December 21, 2021
2021-6408

French Parliament approves Finance Bill for 2022

Executive summary

On 15 December 2021, the French Parliament approved the Finance Bill for 2022 (the Bill).

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

As a preliminary remark, the Bill does not affect the already enacted decrease of the French corporate income tax (CIT) rate from 26.5%, for fiscal years (FYs) starting on or after 1 January 2021, to 25%, for FYs starting on or after 1 January 2022.

This Alert summarizes some of the main direct tax reforms in this Bill that may affect corporations.

Detailed discussion

Adjustment of certain French withholding taxes

In order to comply with European Union (EU) law and the French Administrative Supreme Court (*Conseil d'Etat*) case law,[1] the Bill provides for an adjustment of certain withholding taxes. In particular: (i) those of Article 182 B of the French Tax Code (FTC) applicable to payments made for royalties and for the provision of certain services; and (ii) those of Article 119 bis 2 of the FTC applicable to dividends.

Withholding taxes imposed under Article 182 B of the FTC

- The withholding tax will now be computed based on the gross amount of the sums paid, minus a 10% allowance, when the eligible beneficiary is subject to local CIT outside of France and established either in an EU Member State or in a Member State of the European Economic Area (EEA), other than a Non-Cooperative State or Territory (NCST), that has concluded a treaty with France that includes an administrative assistance provision aimed at combating tax fraud and tax evasion.

- The eligible beneficiary will also be able to claim, provided that it cannot offset the French withholding tax on its local CIT liability, a refund of the portion exceeding the taxation that would have been due in France on said income, taking into account the corresponding expenses directly incurred to generate or retain that revenue which would have been tax deductible if the beneficiary had been located in France.

- The Bill also extends such a claim to withholding taxes under Article 182 A Bis of the FTC applicable to payments made for the provision of artistic services provided or used in France.

Withholding taxes imposed under Article 119 bis 2 of the FTC

The above-mentioned claim will also apply to withholding taxes applicable to French-source dividends provided that the beneficiary is established:

- Either in an EU Member State or an EEA Member State, other than an NCST, that has concluded a treaty with France that includes an administrative assistance provision aimed at combating tax fraud and tax evasion.

- Or in a third State, other than an NCST, that has concluded a treaty with France that includes an administrative assistance provision aimed at combating tax fraud and tax evasion, but only if the beneficiary is not effectively involved in the management or the control of the distributing entity.

Finally, this Bill also provides for slight adjustments of the procedure for obtaining a refund of French withholding taxes borne by non-French resident loss-making companies.

These measures will apply to all the above-mentioned withholding taxes for which the triggering event will be on or after 1 January 2022.

Tax deduction for goodwill amortization

Article 214-3 of the French General Chart of Accounts allows: (i) small businesses within the meaning of Article L. 123-16 of the French Commercial Code;[2] and (ii) any other companies that can prove that the benefits deriving from their goodwill would cease at a certain date, to amortize goodwill for French GAAP purposes as follows:

- Over a 10-year period for small businesses

- Over its useful life or, when such useful life cannot be determined accurately, over a 10-year period for any other companies

However, such amortization was generally not deductible for tax purposes as the conditions set forth by the French Administrative Supreme Court case law are quite stringent. The Bill actually goes further and now prohibits, as a matter of principle, said tax deduction.

Yet, as a derogatory and temporary measure, the Bill provides for the possibility to deduct, for tax purposes, the amortization made in accordance with the above-mentioned French GAAP rules, for goodwill acquired between 1 January 2022 and 31 December 2025.

This measure applies to FYs ending on or after 31 December 2021.

New tax credit for cooperative research

This new tax credit has been designed to promote cooperation between private corporations and public research bodies and will be based on research and development (R&D) expenses incurred as part of research cooperation agreements[3] concluded between 1 January 2022 and 31 December 2025.

The tax credit for cooperative research will amount to 40%[4] of the eligible expenses up to €6 million per year (the expenses cannot simultaneously be used for the computation of the R&D tax credit).

Anti-hybrid rules - Clarification of the 24-month inclusion period

Pursuant to article 205 B of the FTC, designed to tackle hybrid instruments as well as hybrid entities, a company cannot deduct, for French CIT purposes, an expense that has not been included in the taxable result of the non-French resident beneficiary.

For hybrid financial instruments, a payment is deemed to be included in the beneficiary's taxable result if that inclusion takes place during a financial year that begins within 24 months following the end of the FY in respect of which the expense was deducted. This 24-month period is also used to assess the existence of a double deduction outcome in the case of a payment made to a hybrid entity.

The Bill provides that, in the absence of such an inclusion during the year of payment, the expense remains deductible for French CIT purposes in that year and will only have to be added-back to the taxable result of the French company after the aforementioned 24-month period.

This measure applies to FYs ending on or after 31 December 2021.

It is also worth noting that the French administrative guidelines on the anti-hybrid rules have been published on 15 December 2021.[5]

Endnotes

1. CE, 22 November 2019, #423698, SAEM de gestion du Port Vauban, CE, 9 September 2020, #434364, Sté Damolin Etrechy for Article 182 B; CE, 11 May 2021, #438135, UBS Asset Management Life Ltd for Article 119 bis 2.

2. Businesses that do not exceed two of the three following thresholds during a given financial year: (i) total balance sheet of €6 million; (ii) revenue of €12 million; and (iii) average number of employees of 50.

3. Agreements whereby the research project management, as well the risks and profits, are shared between the corporation and at least one public research body.

4. Or 50% for the Small and Medium Enterprises.

5. BOI-IS-BASE-80-10.
