

French Parliament approves Finance Bill for 2021

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Executive summary

On 17 December 2020, the French Parliament approved the Finance Bill for 2021 (the Bill).

Except for the constitutionality review by the *Conseil constitutionnel* (French Constitutional Council), the Bill is final.

This Alert summarizes the main corporate tax provisions relating to companies in the Bill.

Detailed discussion

Deferral or spreading of the taxation related to the voluntary revaluation of tangible and financial assets

The Bill provides the ability for companies that implement a voluntary French GAAP revaluation of their tangible and financial assets (according to Article L. 123-18 of the French Commercial Code) to avoid the immediate taxation of the revaluation surplus by benefiting from a tax deferral for non-depreciable assets and from a spreading of the taxation for depreciable assets:

- ▶ For non-depreciable assets, the revaluation will be tax neutral since the deductibility of the depreciations and the capital gain or loss resulting from the disposal of such assets will be determined based on their non-revaluated value.
- ▶ For depreciable assets, the revaluation surplus will be added back to the taxable income over a 15-year period for buildings, plantations, equipment and fixtures on land that are depreciable over at least 15 years or, over a 5-year period for other depreciable assets; however, the disposal of a depreciable asset will trigger the immediate taxation of the portion of the revaluation surplus not yet added back to the taxable income. Symmetrically, the depreciation will be deductible on the basis of the revaluated value.

This temporary and optional measure applies to the first revaluation performed during a fiscal year (FY) ended on or after 31 December 2020, and no later than 31 December 2022.

Spreading of the capital gain resulting from a building lease-back transaction

The Bill reactivates the spreading mechanism of the capital gain resulting from the disposal by a company of its building to a leasing company, followed by the leasing of that building by the latter to the former (as stated for in Article 39 novodecies of the French Tax Code). This mechanism is dedicated to buildings assigned to an operating activity,¹ as opposed to a patrimonial activity (managing assets), carried out by the lessee or by a related company to which the buildings are sub-leased.

Thus, the capital gain will be spread over a 15-year period or over the duration of the lease agreement if shorter. However, the purchase of the building by the lessee or the termination of the lease agreement will trigger the immediate taxation of the portion of the capital gain not yet added back to the taxable income.

This mechanism applies to transactions entered into from 1 January 2021 to 30 June 2023, which are preceded by a financing agreement accepted by the lessee on or after 28 September 2020 and no later than 31 December 2022.

Creation of a tax credit for rent waivers granted to companies affected by the Covid-19 crisis

The Bill provides for a new tax credit in favor of lessors, equal to 50% of rents (which may be limited to a certain extent) that the latter waived, before 31 December 2020, to tenants

hiring less than 5,000 employees and facing difficulties related to the Covid-19 crisis. This measure implies tenants of premises located in France, which are subject to an administrative closure or belong to a particularly affected sector (e.g., hospitality, catering, culture, event sectors). Such a credit is limited to rental payments due for November 2020 and waived before year-end. There is a limit of €800,000 per tenant and the credit should not apply to financial lessors.

Confirmation of the tax deductibility of rent debt waivers

As a reminder, the second Amending Finance Bill for 2020 allowed the deductibility of rent debt waivers, subject to the absence of a capital link (within the meaning of Article 39, 12 of the French Tax Code) between the lessor and the tenant, granted between 15 April 2020 and 31 December 2020 (Article 39-1-9° of the French Tax Code). The Bill provides for the extension of this measure to rent debt waivers granted until 30 June 2021.

Repeal of the annual symmetrical positions filing requirement

As a principle, Article 38-6-3° of the French Tax Code provides that losses on symmetrical positions² taken by companies are only tax deductible for the part exceeding gains not yet taxed on positions taken in the opposite direction, provided that symmetrical positions have been declared on a summary form to be filed with the annual corporate income tax return.

For the sake of simplification, the Bill repeals this specific filing requirement. However, the above-mentioned summary form must still be prepared and made available to the French tax authorities upon request, failing which losses on symmetrical positions will not be tax deductible.

This measure applies to FYs ended on or after 31 December 2020.

Preservation of the late payment interest rate decrease

As a reminder, considering the decrease of interest rates as well as the costs resulting from the payment of interest on arrears related to tax refunds, the second Amending Finance Bill for 2017 provided a temporary decrease in the interest rate for tax and customs purposes from 0.40% to 0.20% per month (i.e., 2.40% per year).³ The Bill provides for this reduction to be permanent.

Facilitation of contribution of discounted receivables into the capital of companies facing difficulties

The contribution by a company of a receivable it acquired at a discount, into the capital of the debtor results in a taxable gain for the contributing company (such a discounted receivable being replaced by shares of the beneficiary company, which value corresponds to the nominal value of the contributed receivable). In 2012,⁴ a measure aiming at neutralizing the taxation of this gain was introduced (i.e., the gain of the contributing entity being determined according to the fair market value of the shares received in exchange of the contribution instead of their nominal value). The application of this measure is subject to the absence of a capital link (within the meaning of Article 39, 12 of the French Tax Code), throughout a twelve-month period preceding/following the disposal:

- (i) between the company which sold the receivable and the company which acquired it; and
- (ii) between the company which sold the receivable and the debtor company to which the receivable is then capitalized.

In order to facilitate the immediate recapitalization of companies facing difficulties, the Bill provides for the repeal of the above-mentioned second independence requirement (i.e., between the seller and the debtor), if the capital increase is carried out in the framework of a “conciliation protocol” (*Protocole de conciliation*), a safeguard plan (*Procédure de sauvegarde judiciaire*) or court-ordered reorganization (*Procédure de redressement judiciaire*). However, the above-mentioned first independence requirement (i.e., between the seller and the purchaser) must still be satisfied.

This measure applies to FYs ended on or after 31 December 2020.

Endnotes

1. Commercial, industrial, craft, independent or agricultural activity.
2. Positions which value or yield varies in an opposite and correlated manner.
3. This reduced rate was supposed to apply to interest due from 1 January 2018 to 31 December 2020.
4. Finance Bill for 2013, #2012-1509 dated 29 December 2012.

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