

Special by Design: small entrepreneurs and independent workers

The French legislator has put in place many mechanisms to facilitate the creation of businesses and to reduce the tax burden on them. Carrying out one's entrepreneurial activity alone (regardless of the structure used) is the most common choice when looking at the statistics (more than 35,000 business creations between 2019 and 2020, half of that are micro-entreprises). The legislator has provided for several regimes for this purpose, which have specificities as well on the fiscal, social, patrimonial or administrative level (some are more restrictive than others). We will take a purely fiscal approach (tax system, tax advantages and disadvantages).

My colleague Emma and I will talk to you about the different French systems that can meet the expectations of independent workers and small entrepreneurs: the sole proprietorship, the micro-enterprise, the Limited Liability Sole Proprietorship, and the Single-member company with the one-person limited liability undertakings or the single-person Simplified Joint-Stock Company (even if they are criticized for unfair competition, or because the status remains too precarious).

I- French tax system

A) Sole proprietorships

1) Actual regime and controlled declaration

The sole trader is a natural person who manages a business on his own behalf and for his own account. However, the law does not grant the structure created legal personality. The sole proprietorship does not constitute a legal person separate from the entrepreneur. When a sole proprietorship is set up, the natural person is merged with the business. This means that your personal assets are also merged with your business assets. This is the application of the principle of uniqueness of assets. The sole proprietorship is in fact a structure for borrowing from the natural person. The sole trader is therefore the only person in charge and is not accountable to anyone.

The sole trader can choose between 3 tax regimes, depending on the amount of his turnover: the micro-enterprise regime, the simplified actual regime and the normal actual regime.

Default actual regime: By default, sole proprietorships are subject to the "actual income tax regime" in the category corresponding to your activity: industrial and commercial profits (BIC) if the sole proprietor is a trader or craftsman, agricultural profits if he carries out an agricultural activity (BA) or non-commercial profits (BNC) in other cases (liberal activity in particular). There is no taxation at company level. The majority of sole proprietorships are taxed under the simplified actual regime and not the normal actual regime. The main difference between the two is that the requirements in terms of accounting and declarations are not exactly the same: they are heavier for the normal actual regime.

Simplified actual regime or normal actual regime?

You can switch from the simplified to the normal scheme by decision of the manager of the sole proprietorship or according to the amount of your turnover. In fact, you are automatically under the simplified actual regime if your turnover excluding tax does not exceed :

818,000€ for a purchase-resale activity or accommodation services;

247,000€ for a service provision activity.

265,000€ for an agricultural activity

These thresholds are to be taken into account for the years 2020, 2021 and 2022.

The simplified tax regime remains applicable for the establishment of the tax due for the first year following the year in which the turnover limits provided for this regime are exceeded.

However, the changeover to the normal actual tax system is immediate if the turnover exceeds the following thresholds :

purchase-resale activity or accommodation services: €901,000 turnover excluding tax over the two previous calendar years;

service provision activity: €279,000 turnover excluding tax over the previous two calendar years.

Switching from the simplified actual tax regime to the actual tax regime: Companies under the simplified actual tax regime can opt for the normal actual tax regime.

Controlled declaration for non-commercial profits under the actual regime: In terms of non-commercial profits (BNC), we do not speak of the simplified or normal actual regime. If the sole proprietorship is not subject to the micro-enterprise regime (turnover of less than EUR 72 500 = micro-enterprise ceiling), the "controlled declaration" regime applies in all cases. BICs can opt for the controlled declaration status, but only BNC companies are obliged to do so. This is a real taxation system for an activity subject to VAT. via installments calculated by the tax authorities on the basis of the last known situation. They are deducted monthly or quarterly, at the option of the individual entrepreneur. There is therefore an adjustment after the fact.

Taxation of the tax result: all net profits will be added to the income of the tax household and will be reported in the household's annual tax return. It will be subject to the progressive scale of income tax, he is not a micro-entrepreneur, the individual entrepreneur will be able to deduct the expenses of his business from his turnover (no deduction of expenses for the micro-entrepreneur). Therefore, the taxable result of the sole proprietorship = turnover - expenses. Since 1 January 2019, the withholding tax has been the common law system for the payment of income tax instead of the monthly and provisional withholdings which it will replace. This is standard for anyone subject to income tax. However, for a sole trader, unlike an employee, the taxable result is not known in advance and can change greatly from one year to the next. They will therefore pay their income tax.

2) Micro-entrepreneur tax system

The micro-entrepreneur is generally subject to the legal rules applicable to sole proprietor. However, he benefits from a more favorable regime than the classic sole proprietor (thus restricted access conditions).

What is it? The law of modernization of the economy « loi de modernisation de l'économie » of August 4, 2008 established the micro-entrepreneur regime in French law, initially called the "auto-entrepreneur regime" until 2016. As for the Law « loi Artisanat, commerce et très petites entreprises » of June 18, 2014, it introduced several important changes with the aim of harmonizing the regimes of sole proprietorships.

What are the ceilings? In order for a person to benefit from the micro-entrepreneur tax system, articles 50-0 and 102 ter of the code général des impôts (the french tax code) state that his annual turnover must be less than 72,600 euros for service provision activities or liberal professions and 176,200 euros for business and housing provision activities.

When the activity of the micro-entrepreneur is mixed, that is when there are two distinct activities and therefore two distinct thresholds, the total annual turnover must not exceed 176 000 euros and the part relating to the provision of services must not exceed 72 600 euros.

What is the taxation of taxable income? The micro-entrepreneur is subject to income tax.

→ First, the taxable profit is calculated by applying to the turnover a lump-sum allowance for professional expenses: 71% for selling goods activities, 50% for liberal activities and 34% for service activities. This covers all costs incurred by the micro-enterprise in its operation.

→ Secondly, the income tax scale is applied to the taxable profit.

The problem for micro-entrepreneurs is that since January 1, 2019, we have moved to the withholding tax. However, the micro-entrepreneur cannot anticipate the amount of his taxable income as part of his micro-entrepreneur activity. He will have to pay monthly or quarterly installment based on previous results and to regularize his situation once his taxable income is determined. Nevertheless, there is an optional regime which is the withholding tax regime.

In addition, there is an obligation to keep a hyper simplified accounting.

The operator's remuneration isn't taxed as such because it is included in the taxable result of the micro-enterprise.

Option? There is an option in Article 151-0 of the CGI: option for the payment of withholding tax. This option allows to pay both the social security contributions of the micro-enterprise and the income tax in one go. The tax is therefore paid on a final basis and as and when the turnover is cash. Again, the rate varies by industry:

→ 13.80% for merchandise sales activities (1% income tax and 12.8% social contributions)

→ 23.7% for the sale of craft or commercial services (1.7% income tax and 22% social contributions)

→ 24.2% for liberal activities (2.2% income tax and 22% of social contributions).

This option is possible if the income of the tax household of the year before last is less than or equal to the upper limit of the second bracket of the income tax scale of the year before the year for which the option is exercised. If this threshold is exceeded, the option is not possible.

Tax advantages? This system is interesting for people who wish to test an activity or to exercise it in an accessory way, in complement of another activity. Furthermore, it does not require a professional tax return. Moreover, the more micro-entrepreneurs there are, the more reassuring it is because it means that there is a decrease in the number of undeclared and fraudulent activities.

Tax disadvantages? This system is only open to sole proprietorships, Limited Liability Sole Proprietorship (EIRL in French) and one-person limited liability undertakings (EURL in French) where the sole partner is also the manager of the company. The ceilings concerning the turnover excluding tax are very low so that it excludes the important companies. They can slow down the development of the promising companies. Also, when the actual expenses of the company are higher than the lump-sum allowance provided, this causes an additional cost. Finally, the fact that this regime is successful is not synonymous with a flourishing economy.

3) Limited Liability Sole Proprietorship

Transition: the sole proprietor is responsible for the debts of the business on almost all of his assets. However, he can decide to limit his liability by going through the Limited Liability Sole Proprietorship.

What is the Limited Liability Sole Proprietorship? The Limited Liability Sole Proprietorship is a legal structure instituted by a law of June 15, 2010 allowing the sole proprietor to protect his personal assets from debts coming from his professional activity. There is the creation of two distinct assets: the personal asset and the professional asset per activity, headed by one and the same legal person: the sole proprietor. There is therefore no creation of a legal entity.

However, the Limited Liability Sole Proprietorship status will gradually cease with the law of February 14, 2022 in favor of independent professional activity. Those who are already subject to this regime will be able to continue to do so, but it will no longer be offered to new operators. This novelty will concern all business creations at the end of the 3-month period from the promulgation of the law. In reality, the unique status created by this law transforms all sole proprietorships into Limited Liability Sole Proprietorship, as the personal assets of the sole proprietor will become unseizable by professional creditors by default. There is an automatic and by right separation of the two assets. In any case, the numbers remain low concerning Limited Liability Sole Proprietorship: less than 100,000 Limited Liability Sole Proprietorship in June 2021.

Classic taxation : Income tax is the tax system that will apply by default (BOI-BIC-CHAMP-70-30). The entrepreneur will be taxed in his own name. The profit of the Limited Liability Sole Proprietorship will integrate the income of the tax household of the sole proprietor. Depending on the amount of his turnover:

Either the Limited Liability Sole Proprietorship will be subject to the normal or simplified real regime. The tax category will then vary according to the activity of the EIRL: business profits, non-commercial profits or Agricultural profits.

Either the EIRL will be subject to the micro-entrepreneur regime if the business does not exceed €176,200 for the sale of goods, objects, supplies and foodstuffs to be taken away or consumed on the premises, or for the provision of accommodation and €72,500 for other service provision activities.

Moreover, if there is a deficit, it will be deducted from the global income of the entrepreneur or will be carried forward until the 5th year included. If, in spite of the imputation, the global income is not sufficient to absorb the deficit, the surplus can be carried forward up to and including the 5th year.

Membership in an approved management center will allow him to avoid an increase of 15% of the taxable income for the income of 2021 and 10% for the income of 2022.

Therefore, the Limited Liability Sole Proprietorship operator will have the status of a majority manager of a limited liability company (SARL in French) and his remuneration will not be taxed as such because it will be included in the taxable income of the business. As an indication, the sole proprietor can opt for the corporate income tax system, but this does not concern us.

Tax advantages of the Limited Liability Sole Proprietorship subject to income tax? He will be able to cumulate with the status of micro-entrepreneur. He will have the freedom to opt for the tax system that best suits the individual entrepreneur. Moreover, it is advantageous to remain on the default income tax system if there is little profit, so rather to the creation of the company. The choice of the option will allow him to reinvest his profits, therefore rather during the growth of the business. This will depend on the marginal tax rate of the sole proprietor. The income tax system will also allow the reduction of the taxable income and the taxation of the tax household thanks to the imputation of the deficit on the global taxable income of the tax household.

Tax disadvantages of the Limited Liability Sole Proprietorship subject to income tax? It is impossible to associate with another natural or legal person at a later date, otherwise he will have to transform his Limited Liability Sole Proprietorship into a company, with heavy formalities. Moreover, if the Limited Liability Sole Proprietorship develops, it will be more judicious to switch to the corporate tax option because the income tax will be particularly high.

B) Single-member companies

1) One-person limited liability undertakings

Presentation of the form

The one-person limited liability company (EURL) is a commercial company which is similar to a single-member limited liability company (SARL), the particularity of which is that it has a single shareholder. It is defined in Article L223-1 of the Commercial Code.

This form of company was created by the law of 11 July 1985 concerning single-person companies, known as "single-member companies".

This form of company allows the entrepreneur to protect his personal assets, while retaining the possibility of developing his business by integrating new partners with the SARL form.

The tax regime for EURLs, limited liability companies, varies according to the status of their sole partner.

Although it takes the form of an SARL, an EURL whose sole partner is a natural person is not liable for corporate income tax (unless it expressly opts for this tax); it is subject to the tax regime for partnerships. The partner is therefore personally liable to income tax on the company profits.

Also, an EURL whose sole partner is a legal entity is subject to corporate income tax.

In the event of a deficit (in the BIC or BNC category), this is deducted from the overall income of the sole partner for that year. The excess deficit can be carried forward to the total income of the following 6 years.

About the sole partner and manager, what does this change?

This is a special tax feature of the EURL:

If you are both the manager of an EURL and the sole partner of it, the remuneration that you pay yourself for your duties as manager will be considered as a payment of company profits. In other words, it will be taxed at income tax level in the corresponding category (BIC, BNC, etc.).

If you are a partner but not a manager of your EURL and you pay a remuneration to the manager, you can deduct this remuneration from your taxable base.

Another special feature of the income tax system in EURL is that if you are both a manager and a partner, you can deduct certain costs and expenses from your taxable income. However, they must meet certain conditions:

- they must be personal expenses ;
- correspond to expenses related to the exercise of your activity;
- they must not have already been taken into account to determine the company's result.

In the case of a EURL subject to personal income tax, it is difficult for the sole manager to manage his personal tax and social security contributions.

Since the entry into force of the Sapin 2 law (December 2016), EURLs whose sole natural person partner is the manager can benefit from the micro-enterprise regime.

The option for EURL under the income tax regime does not allow dividends to be paid. However, this practice has lost its interest since part of the dividends (amount exceeding 10% of the following total: share capital + share premiums + current account contributions) received by the majority managers is subject to social security contributions.

Finally, it is necessary to join an approved management centre, otherwise the amount of profit taxable for income tax purposes will be increased by 25%.

2) Single-person Simplified Joint-Stock Company

What is the Single-person Simplified Joint-Stock Company? The Single-person Simplified Joint-Stock Company (SASU in French) is a commercial company (article L227-1 et seq. CCommerce) composed of a single partner.

Classic taxation : Its profits are therefore taxed at the corporate income tax regime by default (which does not concern us in the context of this seminar). However, under certain conditions, it is possible to opt for the tax regime of partnerships and to be subject to income tax (article 8 CGI). When is it possible? As soon as the company is created or during the first 5 years of its existence and for a maximum of 5 fiscal years. Several conditions must also be met: the company must have been created less than 5 years ago, must carry out an industrial, commercial, liberal, agricultural or artisanal activity as its main activity, it must not be listed on the stock exchange, it must be held by an individual shareholder who is the president of a Single-person Simplified Joint-Stock Company, it must have less than 50 employees and an annual turnover or a balance sheet total of less than 10 million euros at the end of the financial year.

In case of option for income tax, it is the sole shareholder who will be taxed on the company's result in addition to his personal income tax. In reality, we have here a translucent company.

For the determination of the taxable result, the rules are almost the same as those of the Single-person Simplified Joint-Stock Company subject to corporate income tax (with some exceptions like the absence of deduction of certain expenses). Depending on whether the activity is commercial, industrial, artisanal, professional or agricultural, the tax result will be reported on the personal income tax return of the sole shareholder in the category of business profits under the normal or simplified regime, or non-commercial profits with the controlled declaration, or agricultural profits (agricultural Single-person Simplified Joint-Stock Company). The taxable profits are then integrated into the overall income of the entrepreneur are subject to the income tax scale. In the event of a deficit, it can be deducted from the sole shareholder's overall income.

The Single-person Simplified Joint-Stock Company, like any Single-member company or legal entity opting for the Income Tax regime, have an increase of 25% of their taxable income if they do not adhere to a approved management center.

Concerning the remuneration of the president and the dividends, they will not be taxed as such because they will be included in the taxable result of the company. He must indicate the amount of his income on his self-employed income tax return in the corresponding box (business profits or non-commercial profits). It will be directly deducted at source. The dividends he will receive will be classified as a capital income. They will be automatically taxed at the « prélèvement forfaitaire unique » of 12.8% (flat rate taxation), but it is possible to opt for taxation at the income tax scale. Here again, the manager does not have to make any payment, it is directly deducted at source. There will also be an automatic distribution of reserves to the sole shareholder.

Tax advantages of the Single-person Simplified Joint-Stock Company subject to income tax ? This Single-member company benefits from light and flexible rules of constitution and operation.

In addition, the Single-person Simplified Joint-Stock Company is a structure that allows the sole shareholder to only be liable for the amount of his contribution.

Moreover, choosing this option when the entrepreneurial project is limited to the medium term with few profits allows not to tax twice the dividends in case of distribution (instead of paying the corporate tax of the company and seeing the dividends paid to the sole shareholder subject to the income tax).

This option also allows to pay less taxes if the income does not exceed the first 3 brackets (tranches) of the income tax scale.

It even allows to be exempted on certain capital gains under conditions.

Also, there may be a reduction in accounting obligations if the company decides to submit to income tax and to the simplified tax regime (recording only of movements affecting cash flow).

Finally, it will be possible to deduct certain expenses from the total taxable amount at the end of the fiscal year (example: travel expenses).

Tax disadvantages of the Single-person Simplified Joint-Stock Company subject to income tax ? The option to pay income tax is only valid for 5 years. The corporate tax will then be obligatory.

Moreover, the option is not interesting when the income exceeds the first three brackets of the income tax scale.

Also, the salary of the spouse of the sole partner will not be fully deductible (only 17,500 euros per year) if they were married under the community regime and the company has not joined an approved management center.