

France enacts Amended Finance Act for 2014 and Finance Act for 2015

December 22, 2014

In brief

The 2014 Amended Finance Act and the 2015 Finance Act both passed on December 18, 2014. Both are still subject to constitutional review and formal publication, but they should enter into force before December 31, 2014.

Under the new legislation, the French fiscal unity regime is now available to French 'sister' companies (so called 'horizontal tax consolidation').

The 2014 Amended Finance Act also contains new conditions to benefit from the parent-subsidiary regime applicable to dividend distributions. It also introduces a new penalty for failure to comply with French transfer pricing requirements.

In detail

Horizontal fiscal unity

Following a European Court of Justice judgement dated June 12, 2014 in which the Court ruled that the Dutch fiscal unity rules breached the Freedom of Establishment for not allowing a fiscal unity between two Dutch companies held through a common parent company established in the European Union (EU) or the European Economic Area (EEA), France decided to amend its own fiscal unity regime.

Taxpayers may now create a fiscal unity between French 'sister' companies that are directly or indirectly held by a parent company established in the EU or the EEA, other

than Lichtenstein ('non-resident parent').

Provided they satisfied all conditions (including ownership requirements), a French parent company or a permanent establishment of an EU or EEA company can now form a French fiscal entity. The following entities related to the French parent company or PE may be part of the French fiscal entity:

- its French subsidiaries
- its French sub-subsidiaries held through French intermediate companies
- its French sub-subsidiaries held through EU or EEA intermediate companies

- French sister companies directly or indirectly held through a common EU or EEA parent.

The new regime applies for the most part to financial years ending on or after December 31, 2014.

New limitation to the French participation exemption regime on dividends

Under the current participation exemption regime, dividends received by a French parent company from qualifying entities are 95% exempt from corporate tax. The remaining 5% of the dividends, representing costs and expenses, is taxable at the standard corporate tax rate of 33.33%.

Pursuant to the Amended Finance Act for 2014, the participation-exemption regime will be denied for dividends paid out of profits from activities not subject to corporate income tax (or equivalent).

The 95% participation-exemption will also not apply to dividends paid out of profits that are deductible from the taxable income of distributing company.

The new limitations will apply to financial years opening on or after January 1, 2015.

Reduced real estate capital gain tax rate for certain non-residents

Capital gains derived from the disposal of real estate assets located in France or derived from the disposal of French real estate shares or interest are now subject in France to a reduced withholding tax rate of 19% (33.33% previously). The 19% rate applies to non-resident individuals and individual investors in flow-through entities. Several exceptions apply especially with respect to non-resident domiciled taxpayers or those established in non-cooperative states and territories.

This new rate applies to capital gains triggered on or after January 1, 2015.

New penalty for missing or incomplete transfer pricing documentation

Failing to provide the French tax authorities with complete transfer pricing documentation will lead to a new penalty amounting to the higher of either (i) 0.5% of the amount of the transactions for which only partial or incomplete documentation has been provided to the French tax Authorities or (ii) 5% of the amounts reassessed by the French Tax Authorities with regards to these transactions.

The minimum penalty cannot be lower than Euro 10,000.

This new penalty applies to tax audits for which a tax audit notification is sent on or after January 1, 2015.

New voluntary adjustment procedure for transfer pricing

In case of a transfer pricing reassessment, the amount reassessed by the French tax authorities generally qualifies as a deemed dividend subject to French withholding tax.

In the course of a tax reassessment procedure, the taxpayer is now entitled to formally request the French tax authorities to waive withholding tax on deemed distributions. However, the taxpayer must not yet have received the payment notice from the French tax authorities for such withholding tax. In addition, he must have formally accepted the reassessments and penalties applied. Also, the French taxpayer must receive the amount of the deemed distribution within 60 days following the date of the request.

This procedure does not apply if the beneficiary of the deemed distribution is located in a non-cooperative state or territory.

This new procedure will be effective on the day following the publication of Amended Finance Act for 2014 in the legal gazette.

Miscellaneous

- The Amended Finance Act for 2014 provides that certain taxes will not be deductible anymore for French corporate income tax purposes.
- The Amended Finance Act for 2014 provides that the information regarding the use of the tax credit for employment and competitiveness (CICE) shall be detailed in the company's balance sheet appendix or in a separate appendix attached to the company's financial statements.

- Other tax measures are part of the Amended Finance Act for 2014 and the Finance Act for 2015 which are not covered in this *Tax Insights*.
- The Social Security Finance Act for 2015 has repealed the employee bonus on dividends (so called 'Prime de partage du profit'). This will be enacted before December 31, 2014.
- On December 12, 2014, the French Prime Minister published on its website a calendar of milestone reforms over the next five years. He indicated that the French corporate income tax rate will be progressively reduced from 33.1/3% to 32% in 2017 and down to 28% in 2020. From a constitutional perspective, this announcement is not binding and is not yet a draft Bill. It is a mere political statement.
- As a reminder, the French corporate income tax surcharge of 10.7% will also be repealed for fiscal years closed on or after December 31, 2016. In practice, calendar year companies will be liable for the surtax for 2014 and 2015.
- In addition, the social solidarity contribution ('C3S') assessed on the company's turnover should be repealed as well in 2017.

The takeaway

US multinationals with French subsidiaries or branches should take into account these new rules.

US multinationals operating in France should also consider the opportunity to set-up a fiscal unity between French sisters' subsidiaries.

Let's talk

For a deeper discussion of how this might affect your business, please contact:

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