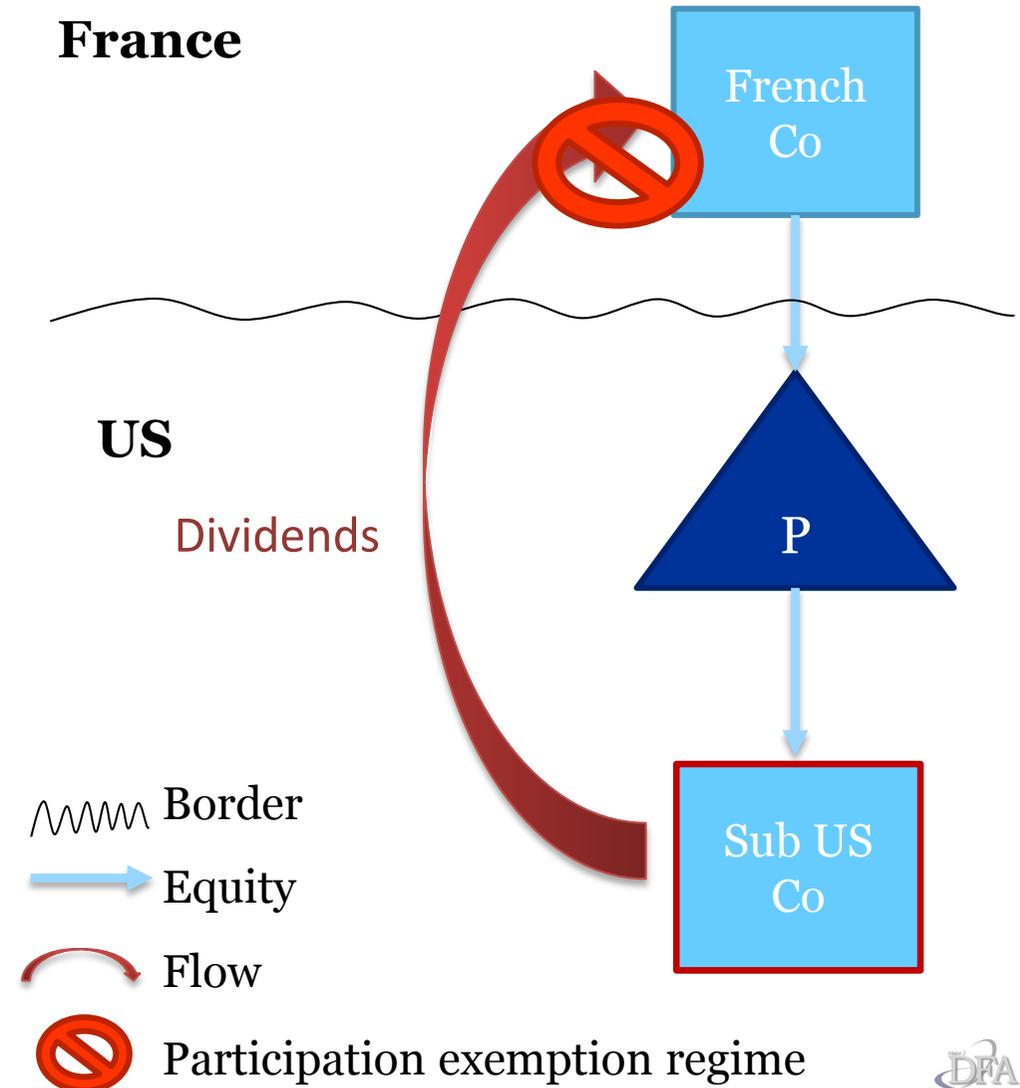
- The DTT does not contain provisions dealing with partnership:
  - The partnership could be considered as a PE
  - Passive income paid to a partnership should be included in the partnership's taxable base as active income
  - Art 7 (OECD model): taxation in both the State of residence and the State of source
  - French Tax Code: Exemption (territoriality principle)



## 2.2- Treatment of passive income through a foreign partnership

### French Co argument:

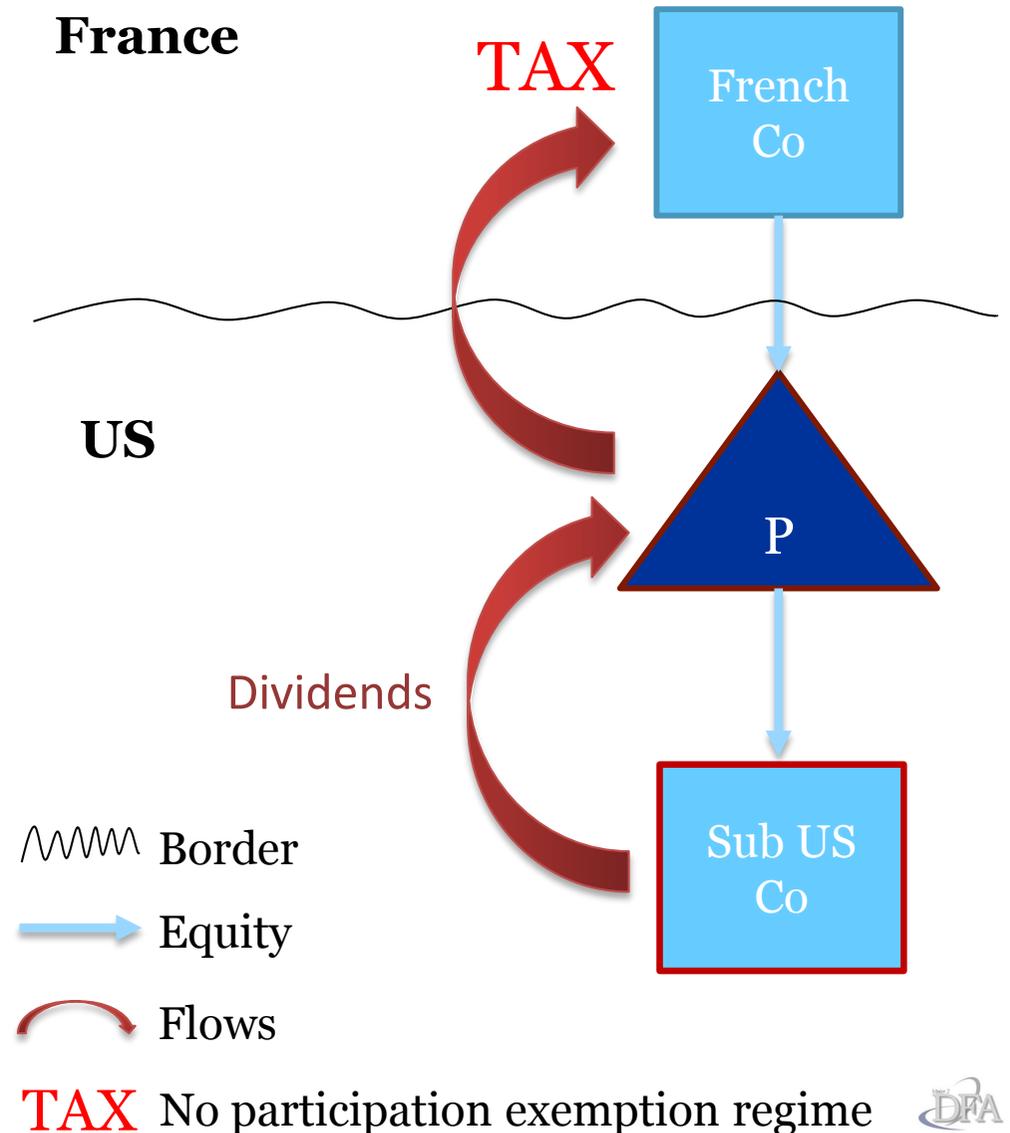
- In the *Artemis* case of 2014, the *Conseil d'Etat* had to rule whether or not the French participation exemption regime was applicable to a partnership
- According to the French Co, the dividends are directly apprehended by the partners (i.e. the full transparency of the general partnership should apply)
- The French Co claimed the benefit of the French participation exemption regime as a result of its indirect holding in the US Co



## 2.2- Treatment of passive income through a foreign partnership

### The Court's ruling:

- The *Conseil d'Etat* refused the application of the regime:
  - The regime is only applicable to direct holdings
  - General partnerships have a legal personality separated from their partners
  - The partnership is not subject to CIT in the US and must be considered, from a French perspective, as a “*société de personnes*”
  - The only purpose of the DTT is to allocate the right to tax
  - What if the partnership was a LP, a LLP or, a “flow through entity”?



# *Conclusion*

---

# *Conclusion*

- The French tax treatment of partnerships (whether they are French or not) remains unclear on a number of issues
- Difficulties regarding the semi-transparency of partnerships (i.e. from a French perspective) are still relevant
- The complexity of the topic and the few cases ruled every year by the French administrative Courts does not help clarifying the situation
- Some French authors advocate for a change towards full transparency of partnerships

---

*Any questions?*

THANK YOU FOR YOUR WARM WELCOME!



**NEW YORK**  
**LAW SCHOOL**