Global Tax Alert

French Government releases draft Finance Bill for 2014

The French Government presented the draft of the Finance Bill for 2014 on 25 September 2013. This draft will be discussed by the French Parliament over the following weeks.

This Alert presents a brief summary of the main tax reforms included in this draft and which may affect corporations.

New 1% tax on EBITDA

The draft Finance Bill for 2014 proposes introducing a new tax on EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) for companies subject to corporate income tax (CIT) as well as real estate investment companies subject to a CIT exemption regime¹ operating a business in France and having turnover in excess of €50 million per year (in a tax consolidated group, the turnover would be computed on an aggregated basis).

The EBITDA for the purpose of the 1% tax would be computed based on the difference between (i) the added value (as used for the purpose of the business contribution on added value) and (ii) personnel costs plus taxes (other than CIT, and taxes already deducted to compute the added value).

The tax, which would not be tax deductible for CIT purposes, would be paid along with the final balance of CIT (15 April for companies having a calendar fiscal year). In a tax consolidated group, the parent company would file and pay the 1% tax on behalf of consolidated subsidiaries.

These new rules would apply for companies having their fiscal years (FYs) ending on or after 31 December 2013.

Repeal of minimum fixed annual tax

The draft Finance Bill for 2014 would confirm the repeal of the minimum fixed annual tax (Impostion Forfaitaire Annuelle) by 1 January 2014.
The 1% tax on EBITDA is presented as a replacement of the minimum fixed annual tax.

Limitation of deductibility of interest accrued to low taxed related party lenders

The draft Finance Bill for 2014 proposes to prohibit the tax deduction in France of interest on loans granted by a related party lender if the tax effectively borne by the lender on such interest is less than 25% of the tax that would be borne by it, had it been established in France.

These new rules would apply in FYs ending on or after 25 September 2013.

Shift of the burden of proof to the taxpayer in case of business restructuring

The draft Finance Bill for 2014 proposes to introduce a specific transfer pricing regulation that would shift the burden of proof to the taxpayer where:

- Functions or business risks are transferred by a French entity to a related party; and
- The EBITDA of the French entity (as defined for purposes of the new 1% tax) in the two FYs following such transfer is 20% lower than the average over the three FYs preceding the transfer.

In such a case, the French entity would have to prove, at the request of the French tax authorities, that it has received an arm’s length financial compensation.

However, the rule would not apply to a mere disposal or licensing of an isolated asset, provided no other business risks or functions are being transferred.

It is also proposed to include “non cooperative States or territories” in the category of countries in relation to which transfer pricing rules (including the shift of burden of proof mentioned above) would apply regardless of any link of control or dependence between the French taxpayer and the foreign entity. Currently this applies only to low tax jurisdictions, i.e., countries in which the tax burden is less than half the tax burden that would apply in France.

The new rules would apply in FYs ending on or after 31 December 2013.

Exceptional solidarity surtax on remunerations exceeding €1 million

The draft Finance Bill for 2014 would introduce an “exceptional solidarity tax” of 50% on the portion of remunerations granted to an employee or director that exceeds €1 million. Remunerations taken into account are, in a principle, those deductible for CIT purposes, including wages, pension payments or stock options. Specific computation rules would apply for pension payments and stock options. The tax would only apply to remunerations granted in civil years 2013 and 2014, and would be capped at 5% of the turnover of the civil year. The employer would need to file a specific return and pay the tax by 30 April of the following year.

Increase of the rate of the systemic risk banking tax

The draft Finance Bill for 2014 proposes to increase from 0.5% to 0.529% the rate of the systemic risk banking tax introduced by the Finance Bill for 2011. The new rate would apply to the tax due as from 2014 (payable on 30 April 2014).

Research and development (R&D) tax credit

The draft Finance Bill for 2014 proposes to simplify the computation of certain expenses eligible for the R&D tax credit with respect to personnel costs and IP protection costs. This new rule would apply for expenses incurred as from 1 January 2014.

A detailed tax Alert will be released when the Finance Bill for 2014 is final.

Endnotes

1. Regime of “Sociétés d’investissements immobiliers cotées” (SIIC).

2. For the latest list of these countries, see EY Global Tax Alert, French Government updates blacklist of non cooperative countries, dated 29 August 2013.

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