



# Draft Finance Bill for 2022 ("PLF22"): very few measures announced concerning direct corporate taxation

11<sup>th</sup> October

The Draft Finance Bill for 2022 ("PLF22") was released on 22 September 2021. At this stage, it contains limited measures pertaining to direct corporate taxation. We are all looking forward to Parliament's proposals resulting from the debates currently in progress.

## Compliance with EU law on Withholding Taxes ("WHT") applicable to non-resident companies (Article 7 of the PLF22)

As a reminder, the impossibility for companies to deduct certain expenses from the basis of the withholding tax provided for in [Article 119 bis of the French Tax Code \("FTC"\)](#) has been considered contrary to the principle of the free movement of capital (CE 11/05/2021 n° 438135 UBS Asset Management Life Ltd).

Similarly, the impossibility for a non-resident service provider to deduct professional expenses in the calculation of the withholding tax provided for in [Article 182 B of the FTC](#) constitutes an infringement of the principle of freedom to provide services stated by Article 56 of the Treaty on the Functioning of the EU (CE 22/11/2019 n° 423698 and CE 09/09/2020 n° 434364).

Consequently, the PLF22 provides for (i) a **flat-rate deduction of 10%** applicable at the time of deduction of the withholding tax (concerns only the WHT deducted under Article 182 B of the FTC) and (ii) the possibility to **request a *posteriori* the refund** of the difference between the WHT levied (under articles 119 bis, 182 A bis and 182 B of the FTC) and the withholding tax computed on a basis net of the actual expenses incurred for the acquisition and retention of the income thus taxed.

The measures concern legal entities or organizations (i) whose results are not subject to that income tax in the hands of their partner, (ii) which are resident in the EU or the EEA (excluding Liechtenstein) and (iii) whose taxation rules in their State of tax residency do not allow the offsetting of the withholding tax levied in France.

With respect to the possibility of requesting a refund of the withholding tax levied under Article 119 bis of the FTC, the PLF22 extends this measure to residents of a non-EU or EEA country that has entered into an administrative assistance agreement with France to combat fraud and tax evasion, and this provided that the shareholding in the French distributing company does not allow beneficiaries whose revenues are subject to the WHT to participate in the actual and effective management and control of the French company.

These measures apply to WHT whose triggering event occurs **on or after 1 January 2022**.

In addition, for foreign loss-making entities, the PLF22 modifies [Article 235 quater of the FTC](#) so that (i) **applications for the refunding of then WHT** can be filed within **the period provided for in articles R 196-1 and R 196-3 of the tax procedure code "LPF"** and (ii) **declarations in order to benefit from the tax deferral** can be filed up to **6 months after the end of the fiscal year** for which the deferral is requested (instead of 3 months).

## Tax depreciation of goodwill ("*fonds commercial*") (Article 6 of the PLF22)

The PLF22 encourages the acquisition of **goodwill** in 2022 and 2023.

Article 6 of the PLF22 provides that the amortization of **goodwill acquired between 1 January 2022 and 31 December 2023** will be **tax deductible**.

## Repeal of inefficient tax expenditures (Article 10 of PLF22)

The PLF22 provides for the removal of tax exemptions for companies which were created to take over a company or an industrial establishment in difficulty, and more notably:

- the exemption from corporate income tax on profits made during the 24 months following their creation,
- the temporary exemption from property tax on developed properties, and from the CFE and CVAE for companies benefiting from the exemption from corporate income tax.

Finally, the PLF22 provides for the **repeal** of the exemption from income tax capped at €61k of profits, for those companies operating in urban free zones (ZFU) and which until now had benefitted from said exemption.

## Adjustment of capital gains tax exemption on transfer of businesses (Article 5 of the PLF22)

The PLF22 provides for the widening of the scope of exemptions for capital gains realized on the sale or transfer of companies (Article 238 quinquies of the FTC).

In the aim of encouraging business takeovers, the PLF22 proposes:

- to increase the ceilings for the exemption of capital

gains on the disposal of businesses: a total exemption would apply when the sale price is less than or equal to €500,000 (instead of €300k), and a partial exemption in the case where the sale price is less than or equal to €1m (instead of €500k);

- to extend this provision to the transfer of a business under a management lease to anyone other than the standing lease manager if the latter does not take over the business and provided that the transfer is backed by a transfer of all the elements which contribute to the operation of the business that was the subject of the management lease.

Several provisions also aim to ease the exemption mechanisms for capital gains on securities or businesses when the managers of individual businesses come to retire.

## Contacts



**Stéphanie Brevost**  
Attorney at Law – Partner

Direct Taxation  
E: SBrevost@avocats-gt.com  
T: +33 (0) 1 41 16 27 02



**Thibaut Grange**  
Attorney at Law – Director

Direct Taxation  
E: TGrange@avocats-gt.com  
T: +33 (0) 1 41 16 27 14



### Grant Thornton Société d'Avocats

29, rue du Pont  
92200 – Neuilly-sur-Seine, France  
[www.avocats-gt.com](http://www.avocats-gt.com)

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