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Finance Bill 2014 includes new taxes on large companies

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The French government announced a package of measures on 25 September 2013 that would impact large companies. The measures are part of the draft finance bill for 2014 and include an exceptional tax on high remuneration paid by companies, a 1% tax on gross operating profit, a restriction on the deduction of interest paid between related parties and a new transfer pricing reporting obligation for certain business restructurings.

If enacted, some of the proposals would be applicable as from the current financial year.

Exceptional tax on high salaries paid by companies

A temporary tax would be levied at a rate of 50% on the portion of remuneration (generally salary or income of a self-employed individual) paid to employees and directors that exceeds EUR 1 million per year per individual. This new tax would apply to remuneration paid or attributed in 2013 and 2014 (on an annual basis), but would be capped each year at 5% of the company's turnover in the relevant year.

The types of remuneration and benefits falling within the scope of the new tax are broad and would include, for example, bonuses (regardless of when the bonus is paid, if it is attributable to 2013 or 2014), as well as stock option and free share grants.

If the proposal is enacted without modification, affected companies would have to pay tax of up to 75% of the remuneration exceeding EUR 1 million (taking into account the exceptional tax and relevant social contributions). This tax is intended to replace the tax that would have required wealthy individuals in France to pay a 75% effective income tax rate on professional income exceeding EUR 1 million, but that was invalidated by the Constitutional Court in 2012.

Contribution on gross operating profits

Corporate taxpayers with a turnover exceeding EUR 50 million would be required to pay a new 1% contribution on gross operating profits (added value less payroll costs and deductible taxes). Depreciation and finance charges would, therefore, effectively be caught by the new tax.

In a tax group, the EUR 50 million threshold would be computed at the group level and if the threshold is reached, the new tax would be computed at the level of each group entity.

This new tax would apply for fiscal years closing on or after 31 December 2013.

Prevention of hybrid mismatches

Interest paid on a loan granted by an affiliated French company or a nonresident company would no longer be tax deductible in the hands of the French borrower if the interest is not subject to tax at the level of the lending company that is equal to at least 25% of the tax that would have been due under the standard French rules. If the lender is not registered or established in France, the taxation of interest it receives would have to be equal to at least 25% of the corporate tax liability that would have been due in France had the company been registered or established in France. The French borrower would need to show that the interest is subject to such minimum taxation at the level of the lending company for the interest to be deductible for the borrower.

The restriction on interest deductions would be applicable to fiscal years ending after 25 September 2013, so it would impact fiscal year 2013.

This measure represents the first step France has taken to give effect to the OECD BEPS project.

Transfer of functions or risks between affiliated companies

The tax package includes measures that would affect business restructurings (i.e. transfers of functions or risks) between affiliated companies. Under the proposals, if the gross operating profit of the transferring company in one of the following two years is reduced by 20% (as compared to the average gross operating profit of the three years preceding the transfer), the transferring company would have to demonstrate, in the event of an audit, that it received fair compensation for the transaction. For this purpose, the company would have to submit (if so requested by the French tax authorities) any relevant information relating to the determination of the results of the parties involved (including the transferee) before and after the transfer. If the transferring company fails to provide the information, profits that should have been realized would be assessed at the level of the transferring company.

This measure would apply to fiscal years closing on or after 31 December 2013.

Very limited information has been released on this proposal and it is likely to generate considerable debate. The parliament will discuss the proposed measures during the next couple of months. The final vote on the Finance Bill is expected before the end of 2013.

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