

15 December 2023

France – Tax update

FRENCH DRAFT FINANCE BILL FOR 2024

The French Government is pushing to adopt the draft Finance Bill for 2024 at the French National Assembly. This draft Finance Bill under discussion will be potentially amended over the coming weeks and must be voted by the end of 2023. The main tax measures of interest are listed below:

- **transfer pricing:** companies with annual turnover or gross balance sheet assets exceeding EUR 150 million, compared to EUR 400 million previously, would be obliged to provide specific documentation on their transfer pricing policy within 30 days upon request of the FTA. Penalties for not providing such TP documentation would be increased from EUR 10,000 to EUR 50,000. Moreover, the transfer of “hard-to-value intangibles” (see OECD guidance) would be subject to an extended statute of limitations, which would run until the end of the 6th year following the year during which taxation is due (instead of three years). The new measure would apply for tax years opened as from 1 January 2024.
- more favorable rules for **dividends** received by French parent companies
- “Pillar two”: Transposition of the European Union **Minimum Taxation Directive (2022/2523)** into French domestic law
- introduction of a new “**green tax credit**” for investments in certain “green” industries
- postponement of the repeal of the Business Contribution on the Added Value (BCAV – “CVAE”)
- introduction of a new anti-abuse measure regarding the estate wealth tax (“*impôt sur la fortune immobilière*” – “IFI”)
- changes relating to the taxation of furnished rentals for individuals
- exit tax refund for individuals

Any further developments will be reported in due course.

FRENCH BILL ON SOCIAL SECURITY FOR 2024

No salary tax should be due on entities normally subject to VAT members of a French VAT group having an industrial and commercial activity for more than 90% with third parties.



MORE PRAGMATIC APPROACH TO MANAGEMENT FEES

In accordance with traditional case law, sums paid by one company to another for the performance of management services entrusted to the director of the company receiving the services by virtue of his corporate office are in principle non-deductible for tax purposes.

The French Administrative Supreme Court has just ruled that the conclusion of such an agreement does not constitute abnormal commercial management (i.e. tax deductible) where the "competent corporate bodies [of the company receiving the services] actually intended, by paying the fees corresponding to these services, to remunerate the executive indirectly".

This solution, which requires a certain amount of formality to be observed, is favourable to the taxpayer, even if certain questions remain unanswered. In addition, of course, the reality of the services provided and the normality of the amount of remuneration will remain subjects of attention for the auditing services (CE 9e-10e ch. 4-10-2023 n° 466887, Sté Collectivision).

VAT AND BUSINESS CONTRIBUTION ON THE ADDED VALUE: TAXATION OF A PERMANENT ESTABLISHMENT IN FRANCE OF A SLOVAKIAN COMPANY

The Bordeaux Administrative Appeal Court ruled that a Slovakian company, which mainly has French customers, has a permanent establishment in France with a sufficient degree of permanence and a structure (human and technical) capable of autonomously providing the services in question... even though (1) the company's registered office and bank account were set up in Slovakia (2) the sole shareholder claimed to reside in Slovakia where he held the AGMs (3) the tax returns were filed in Slovakia where it paid Slovakian corporation tax (4) the company supplied labour of Slovakian origin.

It therefore had to charge French VAT and was subject to CVAE (CAA de Bordeaux, 21-11-2023, 21BX02701 (VAT) et 21BX02702 (CVAE), Sté Technical Systems SRO).

ABNORMAL ACT OF MANAGEMENT THEORY : THE MERE PROSPECT OF FUTURE SALES MAY JUSTIFY THE TAX DEDUCTION OF A DEBT WAIVER

From a French tax standpoint, aids of any kind granted by a company to another company are not tax deductible, except when the aid has a commercial nature and is done in the creditor's interest (except in specific cases of insolvency proceedings) (FTC, art. 39, 13).

In this case, an operating parent company granted its subsidiary a license to use its know-how relating to a technology. The French administrative court ruled that the waiver relating to this flow could not be commercial because, at the date of the waiver, the grant of the technology had not generated any direct or indirect income for the parent company.

On the contrary, the French Administrative Supreme Court deemed that, since the technology granted and the improvements made to it by the subsidiary were of significant importance to the parent company's business model and gave it a serious prospect of generating sales, the waiver could have a commercial in nature, even if no sales had been achieved at the time the license was granted (CE 26-7-2023 n°463846 Sté Lamaii).

TRANSFER OF LOSSES IN THE CONTEXT OF A REORGANIZATION : NEW FAVORABLE GUIDELINES

In the context of a merger or similar transaction covered by the special preferential regime provided for in Article 210 A of the General Tax Code, the absorbed company's previous tax losses carried forward may be transferred, subject to approval, to the company benefiting from the transaction. One of the conditions for granting this approval is that, in particular, the activity giving rise to the losses for which the transfer is requested has not undergone what is termed a significant change during the period in respect of which the losses for which the transfer is requested were recognized. In this decision, the French Administrative Supreme Court clarifies two points:

- (i) approval may be granted by the tax authorities for only a fraction of the deficits whose transfer is requested,
- (ii) in order to assess the "significant change in activity", the tax authorities must assess the changes in human and material resources and the overall volume of business, as well as the "economic context in which these changes in terms of turnover and staff were made". In this way, the cause of the changes observed must be taken into account, particularly when these changes are explained by economically justified restructuring (CE 9e-10e ch. 17-10-2023 n° 464667, Sté Metalic et Sté AJ Partenaires).

TRANSFER PRICING : FAVORABLE CASE LAW

The French Administrative Supreme Court points out that to apply the presumption of indirect transfer of profits abroad (French tax code, art. 57), the French tax authorities must first demonstrate the existence of an « advantage by comparison » and base themselves on precise and detailed comparables (CE, 7-11-2023, n° 471310, Sté Alphadif).

NEW TRANSFER PRICING GUIDELINES

The French transfer pricing guide for SMEs has published by the French tax authorities and the general guidelines on TP have been updated (TP Guide in French).

DOUBLE TAX TREATIES UPDATE

- Sweden ratifies protocol to tax treaty with France
- Saudi Arabian Council of ministers approves extension of implementation of tax treaty with France
- The French Government has confirmed it is not in its intention to conclude a new inheritance tax treaty with Switzerland
- French Council of Ministers approves tax treaty with Moldova
- French senate approves tax treaties with Greece and with Denmark

Any further developments will be reported in due course.

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