

News flash

Department : Tax

FRENCH FINANCE BILL FOR 2014

MAIN TAX MEASURES

FINANCE BILL FOR 2014

Finance Bill for 2014 was presented to the Council of Ministers on Wednesday September 25th, 2013.

Details of the main tax measures for individuals and companies are summarized below.

These measures are not final and may be further modified by the parliament.

INDIVIDUAL TAXATION

Capital gains taxation on disposal of securities – New regime

Capital gains derived from the sale of securities realized by individual taxpayers would systematically be subject to French personal income tax at progressive rates, after a rebate for length of holding.

The rebate depending on the length of holding of the securities sold would be 50% for holding between 2 and 8 years, and 65% after 8 years of holding.

A specific regime would also apply to capital gains derived from sales of shares in small and medium enterprises ("SME") created less than 10 years ago and to capital gains currently taxed under a preferential regime (notably the regime applicable to young innovative enterprises securities). This specific rebate would replace the existing alternative regimes.

This specific regime would consist in an increased rebate for length of holding, as follows:

- 50% for holding between 1 to 4 years,
- 65% for holding between 4 to 8 years,
- 85% after 8 years of holding.

In addition to this increased rebate, a preliminary fixed tax allowance of K€500 would apply for SME managers upon retirement.

The finance bill also amends the favorable tax regime applicable to capital gains derived from the sale of OPCVM for both tax residents and non-tax residents.

These measures would apply to sales realized on or after January 1st, 2013.

Capital gains on disposal of real estate – New regime

Under the current regime, capital gains on real estate are subject to a 19% levy after application of a progressive tax rebate for a holding period leading to a full exemption on capital gains after thirty years.

This tax rebate for holding period would be amended. Regarding real estate, other than building lots, held for more than five years, a rebate would be applied on the taxable basis as follows:

- 6% for each year of holding after the fifth year;
- 4% for the twenty-second year of holding;

leading to a full exemption on capital gains after twenty-two years.

Regarding social surtaxes, the full exemption would not apply before a holding period of thirty years, rebate being as follows:

- 1.65% for each year of holding after the fifth year
- 1.60% for the twenty-second year
- 9% for the years after the twenty-second year

These new rules would apply to capital gains realized as from September 1st, 2013, except for building lots.

An exceptional rebate of 25% would apply on real estate capital gains realized during the period from September 1st, 2013 to August 31st, 2014. This tax rebate would apply to income tax and social surtaxes.

CORPORATE TAXATION

New anti-hybrid financing / subject to tax rules

The Finance bill proposes to deny the deductibility of the interest paid by a company to another related company under certain conditions.

The deductibility of interest paid to the lending company would be denied if the taxation of the interest paid is at least a quarter (25%) lower than if it were taxed under general tax rules.

This measure would apply without distinction to tax residents and non-tax residents on or after 25 September 2013.

Corporate income tax surcharge (former EBE / ENE tax)

The government proposed to introduce a new tax called "*Cotisation sur l'excédent net d'exploitation*" (ENE) (previously called "*Cotisation sur l'excédent brut d'exploitation*" (EBE)). This 1% tax was initially supposed to be based on the EBE (corresponding to the EBITDA) and then to the ENE (corresponding to the same basis less amortization).

However, further to the objections raised by the French companies' representatives, the government decided to abandon this measure in favor of a new temporary corporate income tax surcharge. This announcement was made on 7 October 2013 and the details of this surcharge are not yet revealed.

Transfer pricing – Business restructuring

It is proposed to reinforce transfer pricing rules in case of business restructuring.

A French company that transfers part of its functions or risks to a related company outside France would have to justify that the operation is at arm's length. This new obligation would be triggered if the transfer of part of a company's functions or risks results in at least a reduction of 20% of its *Earnings Before Interest Tax Depreciation and Amortization* (EBITDA) in comparison with the average EBITDA of the previous 3 fiscal years.

This measure would apply as from 31 December 2013.

OTHERS MEASURES

VAT – Reverse charge mechanism in the construction sector

In order to fight against the carousel fraud, it is proposed to implement a reverse charge mechanism for the payment of VAT in the construction sector.

According to the Finance bill, the reverse charge mechanism would be limited to (i) certain services provided on a building (ii) when performed by a subcontractor (iii) on the behalf of a taxable person (the principal) subject to VAT.

New exceptional solidarity tax on high remuneration

A new exceptional tax would be paid by companies for remunerations superior to €1 M.

This tax would be equal to 50% of the gross remuneration in excess of €1M and would be capped to 5% of the annual turnover.

These measures would apply for remunerations paid or attributed in 2013 and 2014.

Systemic tax increase

The rate of the systemic tax would be increased from 0.50% to 0.529% as from January 1st, 2014.

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