



France, 2019 Finance Bill at a glance for corporations

March 2019

Key measures impacting the French corporations: overhaul of the IP and net financial expenses regimes, amendments to the tax group regime

French tax group regime and its main amendments applicable to financial years beginning on or after January 2019 (Art. 32)

- **1% taxation on distributions within the tax group:**
 - Extension to distributions paid by subsidiaries located in the European Union or in the European Economic Area to **companies which are not members of a French tax group** but meet the conditions to be part of one and provided that the parent company has not formally decided not to elect for the tax group regime.
 - As from the second fiscal year of the tax group, extension to **distributions which are not eligible to the parent-subsidiary regime.**
- **Repeal of neutralization of debt waivers and subsidies** granted between companies which are members of a tax group.
- **Legalization of invoicing at cost** for supplies of goods (except for fixed assets) and services within the same tax group.
- **Repeal of the neutralization of the 12% taxation** on long term capital gains (i.e. on sales of shares held for more than two years).
- The **merger of the parent company into a subsidiary** which is member of the same tax group **does not trigger the end of the tax group anymore** when the operation benefits from the tax free regime and if the option is exercised within the legal deadlines. This provision is applicable to fiscal years ended on or after 31 December 2018.
- The withdrawal of a Member State from the EU (e.g. **Brexit**) causes the company located in this State to lose its status of non-resident parent or intermediate company but **has not effect on the French tax group up until the closing of the fiscal year** during which the withdrawal occurs.

Revision of the limitation rules for financial expenses tax deductibility (Art. 34)

- Continuity of the limitations of the interest rate served to related parties (Articles 39-1,3° and 212, I- b of the French Tax Code), which must be applied prior to the new limitation mechanism.
- Removal of the limitation for financial expenses related to the acquisition of shares by foreign purchasers (“Carrez Amendment”).
- Repeal of the general limitation of net financial expenses (“*rabot fiscal*”) and replacement with a **new mechanism encompassing new thin-capitalisation rules.**
- The new mechanism: the deduction of net financial expenses is capped at the higher of either **3 million euros of net financial expenses or 30% of the tax EBITDA.**
 - The new scope of **net financial expenses** is much broader than the one used for the “*rabot fiscal*”. Now, bank and guarantee fees on financing operations, rate and currency swaps, and foreign exchange gains and losses related to financial transactions are notably included.
 - **The tax EBITDA** equals the taxable result before offsetting tax losses, plus net financial expenses, tax deductible amortisation and net provisions for depreciation and capital gains or losses on disposal of assets subject to the reduced CIT rate of 15% or 19%.
- The net financial expenses excluded from tax deduction for a given fiscal year can now be **carried forward on the following fiscal years, without time limitation.** Besides, the unused interest deduction capacity can be offset on the deduction cap of **the following five fiscal years.**



- Safe harbour clause: members of a **consolidated group are entitled to an additional 75% deduction** when the equity capital-to-assets ratio is higher at the level of the company than at the level of the group, with a 2 percentage points tolerance.
- A new thin-capitalisation provision is included in the new mechanism:
 - An entity is considered as thin-capitalised when the debt ratio toward related parties exceeds **1.5 times its equity**.
 - The deduction of net financial expenses on related-party debt exceeding 1.5 times the entity's equity is capped at the higher of either **1 million euros or 10% tax EBITDA** (the net financial expenses balance remains subject to the higher caps of €3m or 30% of tax EBITDA).
 - The application of the additional 75% deduction is not allowed.
 - Only one-third of the net financial expenses excluded from deduction because of thin-capitalisation rules may be carried forward.
- For the **tax group members**, the net financial expenses and the tax EBITDA are determined **at the group level**. To appreciate the existence of a thin-capitalisation, the tax group's equity is compared to its debt towards related entities which are not in the tax group.
- Finally, special provisions apply to the carry-forward net financial expenses and to the unused deduction capacity when a company enters or exits the tax group.

Modification of the French patent tax regime (Art. 37 et 38)

- The French patent tax regime is modified to ensure its compliance with the recommendations of the EU and the OECD, i.e. the **“nexus approach” under which** the company itself must incur R&D expenses related to a patent to benefit from the favourable tax regime on the corresponding royalties or capital gains.
- As the previous one, the new tax regime applies to **patents**, utility certificates, patent supplementary protection certificates, plant variety protection certificates, industrial manufacturing processes (under the same conditions as the previous regime). The new provision extends the scope of eligible assets to **copyrighted software and inventions for which the patentability has been certified by the French National Institute of Industrial Property, for SMEs only**.
- The **new tax rate** applicable to the income from concession, sub-concession or sale of eligible patents is **10%**.
- To benefit from it, the company must elect for the new regime, either for each asset or, upon presentation of justification, for specific families of goods or services.
- The taxable income subject to the reduced rate is calculated in two steps: determination of the net eligible income, then multiplication by a “nexus” ratio.
 1. Net income: difference between the income **generated by the asset** during the fiscal year **and the related company's R&D expenses** during the same fiscal year. For the first fiscal year, a **recapture mechanism** allows to factor R&D expenses related to the asset since the election's date of the new regime.
 2. “Nexus” ratio: **ratio** between (i) a **numerator** which equals to **130% of R&D expenses** directly related to the creation and development of the asset and **either incurred by the company or outsourced to non-related parties, and** (ii) a **denominator** which equals to the expenses above, **plus expenses outsourced to related-parties and the acquisition cost of the asset**. This ratio factors expenses occurred during the fiscal year as well as expenses occurred during previous fiscal years. Specific transitional provisions applies to fiscal years 2019 and 2020. Under specific conditions, the company could apply for the approval by the French Tax Authorities of a substitute ratio.
- **In tax groups**, the net income is calculated at the group level, and the ratio numerator factors the expenses occurred by the companies of the tax group. Special provisions apply when a company owning eligible assets enters or exits the tax group.
- Entities which elect for the new favourable tax regime must **join their net income calculation and the ratio applied to their annual tax return**, and transmit upon request of the French Tax Authorities a **general documentation on the organisation of the R&D activity**.
- Furthermore, part of patent royalties is **not deductible from tax purposes** when the beneficiary is a related party which is subject to an **effective tax rate under 25%**. However, the limitation should in practice only apply when the beneficiary is located neither in a EU State nor in a EEA State and profits from a tax regime which is listed as harmful by the OECD.
- The new regime applies to fiscal years beginning on or after 1 January 2019.



IN BRIEF

Tax reduction for sponsoring

- Creation of an alternative 10 000 euros threshold when the tax reduction exceeds 5‰ of the company turnover (applies to fiscal years ended on or after 31 December 2018).
- For companies which make donations over 10 000 euros during the fiscal year, introduction of an obligation to disclose the beneficiary identity, the amounts donated and the date of the payment (applies to fiscal year beginning on or after 1 January 2019).

R&D tax credit

- Extension of the obligation to disclose the nature of the expenses financed by the research tax credit for companies incurring over 2 million euros in R&D expenses during the fiscal year.
- Those companies must file the Form 2069-A-I detailing the nature of their current research studies, the progress report of the programs, the allocated human and material resources and their localisation.
- Applicable to tax returns filed on and after 1 January 2019.

Increase of the final CIT instalment of large companies

- Increase of the estimated CIT of the fiscal year from 80% to 95% for companies with a turnover between 250 million euros and 1 billion euros.
- Increase of the estimated CIT of the fiscal year from 95% to 98% for companies with a turnover between 1 billion euros and 5 billion euros.
- Applicable for the fiscal years beginning on and after 1 January 2019.

Repeal of registration fees for specific legal deeds subject up until now to fixed fees of €375 or €500

- Are mainly targeted (non-exhaustive list):
 - i. Deeds drawn up when the company's is incorporated or for incorporation or capital increases (in particular pure and simple contributions not subject to transfer rights,

pure and simple contributions of real estate, goodwill or customer base made to an entity subject to CIT by another entity subject to CIT which commits to keeping the shares received for at least three years, incorporations of reserves, profits or provisions...);

- ii. Deeds related to the existence or the dissolution of the company (in particular some capital reductions, change of tax regime causing the company to become subject to CIT, mergers or similar transactions...).
- Applicable to registrations made on or after 1 January 2019.

Extension of the anti-abuse rule (Art. 108 et 109)

- The general anti-abuse clause of the ATAD directive is transposed into new Article 205 A of the French tax code. The clause applies **only in CIT matters** and allows the French Tax Authorities to dismiss schemes set up by the taxpayer with the **main purpose, or one of its main purposes**, the benefit from a tax advantage contrary to the aim of the applicable tax legislation. Applicable for fiscal year beginning on or after 1 January 2019.
- In parallel, new Article L64 A of the Tax Procedure Code introduces a **new tax anti-abuse procedure** which allows the French Tax Authorities to dismiss **fraudulent activities primarily, and not exclusively, tax motivated** (cf. Article L 64 of Tax Procedure Code). However, the 40% and 80% tax surcharges applicable for the standard anti-abuse procedure (exclusively tax motivated) will not be systematically applied to transactions which are primarily tax motivated.
- Applicable to reassessments notified on or after 1 January 2021 and related to transactions filed or performed on or after 1 January 2020.

Right for French partnerships to opt out of CIT

- Companies which have elected for CIT may now opt out up until the fifth fiscal year following the fiscal year of the option.
- Applicable for the fiscal year ended on and after 31 December 2018.

We remain at your disposal should you need any additional information.

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