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Global Tax Alert

French Parliament approves Finance Bill for 2016 and Amending Finance Bill for 2015

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Executive summary

On 17 December 2015, the French Parliament approved the Finance Bill for 2016 (2016 FB) and the Amended Finance Bill for 2015 (2015 AFB).

Except for the constitutionality review by the French *Conseil Constitutionnel*, both Bills are final and expected to be published before year end.

The main corporate tax provisions relating to companies are summarized below.

Detailed discussion

Country-by-country reporting

The 2016 FB introduces a country-by-country reporting (CbCR) requirement in the French legislation.

For fiscal years starting on or after 1 January 2016, the CbCR will have to be filed online within twelve months from the closing of each fiscal year. The information to be disclosed, which should include, on a country-by-country basis, group's profits and other economic, accounting and tax aggregates and information on the location and activities of its constituent entities, will be detailed by decree. The CbCR will be exchanged by France under automatic exchange agreements, subject to reciprocity.

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The requirement applies to legal entities established in France (i) that prepare consolidated accounts, hold directly or indirectly foreign branches or subsidiaries and generate a consolidated revenue of €750 million or more (unless they are held by another entity that is already subject to a CbCR requirement), or (ii) that are held by foreign companies which meet the aforementioned conditions but are located in a "non-compliant" jurisdiction (except if the entity demonstrates that another group entity located in a "compliant" jurisdiction has been designated for filing the CbCR). "Compliant" jurisdictions will be listed by decree and will be those (i) having introduced CbCR, (ii) having an automatic exchange agreement in place with France, and (iii) respecting the terms of that agreement. Penalties for non-filing would be €100,000.

Filing of the annual transfer pricing documentation

The 2016 FB amends the filing process of the annual transfer pricing documentation by (i) making e-filing compulsory, and (ii) imposing on the parent company of a French tax consolidated group the obligation to file each consolidated entity's annual transfer pricing documentation.

In addition, the annual transfer pricing documentation will have to report the country(ies) in which related companies own intangible assets or carry-out intra-group transactions.

Modification of the dividend participation exemption regime following CJEU *Steria* case

The 2015 AFB modifies the tax treatment of certain dividend distributions to be received by French companies following the decision recently rendered by the Court of Justice of the European Union (CJEU) in the *Steria* case.[1]

For fiscal years starting on or after 1 January 2016, (i) the fraction (currently 5%) of qualifying dividends that generally remains taxable under the French dividend participation exemption regime will no longer be exempt for distributions made within a French tax consolidated group, and (ii) the rate of that taxable fraction will be set at 1% (instead of 5% for all other cases) for those distributions made within a French tax consolidated group, as well as for distributions received by a member of a French tax consolidated group from European Union (EU) or European Economic Area (EEA) qualifying subsidiaries held at 95% or more.[2]

Amendments to the French dividend participation exemption regime and dividend withholding tax treatment to comply with EU law

The 2015 AFB amends the French participation exemption regime, as well as the withholding tax (WHT) treatment applicable to dividends distributed by French entities to EU resident entities, in order to comply with the EU Directive 2011/96/UE dated 30 November 2011.

The French participation exemption regime currently limits the taxable basis of qualifying dividends to 5% of the dividend amount (this is deemed to reflect expenses in relation to the exempt dividends), triggering a 1.72% effective taxation, plus potential surtaxes.[3]

In addition, under domestic law, French outbound dividends paid to a non-French resident company are subject to a 30% WHT, but an exemption can apply if specific requirements are met.[4]

For fiscal years starting on or after 1 January 2016, the 2015 AFB transposes into French domestic law the general anti-abuse clause provided by the amended EU Parent-Subsidiary Directive 2015/121 dated 27 January 2015. The wording of the Bill is identical to that provided under the Directive, and refers to dividends distributed "within an arrangement or a series of arrangement which, having been put into place for the main purpose, or one of the main purposes, of obtaining a tax advantage contrary to the object or purpose of the participation exemption regime, are not genuine having regard to all relevant facts and circumstances" (i.e., "not put into place for valid commercial reasons which reflect economic reality").

This anti-abuse clause applies both to dividends paid by a French entity to certain EU-resident entities, to deny the WHT exemption, and to dividends received by a French resident entity, to deny the application of the participation exemption regime.

For fiscal years ending on or after 31 December 2015, the 2015 AFB:

(i) Extends the application of the WHT exemption to dividends paid to entities having their effective place of management in an EEA State having concluded with France a tax treaty including an administrative assistance clause

(ii) Reduces the 10% shareholding requirement for benefiting from the WHT exemption to 5% when the EU/EEA effective beneficiary of the dividend cannot offset the French domestic WHT as a tax credit (this provision was already applicable, by virtue of the French Tax Authorities guidelines commenting the "*Denkavit*"[5] case law)

(iii) Introduces a safe-harbor clause for French parent companies receiving dividends from entities located in a NCST, entitling them to the benefits of the participation exemption regime provided they can establish that the activities run by the NCST entities relate to genuine operations that do not have, as an object or purpose, the localization of profits in an NCST, with a tax fraud intention

(iv) Excludes from the benefits of the participation exemption regime the dividends distributed by specific French investment companies (i.e., SIIC and SICOMI for the portion of the dividends corresponding to exempt income, SPPICAV and SCR)

(v) Extends the benefits of the participation exemption regime and of the WHT exemption to dividends derived from shares that are held through bare ownership only

In addition, the 2015 AFB exempts from French WHT the dividends paid from France to non-French resident entities subject to CIT that have their effective place of management in an EU Member State or an EEA State having concluded with France a tax treaty including an administrative assistance clause, that are (i) in a tax loss making position, and (ii) either subject to a legal procedure equivalent to the French liquidation procedure, or insolvent. This exemption will apply to dividends paid on or after 1 January 2016.

Also, the 2015 AFB modifies the qualifying requirements to benefit from the dividend participation exemption regime in cases where the French parent is held by non-profit organizations, for fiscal years ending on or after 31 December 2015. In this situation, in order for the French parent to benefit from the participation exemption regime on dividend income, the standard 5% holding requirement of the share capital during a two-year period will be reduced to a 2.5% holding requirement of the share capital and 5% of the voting rights of the issuing company and the holding period will be increased to five years.

Endnotes

1. CJEU, 2 September 2015, Groupe Steria SCA, C-386/14; see EY Global Tax Alert, *CJEU holds French taxation of EU-source dividends incompatible with EU law*, dated 2 September 2015.
2. See EY Global Tax Alert, *French dividend participation exemption may be modified effective 1 January 2016 following CJEU Steria case*, dated 4 December 2015.
3. This regime applies to dividends distributed by French or foreign entities that have been held at 5% at least for a two-year period. It does not apply in particular to dividends distributed by entities located in a NCST (Non-Cooperative State or Territory).
4. In particular, (i) the beneficiary must have held, or must make the commitment to hold, for at least two years 10% or more of the share capital of the French company, (ii) the beneficiary must have its effective place of management in an EU Member State and be subject to CIT, and (iii) if the ultimate controlling shareholders are non-EU residents, the EU beneficiary must be in a position to demonstrate that its interposition did not have the avoidance of the domestic WHT as its main purpose or one of its main purposes.
5. CJEU, 14 December 2006, Denkavit, C-170/05.

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