



Finance Bill for 2022 (« FB22 »): Main direct tax measures for corporations

14 January 2022

On 28 December 2021, the Constitutional Council validated the Finance Bill for 2022 ("FB22"). There are few significant measures related to direct corporate tax in this new law.

Corporate tax rate

| FY beginning on or after | 01/01/2021 | | 01/01/2022 | |
|---|---|---|---------------------------------------|---|
| | Without surtax | With 3.3% surtax | Without surtax | With 3.3% surtax |
| 01/01/2021 Turnover (EUR) < 10m€ | 15%* (0 - 38k€) 26,5% (beyond) | 15,50%* (0 - 38k€) 27,37% (beyond) | 15%* (0 - 38k€) 25% (beyond) | 15,50%* (0 - 38k€) 25,83% (beyond) |
| 01/01/2021 10m€ ≤ Turnover (EUR) < 250m€ | 26,5% | 27,37% | 25% | 25,83% |
| Turnover (EUR) ≥ 250m€ | 27,5% | 28,41% | 25% | 25,83% |

*conditioned on the fact that the company (1) has a turnover of less than €10m, (2) that the capital has been paid up and (3) that at least 75% of it is owned by natural persons.

Maximum interest tax deductible rate

The maximum deductible interest rate is 1.17% for 12-month periods ending 31 December 2021.

Compliance with European law of withholding taxes ("WHT") applicable to non-resident companies (Art. 24 of the FB22)

The FB22 introduces (i) a **flat-rate deduction of 10%** applicable at the time of deduction of the withholding tax under Article 182 B of the French Tax Code ("FTC") and (ii) the possibility to **request a posteriori the refund** of the difference between the withholding tax deducted (under Articles 119 bis and 182 B of the FTC) and the WHT calculated on the basis of a net base of the actual expenses incurred.

These measures concern legal entities or organizations (i) whose results are not subject to income tax in the

hands of a partner, (ii) resident in the EU or the EEA (excluding Liechtenstein) and (iii) whose taxation rules in their State of residence do not allow the deduction of the RAS levied in France.

In addition, the possibility of requesting the *a posteriori* refund of the withholding tax levied under Article 119 bis of the FTC is to be extended under certain conditions to residents of a country outside the EU or the EEA.

These measures apply to withholding taxes where the triggering event **occurs on or after 1 January 2022**.

Finally, for foreign loss-making entities, the FB22 modifies **Article 235 quater of the FTC** to enable (i) **claims for a withholding tax refund** to be filed within **the claim period (a period which expires on 31 December of the second year following the year of payment of the tax)** and (ii) **declarations benefitting from the tax deferral** to be filed up to **6 months after the closing** of the fiscal year in which the deferral is requested (instead of 3 months previously).

Tax depreciation of goodwill ("Fonds commerciaux") (Art. 23 of the FB22)

The FB22 introduces the principle of the non-deductibility of the goodwill depreciation for tax purposes, with the exception of goodwill acquired between 1 January 2022 and 31 December 2025. Companies will have to justify this limited period of use. Only qualified small businesses will be exempted.



Measures to encourage transfer of business (Art. 19 of the FB22)

The FB22 broadens the scope of application of exemptions for capital gains realized on the sale or transfer of businesses (Article 238 quinquies of the FTC).

- Increase of the exemption ceilings for capital gains on the sale of businesses (€500k for a total exemption and €1,000k for a partial exemption);
- Extension of the exemption to sales of businesses leased to anyone other than the lessee manager, under certain conditions;
- Temporary extension (36 months instead of 24 months) of the transfer period allowing the sole proprietor or the manager to benefit from the exemption provided for in case of their entitled retirement being requested between 1 January 2019 and 31 December 2021.

Extension of the duration of the Young Innovative Company status. (Art. 11 of the FB22)

The FB22 extends the duration of the young innovative company status from 7 to 10 years. As such, it can benefit from tax advantages in regard to the tax on profits until its 11th anniversary of creation.

This extension does not apply to exemptions from social security contributions and local taxes.

Extension and adjustment of the innovation tax credit (Art. 83 of the FB22)

The FB22 extends the innovation tax credit (*CII*), initially in place until 31 December 2022, until 31 December 2024.

In addition, the flat-rate inclusion of operating expenses in the *CII* base has been removed.

As a counterpart, the rate of the *CII* will increase from 20% to 30% of the total expenses incurred (and from 40% to 60% for the rate applicable to French overseas departments).

Clarification of the measure to combat hybrid mismatch arrangements (Art. 14 of the FB22)

As a reminder, Article 205 B of the FTC provides for the neutralization of the effects of tax asymmetry or

“mismatching” where payments are made under financial instruments or schemes and give rise to a double deduction. However, there were questions as to which year the expense should be reintegrated into the income of the paying party.

Henceforth, the FB22 provides that where the party receiving the payment has not included said payment in its taxable profit within 24 months of receiving the payment, the payment itself will be reinstated in the taxable profit of the paying party at the end of the last fiscal year starting within 24 months of the end of the fiscal year in which the expense was initially deducted.

Creation of a tax credit for collaborative research (Art. 69 of the FB22)

Subject to conditions, the FB22 introduces a tax credit for companies that enter into partnership agreements with certain research organizations from 1 January 2022, with the aim of financing research expenses incurred by these organizations.

The amount of this tax credit will be equal to 40% of the invoiced amounts (increased to 50% for SMEs) within the overall limit of €6m per year.

This tax credit will be usable according to the same terms as those applicable to the research tax credit. Details of the reporting procedures are expected to be published at a later date.

Clarifications regarding carry-back (Art. 15 de la FB22)

The FB22 expressly disallows from the benefit of being able to carry-back, that part of the profit which gave rise to a tax on which a tax reduction was charged for the fiscal years ending on or after 31 December 2021.

As such, the FB22 standardizes the treatment that was already applicable to tax credits.

Appointment of a tax representative for capital gains on shares and real estate assets (Art. 30 of FB22)

As a reminder, Articles 244 bis A and 244 bis B of the FTC require the appointment of a tax representative for the payment of capital gains tax in France when a capital gain on real estate or shares (in case of substantial participation) is realized by a person who is not a tax resident of France. Until now, this appointment was made under the same conditions as for VAT.

The FB22 states that henceforth, the appointment of the tax representative for capital gains will be subject to specific accreditation conditions, namely:

- Neither the person appointed as a representative nor his or her managers must have committed serious offences against the French tax legislation, or been subject to certain sanctions provided for by the Commercial Code;
- The appointed person complies with his/her declaratory and payment obligations both on his/her own behalf but also on behalf of the persons he/she represents;
- The appointed person has the necessary guarantees to respect the obligations related to the status of representative.

A decree of the Supreme Administrative Court (*Conseil d'Etat*) will provide further details notably on the conditions for granting and withdrawing accreditation.

Transposition of Directive DAC7

The FB22 transposes the provisions of the DAC Directive⁷ (Directive 2021/514 of 22 March 2021) by introducing a harmonized system of declaration and automatic exchanges between Member States concerning information relating to income generated through online platforms.

Furthermore, the FB22 reinforces the rules relating to international administrative cooperation, notably providing in respect of the possibility to carry out joint controls as from 1 January 2024.

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