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Main provisions of the 2015 Finance Bill that impact businesses

Like every year, the Finance Bill supplements existing tax rules and/or create new tax schemes.

For 2015, the main tax provisions relating to businesses concern primarily horizontal tax consolidation schemes, the reverse charge mechanism regarding VAT due on imports, the single 19% tax rate on real estate capital gains earned by non-residents, the repeal of the obligation to appoint a tax representative in certain circumstances, the imposition of higher penalties for non-compliance with transfer pricing documentation requirements, etc.

Single tax rate for real estate capital gains earned by non-resident natural persons

Effective as from January 1, 2015, any real estate capital gains derived from assets located in France and earned by natural persons residing in France, in the European Economic Area (the "EEA") or in third-party country are subject to a single tax rate of 19%.

It should be noted, however, that the 75% tax rate applicable to nationals of non-cooperative states and territories is maintained.

NB: cf. also the article entitled "The future of social levies on income derived from French real estate assets"

held by non-residents: an EU law perspective” published in our January 2015 e-newsletter.

Share buy-back

Following a decision rendered by the French Constitutional Council on June 20, 2014, the 2015 Finance Bill stipulates that the sums allocated to a shareholder – natural person or legal entity – following redemptions of shares carried out on or after January 1, 2015 will be taxed exclusively under the regime applicable to capital gains derived from sales of shares, and shall no longer be partly regarded as distributed income.

Repeal of the obligation to appoint a tax representative

Any taxpayer liable to a French tax and residing in a Member State of the EEA, except Lichtenstein, no longer has the obligation to systematically appoint a tax representative in France.

This provision is effective since January 1, 2015 and applies, in particular, to (i) capital gains derived from the sale of securities and real estate capital gains, and (ii) the 3% tax on the market value of real estate assets located in France.

VAT import and reserve-charge mechanism

Any economic operator eligible to the French single customs clearance procedure (*procédure unique de dédouanement* also called *PDU*) may indicate the amount of VAT due on imports directly onto its VAT return (dedicated information fields have been added for this purpose), effective as from January 1, 2015.

This option lasts until December 31 of the third subsequent years and is tacitly renewed. This new scheme relieves such operators from the obligation to pay due VAT to the local customs authorities and enables them to exercise their right to recover or be refunded VAT with the Tax authorities. The cash management effort is thus fully alleviated.

More flexible tax reduction applicable to subscriptions of shares in a pure holding company

Any cash payment made until December 16, 2016 for the purposes of subscribing, directly or indirectly, for shares in the capital of Small- and Mid-sized Businesses entitles to a rebate on income tax or wealth tax, subject, in particular, to the retention of such shares until December 31 of the fifth year following that of

subscription.

While it was already possible to subscribe for shares in a pure holding company, the applicable requirements as to the minimum number of employees and maximum number of legal representatives or shareholders made it very difficult to implement this in practice.

Henceforth, any subscription for shares in a pure holding company made on or after January 1, 2015 will entitle to one of the above tax rebates as the above requirements specifically applicable to pure holding companies have been abolished. On the other hand, the 5-year retention period continues to apply.

Horizontal tax consolidation without a parent company in France

The tax consolidation scheme is extended to French subsidiaries located in France that are owned at 95% or more by a single company that is subject to a tax equivalent to the French corporate income tax in another country of the EEA.

Under this new horizontal tax consolidation regime that applies to financial years closed on or after 31 December 2014, a single French subsidiary (freely chosen) shall be liable for the corporate income tax and assimilated taxes in France on the aggregate revenues of all entities included in the horizontal tax consolidation perimeter.

Higher penalties for non-compliance with transfer pricing documentation requirements

The obligation to prepare transfer pricing documentation is imposed on companies with a turnover or gross assets on the balance sheet over €400 million. It must be made available to the French Tax Authorities wherever a tax audit is initiated.

The financial penalty is no less than €10,000 for each audited financial year and can be increased up to:

- 0.5% of the volume of transactions relating to the documentation that was not provided to the tax authorities, after a formal notice (even if the profits have not been transferred), or
- 5% of the additional tax assessments relating to transactions for which documentation has not been provided to the French tax authorities.

This new financial penalty applies to tax audits for which an audit notice was sent by the French Tax Authorities on or after 1 January 2015.

More transparency on the use of the *Crédit d'impôt Compétitivité Emploi* (Competitiveness and Employment Tax Credit, or "CICE")

In order to ensure that the CICE is properly used, the 2015 Finance Bill imposes on companies the obligation to provide information on the use of the CICE in a description annexed to the balance sheet or in a note as an appendix to the financial statements.

This new provision applies to tax due on the 2014 income (for companies that are fiscally translucent) and for the determination of taxable earnings for financial years ended as from December 31, 2014 (for companies subject to corporate income tax).

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