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France Tax Alert

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Finance bill 2016 released

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On 30 September 2015, the French government released the proposed 2016 finance bill, which will be discussed by the parliament beginning in mid-October. The bill is expected to be approved at the end of December, subject to confirmation by the constitutional court. The Ministry of Finance confirmed that the government intends to reduce public deficit while continuing to lower tax and social security levies, and announced a number of measures to achieve tax reductions for both enterprises and individuals. The following highlights the proposals that are relevant to foreign companies and foreign individuals.

Corporate tax

Surtax on corporate income tax: Companies subject to corporate tax whose turnover exceeds EUR 250 million are subject to a surtax on the corporate income tax equal to 10.7% of the company's corporate tax liability. Introduced in 2011, the surtax was intended only to apply until fiscal years ended on or before 30 December 2015; however, this date was extended to 30 December 2016 by the amended finance law for 2014. The Minister of Finance now has confirmed that the surtax will be eliminated at the end of 2016. As a result, the maximum effective corporate income tax rate applicable to large companies would decrease to 34.43% compared to the current 38% (not taking into account the 3% surtax on dividends distributed).

Special social contribution: Companies currently are liable to a special social solidarity contribution (CS3) equal to 0.16% of their turnover. The government announced in 2015 that it intended to phase out the C3S contribution by introducing a rebate, the amount of which increases annually. The rebate, which is EUR 3,250,000 for 2015, would be increased to EUR 19 million.

Exceptional depreciation allowance: Industrial robotics manufactured or purchased by certain companies between 1 October 2013 and 31 December 2015 can be amortized over 24 months starting from the in-service date. The proposed finance bill for 2016 would extend the exceptional depreciation for an additional year, until 31 December 2016. This benefit would remain subject to compliance with the EU *de minimis* provisions.

Film tax credit: Film producers currently may benefit from a tax credit for certain expenses incurred on film produced in the French territory. To further enhance the attractiveness and competitiveness of the film industry in France, the following changes are proposed to the regime:

- The tax credit would be granted regardless of whether the film is in French;
- The rate would be increased up to 30% in certain circumstances (in particular, for films in French); and
- The global ceiling for all tax credits applicable to one cinematographic work would increase from EUR 4 million to EUR 30 million.

Transfer pricing: Large companies are required to provide full contemporaneous transfer pricing documentation to the French tax authorities as of the first day of a tax audit. In addition to this contemporaneous transfer pricing documentation requirement, such companies also must submit simplified transfer pricing documentation within six months of filing the tax return for the relevant assessment year. The finance bill for 2016 proposes to require that the annual simplified disclosure be made electronically, and in the case of a tax group, the head of group would have to file the report. Finally, the scope of the annual disclosure would be expanded to encompass information for countries in which group companies that hold intangibles, or with which intragroup transactions are carried out, are established.

Individual tax

The main proposal affecting individuals is that the government has announced it intends to transition to a “pay as you earn” system, under which income tax would be withheld at source starting from 1 January 2018. Due to the complexity of the reform, it will be implemented gradually, with the foundation for the new rules laid out in the proposed finance bill for 2016. Withholding at source would not affect the fundamentals of the current system, i.e. the income tax rates would remain progressive, be calculated per family unit and be based on the household income, and the annual tax return filing obligation would remain intact.

Electronic filing of the annual income tax return would be phased in over a four-year period. During this transition period, only taxpayers whose income exceeds a specified threshold would be required to file electronically. In 2016, only taxpayers who earn more than EUR 40,000 in 2014 would be subject to the electronic filing requirement; this amount would be reduced to EUR 28,000 in 2017 and EUR 15,000 in 2018, and would apply to all taxpayers as from 2019. Payment of income tax also would have to be made electronically. As from 1 January 2016, electronic payments would be required where the tax due is EUR 10,000; this threshold would be decreased to EUR 2,000, EUR 1,000 and EUR 300 for payments made as from 1 January 2017, 2018 and 2019, respectively.

Value added tax

The 2016 finance bill proposes to reduce the threshold under the VAT distance selling rules, from EUR 100,000 to EUR 35,000. Under the distance selling rules, an entrepreneur that sells directly to French private customers can have sales of up to EUR 100,000 before the entrepreneur has to register for VAT purposes in France. In this case (and provided certain other conditions are fulfilled), the entrepreneur can charge the applicable VAT rate of the EU member state from which the goods were shipped. Under the proposed change, distance sellers from other EU member states to France would bear VAT as soon as the total amount of sales realized in France by the operator exceeded EUR 35,000. This harmonization with the threshold applied by most countries should encourage fair competition between EU operators.