



Draft Amending Finance Bill for 2021 ("PLFR21"): the main tax measures

10 June 2021

The draft Amending Finance Bill for 2021 ("PLFR21") was unveiled on 2 June 2021 and adopted in its 1st reading by the Finance Committee on 8 June. The principal aim of the text is to ensure the financing of the emergency measures requested over and above that which was provided for in the decree of 19 May 2021 where the said measures were set to finish at the end of the summer.

A temporary modification of the tax losses carry-back measure (Article 1-I PLFR 2021)

As a reminder, the mechanism for carrying back tax losses allows the losses recorded at the end of a fiscal year to be deducted from the adjusted profit of the previous fiscal year, up to a limit of €1m. This results in a tax credit that can be offset against the tax due for the following years. If the tax credit has not been used, it can be reimbursed at the end of a 5-year period.

The 3rd Amending Finance Bill for 2020 already allowed for the immediate repayment of unused carry-back tax receivables for fiscal years ending no later than 31 December 2020, within the limit of €1m, and for that of the fiscal year preceding.

In the continuity of this support measure, the 1st article of the PLFR21 provides that companies subject to corporate income tax can carry-back the tax losses recorded for the fiscal year concerned on any profits recorded in respect of the 3 fiscal year preceding.

The terms of this temporary measure

Article 220 quinquies of the French Tax Code (FTC) is to be amended to include and apply the following temporary regime:

- The possibility of deducting the tax losses recorded in respect of the **1st tax loss position fiscal year ended as from 30 June 2020 and until 30 June 2021**;
- Possibility to offset these tax losses against the adjusted profits of **the previous 3 fiscal years subject to certain exclusions**.
- Non-application of the €1m imputation limit;
- Taking into account the corporate tax rate applicable to fiscal years beginning on or after 1 January 2022 (i.e. the standard rate of 25%);
- The possibility of an option until the deadline for filing

the income tax return for the fiscal years ending 30 June 2021, and at the latest before the settlement of the tax due for the following year;

- Carry-back tax receivables will be deducted from the tax due in respect of subsequent fiscal years and reimbursed within 5 years of the option. At this stage, it is not possible to obtain an early repayment of these receivables.

A practical example for companies

A small medium size company (SME) closing on 31 December has achieved the following tax results (assuming there are no distributions, exempt profits, etc.):

FY ended on	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021	12/31/2022
Taxable result	100 000	280 000	300 000	<1 460 000>	<100 000>	480 000

The company can opt to carry-back the tax losses for the fiscal year ending 31 December 2020 on the profits made for the three financial fiscal years 2017, 2018 and 2019.

The option to carry-back the tax losses of 2020 should generate a carry-back claim on the basis of profits made in respect of years 2017 to 2019, applying a corporate tax rate of 25%:

FY ended on	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021	12/31/2022
Taxable Result	100 000	280 000	300 000	<1 460 000>	<100 000>	480 000
CIT	33 333	78 400	84 000			120 000
Incurred carry-back receivables	25 000	70 000	75 000			
Offset carry-back receivables						120 000
Balance of carry-back receivables				170 000	170 000	50 000



In the example, only the 1st loss-making result (i.e. year ending 31 December 2020) generates a carry-back tax receivable. This carry-back can be offset against the taxable profit for the year ending 31 December 2022 (i.e. €480,000).

This tax claim may be offset against subsequent profitable years and will be repayable from 2026 onwards.

Specifications for 2021 concerning the tax regime for aid granted to companies by the French State in the context of the health crisis (Article 1-II PLFR21)

Paragraph I of Article 1 of the amending finance bill for 2020 dated 25 April 2020 provided for an exemption from corporate income tax, income tax and all social contributions for aid paid by the Solidarity Fund, "*Fonds de Solidarité des Entreprises*" (FSE). Article 1 of the PLFR21 specifies the following elements.

The tax regime applicable to aid received under the FSE for the period following the adoption of the law of 25 April 2020

The PLFR21 provides that the provisions of Paragraph I of Article 1 of the Amending Finance bill for 2020 of 25 April 2020 "*shall apply to aid paid pursuant to Decree No. 2020-371 of 30 March 2020 as amended, and pursuant to the related Decree No. 2020-1049 of 14 August 2020 (aid for discotheques) as amended, in the version applicable on the date the aid is granted*".

These aids should thus be exempt from corporate income tax, income tax and all social contributions and they will not be taken into account for the calculation of turnover limits for the eligibility to be considered under certain regimes (exemption of professional capital gains, of micro-manufacturing and commercial regime (BIC), of micro-agricultural regime (BA), of micro non-commercial regime (BNC), real simplified BIC and agricultural regimes).

The tax regime applicable to aid paid in 2021 in addition to that of the Solidarity Fund (FSE)

The PLFR states that the provisions providing for the FSE to be excluded from turnover calculations would not be applicable to the additional following aids when they have been received as from the year 2021 or for fiscal years closed as from 1 January 2021:

- a) Aid allocated for fixed costs, and paid pursuant to Decree No. 2021-310 of 24 March 2021, as amended;
- b) Specific aid granted for the benefit of natural or legal person operating ski lifts, paid in application of Decree n° 2021-311 of 24th March 2021
- c) Aid granted to relieve those businesses facing

difficulties to dispose of stocks and which have a turnover of less than €1m, paid in application of Decree n° 2021-594 of 14 May 2021;

- d) Aid granted for the takeover of businesses, paid pursuant to Decree no. 2021-624 of 20 May 2021.

Renewal of the Exceptional Purchasing Power Bonus ("PEPA") - exemption from social security contributions and income tax (Article 2 PLFR21)

The French Government had previously introduced an exceptional purchasing power bonus which was exempt from income tax and social security contributions up to €1,000. This bonus could be paid by certain employers to employees whose remuneration was below 3 times the gross SMIC (minimum wage).

The PLFR21 provides for the renewal of this bonus thereby directly increasing the purchasing power of the lowest paid employees. The exemption from tax and social security contributions would apply to those bonuses paid between 1 June 2021 and 31 March 2022.

The draft law also provides that the limit of exemption from income tax and social security contributions be raised to €2,000 under two alternative conditions:

- The employer is covered by a branch agreement or by a company agreement giving value to employees working in the "second line" of the epidemic; **or**
- The employer has implemented a profit-sharing agreement at the date of payment of the bonus.

Exceptional increase in the income tax reduction rate for donations made to religious associations (Article 7 PLFR21)

Reminder of the current tax regime

Donations or subventions paid to organizations with a mission of general interest give entitlement to an income tax reduction equal to 66% of their actual amount within the limit of 20% of the taxable income (Article 200, 1 of the FTC). Subventions paid to religious or charitable associations, as well as to public establishments of the recognized religions of Alsace-Moselle fall within the scope of this regime (Article 200, 1-e of the FTC).

PLFR21

The PLFR21 proposes to increase the rate of the applicable tax reduction for donations as provided for in Article 200 of the FTC from 66% to 75% for donations and payments made to religious associations or public establishments of the recognized religions of Alsace-Moselle.

This temporary measure would apply to donations and payments made between 2 June 2021 and 31 December 2022:

- Such payments made during the year 2021 would be retained within the limit of €554;
- For payments made in 2022, the limit would be raised proportionately in line with the upper limit of the first bracket of the income tax scale for the year 2021.

Extension of both the granting of state guaranteed loans “PGEs” and the pre-financing of factoring guaranteed by the State (Article 8 of PLFR21)

To mitigate against the economic turbulence resulting from the coronavirus crisis, the French public authorities have set up an exceptional system of guarantees amounting to 300 billion euros in order to support bank financing of companies irrespective of their size or legal form. This aid was initially set to apply until 30 June 2021.

The PLFR21 proposes to extend the period of guarantees by six months during which the granting of state-guaranteed loans and state-guaranteed factoring pre-financing will continue to be allowed. This would extend the possibility for those companies which are eligible, to

take out state-guaranteed loans and state-guaranteed factoring pre-financing until the later date of 31 December 2021 inclusive.

Extension of the Solidarity Fund (Article 11 PLFR21)

Ordinance No. 2020-317 of 25 March 2020 and Decree No. 2020-371 of 30 March 2020 established the solidarity fund for the benefit of small businesses, the self-employed and entrepreneurs. The purpose of this measure is to provide financial support to French companies particularly affected by the economic consequences of the ongoing health crisis.

The PLFR21 plans to extend access to the solidarity fund until 31 August 2021.

In addition, the draft bill provides for France's executive power to extend by decree this same measure beyond 31 August 2021 and for a maximum period of 4 months until 31 December 2021.

Our law firm is at your disposal to assist you in your restructuring operations and for any additional information you may require.

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