

Main provisions of the French Budget Bill for financial year 2020

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Par GFD AVOCATS

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The French government published the draft budget law for 2020 on September 27th 2019 (**DBB**). Outlined below are the main provisions concerning the taxation of companies and individuals. These measures are not necessarily set in stone and could still be amended. Likewise, new provisions, particularly regarding tax treatment of business transfers to a family member (the “Dutreil” Pact) are likely to be introduced by the time the bill is finally adopted.

I. Articles of interest to companies

a. The decrease in corporate tax is set at a slower pace for large companies

France is in the process of reducing the corporate tax rate from 33,1/3% to 25% by 2022. However, the corporate tax reduction will be slower for large companies. Notably, the law of 11 July 2019 already provided that, for companies with a turnover of more than € 250 million, the standard rate of corporation tax is maintained at 33.1 / 3% for 2019. Similarly, in spite of the general reduction of the corporate tax rate, higher tax rates are applicable to these large companies in the coming years:

Turnover	Taxable bracket	Financial year				
		2018	2019	2020	2021	2022
CA < 7,63 M€	0 à 38 120	15 % ⁽¹⁾				
	38 120 à 500 000	28%	28%	28%	26,50%	25%
	> 500 000	33,1/3 %	31%			
7,63 M€ ≤ CA < 250 M€	0 à 500 000	28%	28%	28%	26,50%	25%
	> 500 000	33,1/3 %	31%			
CA ≥ 250 M€	0 à 500 000	28%	28%	28%	27,50%	25%
	> 500 000	33,1/3 %	33,1/3%	31%		

⁽¹⁾ Subject to compliance with certain conditions of ownership of the share capital

b. Withholding taxes applicable to non-resident corporations

According to Article 115 *quinquies* of the French General Tax Code (**FTC**), profits earned in France by foreign companies are deemed to be distributed by the foreign head office. consequently subject to

the withholding tax provided for in Article 119a, 2 of the FTC. It is possible, however, to request a refund of the withholding if it is justified that the actual distributions by the foreign head office have proved to be lower than the amount of the profits made in France. A judgment of the French administrative supreme court¹ (*Conseil d'Etat*) held that this French-style "branch tax" was inconsistent with EU freedom of establishment. It took that position on the basis that a company having its head office in a Member State of the European Union (or is party to the agreement on the European Economic Area) is not allowed to reduce the taxation when the French profits have not been transferred out of France. The purpose of the DBB is to resolve this inconsistency with European Union treaties.

Additionally, changes in the French legislation are proposed in order to allow the reimbursement of the dividend withholding tax for French-source dividends paid to a company in the deficit position. They result from the case law of the Court of Justice of The European Union (**CJEU**)², which held that EU law was opposed to withholding tax levied on the basis of French-source dividends paid to a company in a deficit position.

The withholding tax can be refunded if the corporate shareholder to which the dividend is paid:

- Is in a tax loss position;
- Is established in another state having concluded an administrative assistance agreement with France to tackle fraud and tax evasion and a mutual assistance convention for the recovery of claims relating to taxes, similar to that provided for by the European Union.

However, the payment shall become due when the shareholder is back to a profit position.

c. Transposition of anti-hybrid rules

The DBB transposes into French law the anti-hybrid rules provided by the ATAD Directive (anti-tax avoidance directive)³ targeting certain schemes resulting, in particular, in cross-border payments being deductible in one Member State without being taxable in the other state, being tax deductible simultaneously in two different states, or not being taxable in any state.

The existing anti-hybrid provisions of Article 212 I, B of the FTC would be accordingly repealed.

d. Migration of a fixed asset

Currently, capital gains resulting from the transfer of the headquarters or permanent establishment of gains on the transfer of an isolated fixed asset from France to another Member State.

e. Adjustment to the French research tax credit

The operating expenses lumpsum amount taken into account for the calculation of the Research and Innovation Tax Credits (CIR and CII) is lowered from 50 to 43% of direct expenses. Moreover, the reporting obligations are more stringent.

f. Tax credit for donations

The tax credit for donations is to be reduced to 40% of the total amount of gifts exceeding 2 million euros instead of 60% currently, except for certain donations for distressed persons.

¹ CE 10 of July 2019 Société Cofinimmo n° 412581

² EU CJ 22nd of November 2018 C-575/17 Sofina SA

³ Directive (EU) 2016/1164 12th of 2016

g. Transposition of the Directive on the VAT Regime for Electronic Commerce

The Directive on the VAT Regime for Electronic Commerce⁴ aims to simplify VAT obligations as from 2021 for companies conducting cross-border online sales of goods or services to final consumers and to ensure that VAT on such transactions is properly paid to the Member State where the customer is located.

Currently, the distance sales VAT regime allows operators to apply the VAT of the Member State of dispatch within the limit of a specific turnover threshold provided by the Member State where the customer is located (e.g. € 35,000 in France). This threshold is to be reduced to € 10,000 for all Member States. The VAT of the recipient's State could then be declared and paid to a one-stop shop situated in the Member State of the supplier.

In addition, imports of goods of low value (less than € 150) from non-EU countries are to be exempt from VAT subject to the filing with the new one stop shop regime.

VAT is to be paid by internet platforms that have facilitated the following sales to the final consumer;

- either the sale of imported goods of low value; or
- the distance sale of goods by a taxable person not established in the European union to a non-taxable person.

These platforms would be imposed specific obligations with the maintenance of a register of sales, in order to facilitate the controls

h. Clarification of the VAT system for investment funds

In principle, transactions of a banking or financial nature are exempt from VAT with no possibility for opting out, this includes the management operations intrinsic to investment funds (UCITS). This exemption is currently restricted to forms of UCITS⁵ expressly listed in the French law.

Referring to case-law of the Court of Justice of the European Union⁶ applying the exemption to all entities with characteristics similar to listed investment vehicles, the DBB will broaden the exemption scope. The new list of exempt UCITS is to be established by decree.

i. Simplification of certain VAT rules applicable to cross-border trade of goods

The DBB transposes the Directive of 4 December 2018⁷ which simplifies certain rules on intra-Community supplies.

Currently, when the goods are dispatched, by a taxable person or on their behalf, from another Member State to France, to a French customer where they are stored in call off stocks before being acquired by the client, the assignment to France by the supplier is treated as an intra-Community acquisition in France and subject to French VAT.

According to new proposed legislation, this transaction would be treated as an exempt intra-Community delivery in the Member State of dispatch and as a taxable intra-Community acquisition for the acquirer in the Member State of delivery.

⁴ Directive (EU) 2017/2455 5th of December 2017

⁵ BOI-TVA-SECT-50-10-10 n° 330

⁶ C-595/13 - Fiscale Eenheid X

⁷ Directive (EU) 2018/1910 of the 4th of December 2018

In a chain of transactions taking place before goods are shipped to another Member State, new rules harmonise national practices and facilitate the implementation of the CJEU's decision⁸ recognising only one transaction qualifying as an intra-Community supply (VAT exempt). Accordingly, intra-Community supply of goods will generally be attributed to the transaction between the supplier and the first intermediary, dispatching the goods to the Member State of delivery, either himself or through a third party acting on his behalf. By exception, intra-Community delivery is attributed to delivery made by the intermediary having provided his supplier with a VAT number in the State of departure of the goods.

These simplification measures are accompanied by an amendment which makes the supply of an intra-Community VAT number by the purchaser and the declaration of a Trade of Goods Declaration (TGD) substantive conditions for VAT exemption.

j. Simplification of the recovery of VAT on imports

Subject to the application of the reverse charge mechanism under certain conditions, the VAT on importation of goods is currently paid at the time of custom clearance to French customs authorities.

The DBB simplifies the conditions of the application of the reverse charge mechanism and submit the declaration and payment of VAT to general VAT rules before tax authorities.

k. Compliance obligations for logistic warehouse operators

In the context of the various simplifications above, the DBB imposes more complex compliance obligations on warehouse operators who are to make available to the administration the identification of the owners of sold goods, the origin and destination of such goods and the volume of flows.

l. Creating a list of non-cooperative platform operators

For the same purpose, the DBB introduces a list of platforms that do not meet the repeated requests from the tax administration to comply with VAT rules. This list to be made public and its objective is to damage the reputation of sanctioned operators (name and shame approach).

m. Electronic invoicing

The DBB provides that electronic invoicing between persons subject to VAT is to become mandatory between 2023 and 2025. The data of these invoices is to be automatically collected by the tax administration.

⁸ EUCJ. C-386/16. 26th of July 2017. Toridas UAB : EUCJ. C-628/16. 21st of February 2018. Kreuzmavr

II. Articles of interest to natural persons

a. Tax domiciliation in France of the managers of the big French companies.

The DBB partially codifies the administrative doctrine⁹ on corporate managers. Managers of large French companies (with head office in France and realising an annual turnover exceeding 1 billion euros) would be considered as exercising primarily a professional activity in France, and therefore as being domiciled fiscally in France as from income earned in 2019. The application of this new rule is subject to the provisions of applicable tax treaties.

b. Repeal of taxation over several years of certain exceptional income

In order to avoid to exceptional income increasing the average tax rate resulting from the application of higher marginal tax rates, it is currently possible to tax certain incomes over four years. This applies namely to retirement allowances, time savings account (CET) used to feed a savings plan for collective retirement (Perco) or a company savings plan (PEE). This advantage is to be repealed.

Some other tax provisions should still allow to mitigate the full impact of the progressive tax rate on exceptional income.

c. Use of data uploaded on social networks

In order to fight against fraud, the tax administration is to be granted the right to automatically process data uploaded on online social networks. This approach has already been subject to reservations by the French personal data protection authority (CNIL)¹⁰.

d. Tacit declaration of income

Taxpayers whose information for establishing taxable income is available to the administration and who have not made any amendment to their prefilled tax-return before the deadline, will be deemed to have submitted their tax return as prefilled. This measure would apply to 2019 tax returns submitted in 2020.

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⁹ BOI-IR-CHAMP-10-2016072 n° 180

¹⁰ Deliberation n° 2019-114 12 September 2019