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February 2018

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## TAX NEWSLETTER

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**MAIN PROVISIONS:**

**FINANCE LAW FOR 2018**

**AMENDED FINANCE LAWS FOR 2017**

**UPDATED WITH THE DECISIONS OF THE FRENCH CONSTITUTIONAL  
COURT**

## FINANCE LAW FOR 2018

### CORPORATE TAX

#### Corporate Income Tax

Decrease of the corporate income tax rate as follows:

Share of taxable income	From fiscal years opened on :				
	01/01/2018	01/01/2019	01/01/2020	01/01/2021	01/01/2022
0 to 500K€	28 %	28 %	28 %	26.5 %	25 %
from 500K€	33.1/3 %	31 %			

#### Adjustment of the so-called « Carrez » interest deductibility limitation rule

Article 209 IX of the French Tax Code currently limits the deduction of financial expenses related to the acquisition of securities held for long-term purposes (“titres de participation”) when the French company acquiring the securities cannot prove that the decision-making power over the securities acquired or the control of the target company is actually carried out by a company established in France, either by the company which acquired the securities or by another company of the group established in France.

Article 209 IX is amended to treat as a company established in France "any company having its head office in a Member State of the European Union or in another State party to the Agreement on the European Economic Area having concluded with France an administrative assistance agreement to avoid fraud and tax evasion ".

Thus, if a company established in France acquires a holding, the management and control of which is ensured by a related company established in one of the aforementioned States, said limitation of the deduction of financial expenses is not applicable.

Entry into force: fiscal years opened from 31/12/2017.

#### Repeal of 3% distribution tax

**Repeal of the 3% distribution tax paid by French companies (CGI, article 235 ter ZCA).**

Entry into force: the repeal applies to the distributed amounts whose payment comes into effect from 01/01/2018.

### Payroll Tax

#### Repeal of the higher rate of payroll tax

Compensation paid from 01/01/2018 and subject to payroll tax will be taxed at the rate of 13.60% for the amount exceeding €15,572.

### Cotisation sur la valeur ajoutée des entreprises (CVAE)

#### Turnover to be used in calculating the CVAE rate

Companies whose turnover does not exceed €50 M benefit from a tax-rate reduction.

In order to calculate the effective tax rate of the CVAE in the event a company fulfills the conditions of holding fixed in I of article 223 A of the French Tax Code, it is now necessary to consolidate the gross revenues of all the companies belonging to that group when they satisfy the conditions for holding capital to form part of a tax consolidation group, whether or not they are integrated. The literal application of the new article 1586 quater of the French Tax Code would lead to consolidate the turnover without distinction of the place of establishment of the companies (in France or abroad).

Entry into force: from the CVAE due in 2018.

### INDIVIDUAL TAX

#### Implementation of flat-tax on capital income

Implementation of a single flat-tax rate of 30% on capital income (including dividends, interests, capital gains on sale of shares, life insurance incomes, director fees) broken down into a flat rate of income tax (IR) of 12.8%, plus social security contributions at the overall rate of 17.2%.

Taxpayers can opt irrevocably for the submission of their capital income to the IR scale. This express option covers all the income and gains coming into the flat tax field.

The basis of income and earnings subject to the flat-rate taxation will be the gross amount of income received and / or realized gains. The 40% abatement on the basis of the dividends received is therefore eliminated unless there is an option for the IR scale.

The exceptional contribution on high incomes (CEHR) at a rate of 3 or 4% is maintained on income and capital gains for taxpayers with a reference tax income of over € 250,000 for a single person or € 500,000 for a married couple.

The CEHR thus accumulates with the flat tax.

The current withholding tax for interest, dividends and other distributions in the year of collection is maintained. The rate of this levy will be aligned with that of the flat-rate tax rate (30% instead of 36.5% until 31/12/2017).

Entry into force: This measure comes into force on the basis of income or gains received as of 01/01/2018.

### Lowering tax rates for non-resident taxpayers

#### Rate reduction for income distributions

For income distributed to non-residents, the withholding tax rate is set at:

- 12.8% for individuals;
- 30% for corporations.

Entry into force: these new tax rates apply to revenues distributed from 01/01/2018.

#### Rate reduction for capital gains on disposals of interest exceeding 25%

Concerning the capital gains of disposals of interest exceeding 25% by non-residents, the tax rate is fixed as follows:

- 12.8% for individuals;
- the normal corporate income tax rate for legal persons.

The tax rate is maintained at 75% for gains made by persons domiciled or established in a non-cooperative country.

Entry into force: these new tax rates apply to capital gains realized from 01/01/2018.

#### Rate reduction for SCR distributions

For capital gains distributed by venture capital companies (SCRs) to their non-resident shareholders, the withholding tax rate is set at 12.8%.

Entry into force: these new tax rates apply to revenues distributed from 01/01/2018.

### Establishment of IFI to replace ISF

The ISF (previous French wealth tax) is repealed and replaced by the real estate wealth tax (“Impôt sur la Fortune Immobilière” - IFI) with effect from 01/01/2018. The definitions of taxable persons, chargeable event (1 January of each year), tax threshold (1.3M €) and scale remain unchanged compared to the rules applicable to the ISF. The provisions for inpatriates, the tax reduction for donations to the benefit of certain organizations of general interest are also maintained in the same way.

The change is mainly in the IFI base, defined as all the buildings owned directly and indirectly by the taxpayers.

Non-resident taxpayers are only taxed on property and real estate rights located in France. All other assets, especially financial assets, are no longer subject to the wealth tax. The 5-year exemption for property held outside of France for new French residents is maintained. As with individuals domiciled outside of France, those who have not been domiciled in France during the 5 years preceding their arrival in the French territory are only taxed on their French real estate assets, until December 31 of the fifth year following the year of their arrival in France.

Income cap is not allowed for non-resident taxpayers.

#### Entry into force

IFI is applicable from 01/01/2018.

### AMENDED FINANCE LAWS FOR 2017

#### CORPORATE TAX

#### Corporate Income Tax

#### **Creation of the exceptional contribution on CIT and the additional contribution on CIT (the “Contributions”)**

Exceptional contribution on CIT: entities subject to CIT with revenue exceeding €1 billion would be subject to a 15% exceptional contribution on their CIT.

Additional contribution on CIT: entities subject to CIT with revenue exceeding €3 billion would be subject to a 15% additional contribution on their CIT.

The above described Contributions will apply to the gross amount of CIT due before the offset of available tax

credits for fiscal years ending from December 31, 2017 to December 31, 2018.

Concerning entities which are members of a French tax consolidated group, the Contributions are due by the head of the tax group and based on the group CIT before the offset of available tax credits. The revenue to be considered is equal to the sum of the revenues realized by each entity that is a member of the tax group.

#### **Non deductibility of foreign withholding taxes for French tax purposes**

Taxes levied by a State in accordance with the stipulations of a tax treaty for the elimination of double taxation with respect to income tax concluded by that State with France are no longer deductible.

Withholding taxes taken outside the scope of a tax treaty can be deducted as expenses.

Entry into force: this measure applies to fiscal years ending as from 31/12/2017.

#### **Repeal of advance tax ruling required for cross-border mergers**

The advance tax ruling previously required prior to any merger, demerger or contribution of assets implemented to the benefit of a foreign beneficiary company has been repealed.

However, in order for the transaction to benefit from the favorable merger tax regime, the contributed assets have to be allocated to a French permanent establishment of the foreign beneficiary company.

Finally, provided that the transaction will benefit from the favorable merger regime, the French contributing company will have to file a specific return in order for the French Tax Authorities to understand the purpose of the transaction as well as its consequences.

Entry into force: This measure applies to mergers, demergers and contribution of assets realized as from 01/01/2018.

### **Tax audit and recovery**

#### **Decrease of interest for late filing or late payment and of interest on arrears**

The interest rate for tax and customs purposes is decreased from 0.40% to 0.20% per month (i.e. 2.40% per year).

Entry into force: this reduced rate applies to interest due from 01/01/2018.

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