



ICEbreakers: Unlocking France



Hot topics

- **Tax reclaim considerations:** The European Commission has launched an infringement procedure against France on the grounds that the 3% surcharge on distributed profits is contrary to EU law. France's constitutional court issued a decision on September 30, 2016, concluding that the exemption from the 3% surtax on distributions made within a tax-consolidated group does not comply with the equality principle in the French constitution and, therefore, is unconstitutional. According to the Amended Finance Law for 2016, this exemption is maintained and as from January 1 2017, is extended to distributions paid by French subsidiaries to their French or foreign parent companies, provided a 95% ownership requirement is met (see below). Tax claims still can be filed for taxes paid in FY 2015 and 2016.
- **Scrutiny of the substance of holding companies:** The tax authorities increasingly are focusing on EU holding companies to confirm that they have sufficient substance; a lack of substance will result in the authorities denying the benefits of the EU parent-subsidiary directive.

Legislative updates

The main changes in the **Finance Law for 2017**, which was adopted on December 29, 2016 are as follows:

- **Progressive reduction of corporate income tax rate from 33.1/3% to 28%**
 - **2017:** The reduced 28% rate applies only to SMEs*, but only on the first EUR 75,000 of taxable income.
 - **2018:** The 28% rate will apply to the first EUR 500,000 of taxable income for all companies.
 - **2019:** The 28% rate will be extended to apply to all profits of companies with annual turnover of less than EUR 1 billion (the threshold will be determined at the level of a tax-consolidated group, where applicable). For companies with annual revenue of more than EUR 1 billion, the 28% rate will apply only to the first EUR 500,000 of taxable income.
 - **2020:** The 28% rate will become the standard corporate income tax rate.
- Effective January 1, 2017, the rate of the **employment CICE tax credit** increased from 6% to 7% of salaries paid to employees, up to a monthly individual amount of 2.5 times the minimum gross salary, or roughly EUR 3,650 (i.e. EUR 43,800 per year).
- Companies are entitled to **exceptional tax depreciation**, equal to 40% of the original cost (excluding financial expenses) of eligible fixed assets acquired or manufactured between April 15, 2015 and April 14, 2017. The exceptional depreciation is extended to assets ordered before April 14, 2017 if certain conditions are satisfied.
- The parliament voted on the **diverted profit tax**, but the constitutional court ruled that the tax was unconstitutional, so it was removed from the Finance Law.
- The **Amended Finance Law for 2016**, adopted on December 29, 2016, extended the scope of the exemption from the 3% surtax on dividend distributions made by French subsidiaries to their foreign parent companies (subject to a corporate tax equivalent to the French corporate income tax and established within the EU or a country that has concluded a tax treaty with France that includes an administrative assistance clause) provided a 95% ownership requirement is met. The scope of the exemption also is extended to include distributions made to French entities that hold (directly or indirectly) at least 95% of the share capital of the French distributing entity and are subject to corporate income tax in France even though there is no tax consolidation in France. The expanded rules apply as from January 1, 2017.
- The **"Sapin 2" law**, designed to promote transparency, was adopted on November 8, 2016. The threshold for preparing simplified transfer pricing documentation is reduced from EUR 400 million to EUR 50 million. The provision that would have allowed CbC reports to be made available to the public as from January 1, 2018 was removed from the law after the constitutional court ruled that the measure was unconstitutional.

**SME: Micro, small and medium-sized enterprises: enterprises that employ fewer than 250 persons and have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.*

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