



International Tax

France Tax Alert

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Amended Finance Bill contains proposal to allow horizontal tax consolidation

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The 2014 Amended Finance Bill submitted to the French National Assembly on 12 November 2014 includes a proposed amendment to the tax consolidation regime that would allow "horizontal consolidation" between French sister companies sharing a common parent company established in an EU member state or in a state in the European Economic Area (EEA) that has concluded an administrative assistance agreement with France.

The proposal aims to bring the French tax consolidation regime into compliance with EU law, following the June 2014 decision of the Court of Justice of the European Union (CJEU), in which the court held that the Dutch fiscal unity regime (which is similar to the French regime) violated EU law. Under the fiscal unity regime, sister companies established in the Netherlands may combine to form a tax entity only if the parent company also is established in the Netherlands or has a permanent establishment there; a fiscal unity is not allowed not where the parent company is established in another EU member state, in other words, horizontal tax consolidation is not permitted. The CJEU concluded that a regime restricting tax consolidation to the subsidiaries of a parent company established in their same member state constitutes a restriction on the freedom of establishment that cannot be justified.

Like the Dutch fiscal unity rules, the tax consolidation rules in France (article 223A of the tax code) allow the formation of a tax group only where a French corporate taxpayer acting as parent company (whether a French entity or the French branch of a nonresident entity) holds at least 95% of other French qualifying corporate taxpayers.

It is now proposed to allow tax consolidation between French sister companies that have a common parent company in an EU member state or in an EEA state if the EEA state has concluded an administrative assistance agreement with France (the proposal does not extend to cases where the parent company is resident outside the EU/EEA).

If adopted, the proposal to allow horizontal consolidation would apply starting from tax years ending on 31 December 2014. As regards previous years, affected international groups could consider the possibility of litigation to obtain the benefits of horizontal consolidation based on the CJEU decision in the Dutch case.

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