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NEWSLETTER – October 2023

Main measures in the French draft Finance bill for 2024

This draft Finance Bill under discussion will be potentially amended over the coming weeks and voted by the end of 2023.

It is characterized by a halt to tax cuts, the 'greening' of taxation and the fight against fraud. Among the most important measures are those concerning transfer pricing, which will require extensive preparation for multinational groups.

This tax alert summarizes key tax reforms that may mainly affect corporations.

STRICTER TRANSFER PRICING DOCUMENTATION

Not only have the thresholds been lowered, meaning that more taxpayers would fall within the scope of the transfer pricing documentation requirement, but errors in the documentation will be more severely penalized.

The threshold to fall within the scope of the Master File and Local File will be reduced, for fiscal years starting on or after 1 January 2024, from EUR 400 million to EUR 150 million. This threshold will continue to be assessed on the basis of revenues or gross assets at the level of the French company or other companies in the group.

Greater attention should also be paid to transfer pricing documentation: where the transfer pricing policy implemented is not in line with the documentation, the burden of proof would fall with the taxpayer instead of the tax authorities. In other words, the transfer pricing documentation would become **binding** on the taxpayer, contrary to recent case law. Besides, the **minimum fine** for lack or insufficient documentation would be increased from EUR 10k to **EUR 50k** (per year reassessed).

The statute of limitations for auditing cross-border transfers of certain intangibles (i.e. hard-to-value intangibles within the meaning of the OECD guidelines) would be extended from 3 to 6 years and derogatory tax audit rules would be established.

Pilar two: Transposition of the European Union Minimum Taxation Directive (2022/2523) into French domestic law

It would incorporate the GloBE rules under the OECD/IF Pillar Two, introducing a minimum tax of 15% on the profits of multinational groups that operate in France and have a consolidated revenue of at least EUR 750 million generated during at least two of the last four fiscal years.

INTRODUCTION OF A NEW TAX CREDIT FOR INVESTMENTS IN CERTAIN "GREEN" INDUSTRIES

The draft Bill provides for a new tax credit for investments in green industry. This tax credit would benefit companies setting up or developing production facilities related to batteries, photovoltaic panels, wind turbines and heat pumps, under conditions, notably prior approval from the tax authorities.
The rate of the tax credit would vary between 20% to potentially 60% of the investment costs, depending on the size of the company and the location of the investments. The total amount of the tax credit would, as a general rule, be capped at EUR 150 million for a given FY.

VAT ASPECTS

The draft Finance Bill also includes the transposition of the Council Directive (2020/285) regarding the **special scheme for small businesses into domestic law**, which intends to help lower the administrative burden and compliance costs for small enterprises. In practice, it would modify the rules applicable to the VAT exemption scheme (notably the thresholds). The implementation date is expected on January 1, 2025.

Another measure includes strengthened rules to combat VAT evasion by **non-resident sellers engaged in "dropshipping" sales activities in France**: the Import VAT liability would be extended to non-resident sellers and to dropshippers deemed acting as buy-sell. Simultaneously, the customs brokers liability would be extended as well.

Also destined to combat carrousel fraud, the **French reverse charge of VAT would be extended to all energy warranty certificates**.

Finally, the possibility for the tax authorities to carry out a taxpayer's audit in their own premises is included in the draft Finance Bill.

Postponement of the repeal of the Business Contribution on the Added Value (BCAV – "CVAE")

While this tax was initially set to be fully phased out by 2024, the draft Bill extends this timeline to 2027, with a gradual reduction of the applicable rate.

AMONG OTHER TAX MEASURES…

The draft Bill adjusts **personal income tax brackets** ("*impôt sur le revenu*") to the inflation rate.

Introduction of **new criminal offence** to penalize those - individuals or companies - providing means, services, documents, that facilitate international tax fraud. The applicable criminal penalty could result in five years of imprisonment and a EUR 500 k fine, increased to EUR 2.5 million for legal entities.

TAX WHISPERS / SHORTCOMINGS

There is no provision in the Draft Finance Bill. However, persistent rumors refer to new deadline around March and/or September 2026.

As the draft Finance Bill contains no provision for the neutralization of payroll tax in VAT groups which discriminates large groups not engaged in non-financial business sectors. Also no provision on the French *parahotellerie* regime (AirB&B type), which has been held incompatible with the VAT Directive by caselaw.

Rumors on changes relating to the taxation of furnished rentals: amendments are expected to introduce a more favorable regime for long-term rentals, but a stricter one for seasonal rentals.

In addition, there is some fear that the system for furnished rentals, which allows buildings to be depreciated, will be aligned with that for bare rentals (which no longer benefit from the flat-rate allowance it used to enjoy).

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