French Parliament approves Amended Finance Bill and Amended Social Security Financing Bill for 2014

Executive summary
On 23 July 2014, the French Parliament approved the Amended Finance Bill and the draft Amended Social Security Financing Bill for 2014. Although the most significant tax cuts announced in April as part of a so-called “solidarity pact” are still to be included in future tax bills, these two bills include some tax and social security provisions that may affect corporations. These provisions are mostly unchanged compared to the initial draft but additional ones have been included during parliamentary debates.

Except for the constitutionality review to be made by the French Conseil Constitutionnel in the coming days, the Bills are final and should enter into force the day after their publication.

Detailed discussion

Tax provisions
One year extension of the temporary additional contribution to CIT
The temporary additional contribution (contribution exceptionnelle sur l’impôt sur les sociétés) to corporate income tax (CIT) for companies or tax groups with a turnover exceeding €250 million will remain applicable to fiscal years ending on or before 30 December 2016. The resulting overall CIT rate for taxpayers in scope, taking into account the 10.7% surtax and the standard 3.3% surtax, is currently 38%.

Initially introduced by the Amended Finance Bill for 2011 at a rate of 5% of CIT and scheduled to apply in calendar fiscal years 2011 and 2012 (fiscal years ending on or before 30 December 2013), it was increased to 10.7% by the Finance Bill for 2014 and extended to calendar fiscal years 2013 and 2014 (fiscal years ending on or before 30 December 2015).
Presented by the Government as a tax cut, the Government’s commitment is that it would not be extended further, reducing the maximum overall CIT rate back to 34.43%.

**Rebate on the social solidarity contribution as from calendar year 2015 and full cancellation as from 2017**

Companies with a turnover exceeding €760,000 are currently subject to a social solidarity contribution (contribution sociale de solidarité des sociétés) of 0.16% (including surtaxes) assessed on their turnover.

Implementing another announcement of the “solidarity pact,” the Amended Social Security Financing Bill for 2014 provides for a reduction of the social solidarity contribution in the form of a €3,250,000 basis rebate applied on turnover (leading to a reduction of the social contribution by €5,200 for companies with a turnover exceeding this threshold).

This rebate would be applicable for the first time for the computation of the 2015 social solidarity contribution, i.e., the contribution paid in 2016 based on the turnover derived in calendar year 2015.

At this stage, no details are provided regarding the additional rebate that should be implemented in 2016 and the complete repeal of the social solidarity contribution for all companies as from 2017. These measures have been announced in April and the Government’s explanations under the draft bill have stated that they should be included in future tax bills.

**Extension of transfer pricing provisions for transactions with non-cooperative State or territory**

In a provision added in the course of the discussion before the National Assembly, the Amended Finance Bill for 2014 extends the scope of transfer pricing rules to include transactions with any entity in a non-cooperative State or territory (Etat ou territoire non cooperatif - NCST) regardless of whether the latter entity is related to the French taxpayer.

Therefore, French transfer pricing rules are now applicable if the tax authorities prove the related party nature of the foreign counterparty, unless it is subject to a privileged tax regime or located or incorporated in an NCST.

As of 1 January 2014, the following countries were listed as NCST: Botswana, British Virgin Islands, Brunei, Guatemala, Marshall Islands, Montserrat, Nauru, and Niue.

**New sanction for failure to provide electronic accounting entry file, analytical and consolidated accounts in case of tax audit**

In another provision added during the debates, the Amended Finance Bill for 2014 increases penalties applicable to taxpayers who fail to meet the requirements to provide certain accounting documents upon the opening of a tax audit. As a consequence, the following penalties are now applicable:

- €5k or 10% of the reassessed amount (if any), in case of failure to provide the French tax authorities with their electronic accounting entry file;

- €20k in case of failure to provide their analytical and consolidated accounts (if any).

Respectively introduced by the Third Amended Finance Bill for 2012 and by the 2014 Finance Bill, the requirement to provide electronic accounting entry files and the requirement to provide analytical and consolidated accounts, initially both provided that failure was subject to a penalty of 0.5‰ of the turnover per audited tax period (as adjusted by any tax reassessments), with a minimum penalty of €1.5k.

However, the Constitutional Court invalidated the main parts of the provisions on the grounds that these penalties were out of proportion with the sanctioned behavior, and only the €1.5k minimum penalty has been applicable to tax audits started as from 1 January 2014.

**Social security provisions**

The Amended Social Security Financing Bill for 2014 reduces social security contributions due by employees on salaries between 1 and 1.3 times the French minimum wage (the French minimum wage is currently of €1,445 per month) starting in 2015.

It further includes a reduction (representing up to €4.5 billion in aggregate) on social security contributions due by employers for salaries below 1.6 times the minimum wage.

In essence, the measures provided by the law should exempt companies from paying most contributions on salaries equal to the minimum wage starting in 2015.
In 2015 contributions for independent workers will be reduced by up to €1 billion on a nationwide level.

In addition, the law exceptionally freezes the amount of certain allocations paid out by the French Social Security Administration, such as pensions (when in excess of €1200).

**Measures of the “solidarity pact” to be included in future bills**

The explanations provided by the Government when the draft Amended Finance Bill was tabled confirm the intention announced in April to reduce the standard CIT rate from currently 33\(\frac{3}{4}\)% down to 28% in 2020, with an intermediary step in 2017.

With respect to social security contributions, further cuts in employers’ contributions are scheduled to be implemented starting 1 January 2016 for salaries comprised between 1.6 times and 3.5 times the minimum wage.

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**Endnotes**

3. Introduced by the third Amended Finance Bill for 2012, Section L47A of the French Code of tax procedures requires taxpayers subject to tax audits opened as from 1 January 2014 to provide the French tax authorities with accounting records in the form of an accounting entry file when their accounting is kept electronically.
4. Introduced by the 2014 Finance Bill, Section L13, II and III of the French Code of tax procedures requires taxpayers to communicate analytical and consolidated accounts upon a tax audit opened as from 30 December 2013, to the extent they keep any such accounts. For analytical accounts, the requirement only applies to companies meeting certain thresholds.
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