October 2024

France - Tax Highlights

DRAFT FINANCE BILL FOR 2025

On October 10th, 2024, the new French government unveiled its Finance Bill for 2025 which is currently being debated in Parliament. In the context of sky-rocketing debt and higher interest rates, the new government has announced its objective of reducing the (additional) deficit to 5% of GDP next year, whereas it is expected to reach 6.1% this year. In the absence of a clear majority in Parliament, it is very difficult to predict what final measures will be adopted though. Moreover, additional measures are very likely be added to the Bill during the debate.

We have listed below some of the key measures which may impact businesses and individuals:

- ## For corporations

Introduction of a temporary contribution for large companies

The Finance bill would introduce a **temporary contribution on profits** made by large corporations in France in 2024 and 2025. This contribution would be computed on the basis of the corporation income tax ("CIT") owed by these large corporations:

1. For corporations with sales of €1bn or more but less than €3bn, the additional contribution would amount to 20.6% of CIT for 2024, and 10.3% for 2025;
2. For corporations with sales in excess of €3 billion: the additional contribution would amount to 41.2% of CIT for 2024, and 20.6% for 2025.

At this stage of the debate:

- a smoothing mechanism would be introduced to limit "threshold effects" (companies with sales of €1 billion or more but less than €1.1 billion, or €3 billion or more but less than €3.1 billion);
- sales would be defined as sales generated in France by the taxpayer. In the case of a tax consolidation group, consolidated sales would be taken into account.

These temporary contributions would (of course) not be deductible from the taxable basis. Tax credits or other reductions would not be chargeable against this "exceptional" contribution. It would have to be paid at the latest on the due date of the CIT balance for the relevant financial year (i.e., May 2025 and May 2026 respectively for financial years ending 31 December 2024 and 2025), without any instalments.

Introduction of tax on capital reductions realized by large French companies

It is envisaged to introduce an 8% tax on capital reductions through the cancellation of shares bought back by large corporations, i.e. corporations with sales of more than €1 billion. This tax would apply to capital reductions carried out as from 10 October 2024 onwards.

French tax on business added value ("CVAE") - Abolition (further) postponed by three years (2030 instead of 2027)

The 2024 CVAE rate (0.28%) would be maintained for three more years, that is to until 2027. Then the CVAE rate would be lowered from 2028 to 2030, i.e. 0.19% in 2028, 0.09% in 2029 and abolished in 2030.

Exceptional contribution on the operating profit of large shipping companies

This contribution would apply to companies with sales in excess of €1 billion and would be based on the share of operating income corresponding to maritime costs. The rate would be 9% for the first financial year and 5.5% for the second.

Selection of other measures

- **Special regime for mergers** – The Ordinance n° 2023-393 of 24 May 2023 reformed the regime of mergers and similar transactions, in particular in case of partial divisions and certain mergers without issuance of new shares. The new tax law would extend the tax-neutral regime applicable to these transactions.

- **Pillar 2 - Worldwide minimum tax regime for multinational and domestic groups** – The Finance Bill for 2024 had transposed into French law of the EU Directive 2022/2523 introducing a **15% minimum tax** on the profits of multinational (MNE) groups that operate in France and have a consolidated revenue of at least €750m generated during at least two of the last four fiscal years. The new law would clarify the determination methods of the substance-based exclusion, the application rules related to the top-up tax and the transitional safe harbor regime.

Notwithstanding these "clarifications", many questions remain unanswered and Pillar 2 rules continue to raise serious questions and challenges given applicable double tax treaties and investment treaties.

• For individuals

New “temporary” minimum tax on high income earners

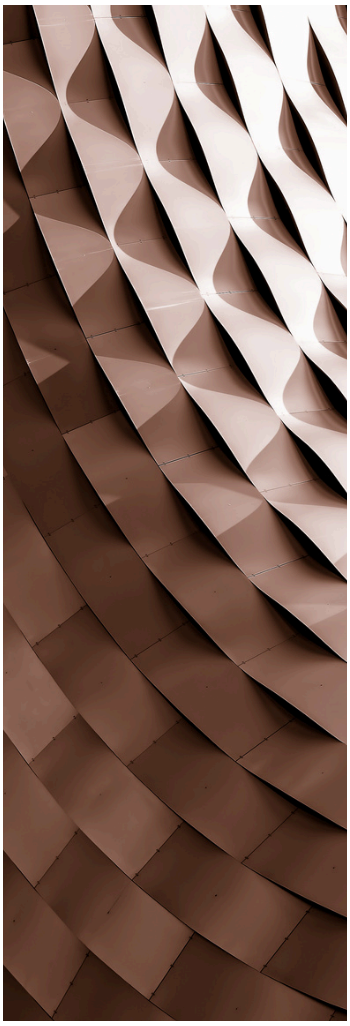
As from 2024 and until 2026, certain high income would be subject to a **minimum average tax rate of 20%**. This would hit high income earners, defined as individuals already subject to the exceptional contribution on high income earners (“CEHR”), i.e. taxpayers with an annual income exceeding €250,000 for a single person and €500,000 for a couple. The tax basis on which this “minimum tax” would apply is quite complex, but initial estimates lead to the conclusion that it could adversely affect individuals who receive dividends on a regular basis.

Real estate rented on a furnished, non-professional basis (“LMNP”)

For disposals taking place from 1 January 2025, new rules would be implemented in case of capital gains. These new rules would increase the taxable basis in case of a capital gain by adding-back the amortization deducted during the renting period. Currently, such amortization is not “recaptured” in case of a disposal (contrary to “professional” landlords).

Tax residence: “clarification” of tax rules applicable

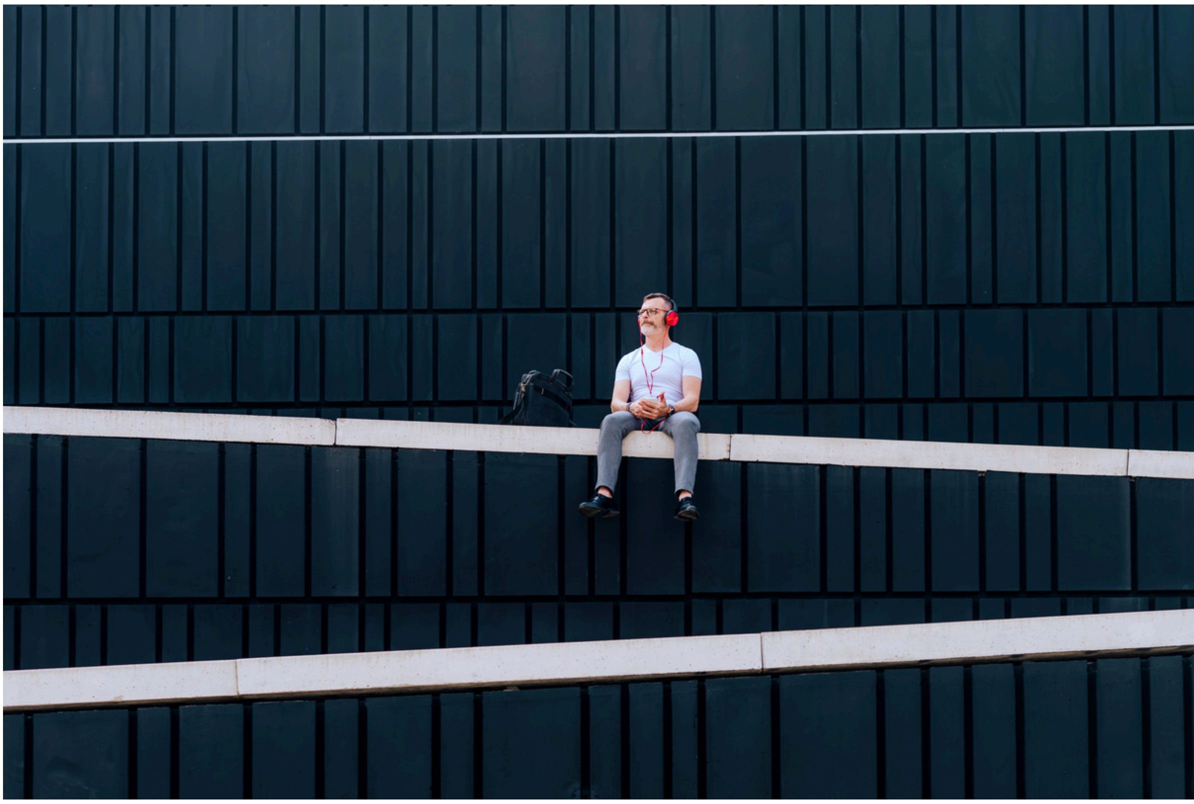
The primacy of the concept of tax residence in treaty law over that of tax residence in domestic law would be legally reaffirmed. French domestic tax rule (French tax code, art. 4 B) would be amended to to provide that a person who meets at least one of the internal criteria for tax residence in France will not be considered to have its tax residence in France if he or she is not considered to be resident for tax purposes in France under double tax treaties.



This new “clarification” is actually meant to reverse a recent court decision which had ruled that the withholding tax on wages paid to a non-resident for double tax treaty purposes is not due in case the employee is a resident of France for domestic tax purposes (CE, 5 February 2024, n°469771).

This new rule could lead to new withholding tax obligations for wages and other French source income paid to non-resident individuals who are not resident of France, subject of course to the application of double tax treaties.

New tax regime of BSPCE warrants for business creators (« bons de souscription de parts de créateur d'entreprise ») The new law intends to establish a (new) distinction between (a) on the one hand, the gain realized upon exercise of the warrants, qualified as an employee benefit and, (b) on the other hand, the gain realized upon disposal of the shares received in exchange for the BSPCEs, having the nature of a capital gain. Both gains would continue to benefit from the 30% flat tax (with a possibility to opt for the progressive income tax rates if more advantageous), but the exercise gain would not be eligible for the deferral of taxation in the event of a transfer of the shares, unless under specific conditions (e.g. in case of a merger or a demerger).



• Other measures

Digital assets: automatic and mandatory exchange of information
Transposition as from 1 January 2026 of the European Directive DAC-8, n°2023/2226 providing for mandatory exchange rules. In particular:
-crypto-asset service providers will have to collect and report information to identify transactions, the accounts used and their holders;
-the conditions under which a platform operator located outside the EU may be relieved of its reporting obligations in France are clarified.

Highly Polluting Vehicles: The threshold for triggering the CO_2 penalty for highly polluting vehicles will be lowered.

Tax transparency: The French Labour Code requires an economic, social and environmental database to be set up, bringing together all the information required for the consultations and recurring information that the employer makes available to the **social and economic committee** (Labour code, art. L. 2312-18). A decree adds to the list of information that must in principle be included in this database the **public country-by-country declaration** as provided for in EU Directive 2021/2101 of 24 November 2021 concerning the communication by certain undertakings and branches of information relating to corporation tax (Labour code, art. R. 2312-8 and R. 2312-9 amended).

👉 Draft finance bill

DOUBLE TAX TREATIES

French dividends received by a resident of Italy: in a recent court decision (TA Montreuil, 10ème ch., 19 sept. 2024, n° 2215513, Decaux, C+), a French tax court has ruled that the CEHR (exceptional contribution on high income earners) is not due on French source dividends.
This decision should be transposable to other double tax treaties.

French Tax Authorities comments on the new Double Tax Treaty with Colombia

The French tax authorities have now published their guidelines on the Colombia-France Income and Capital Tax Treaty (2015) which generally applies from 1 January 2023 for withholding taxes and other.

The French administrative guidelines provide details on the specific treaty provisions regarding notably:

- Covered taxes;
- Income derived from immovable properties;
- The permanent establishment definition and calculation rules of business profits;
- Investment income;
- Capital gains;
- The principal purpose test and the beneficial owner.

French administrative guideline are available here: BOI-INT-CVB-COL

French Tax Authorities comments on the new Double Tax Treaty with Greece

The French tax authorities published their guidelines on the new France – Greece Income Tax Treaty (2022), which replaced the France – Greece Income Tax Treaty (1963) with effect from 1 January 2024.

The French administrative guidelines provide details on the specific treaty provisions regarding notably:
-The calculation rules of business profits;
-Withholding taxes applicable to investment income
-Assistance in the collection of taxes; and
-The retroactive character of rules applicable to certain income for government services.

French administrative guideline are available here: BOI-INT-CVB-GRC

OTHER INTERNATIONAL TAX INFORMATION

The OECD has published its Tax Reforms 2024 report. This report traces the evolution of tax reforms and describes those implemented in 2023 in 90 jurisdictions, including all OECD countries. In particular, it highlights the **downward trend in corporate income tax** and personal income tax rates to support economic recovery in the wake of the health crisis.
Business organizations in France have criticized the draft Finance Bill for 2025 currently debated in Parliament, which contrary to other OECD countries would increase tax on businesses, endangering further their margin and competitiveness in a context of increased globalization.

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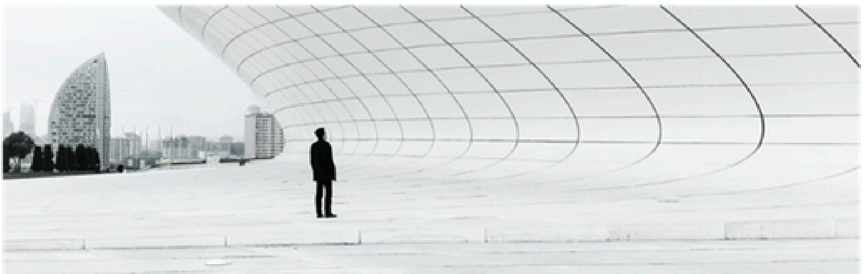

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