

DRAFT FINANCE BILL FOR 2013

MAIN CIT PROVISIONS

The newly-elected French government released, on 28 September 2012, the first draft of the Finance Bill for 2013 (herein after the “**Draft Bill**”). The Draft Bill, as described below, has been adopted by the French *Assemblée Nationale* on 23 October 2012. It will now be discussed before the *Sénat* (discussions starting on 22 November 2012). The Draft Bill currently discussed before the French Parliament includes a fiscal austerity package which mainly attempts to increase the taxable basis retained for lower Corporate Income Tax (herein after the “**CIT**”) purposes, mainly by restricting the ability of companies to deduct some of their expenses. This summary aims at describing the main provisions of the Draft Bill, as currently drafted, for companies subject to CIT, keeping in mind that a number of changes are likely to be brought during the discussions before the French Parliament.

Further tightening of tax deduction rules

1. Tax losses – further tightening of the rules

It is currently proposed to further restrict the ability of companies subject to French CIT to use their tax losses. Based on existing tax rules, tax losses in excess of €1m may be carried forward up to an amount equal to 60% of the companies’ taxable income. For tax losses recognized on fiscal years (herein after “**FY**”) ending as from the 31 December 2012, it is proposed to decrease the 60% ceiling to 50%. As a result, without prejudice of the €1m rebate mentioned above, companies subject to French CIT will remain taxable on at least 50% of their taxable income (instead of 40% before). This limitation should apply for FY ending on 31 December 2012.

2. Financial expenses

For FY starting on 1st January 2012, it is proposed to cap the deductibility of financial charges at 85% of their net amount. The 85% rate is transitional and will be increased up to 75% for FY starting as from 1st January 2014. The limitation does not apply if the annual amount of financial charges incurred by the taxpayer is lower than €3m.

Based on the current drafting of the Draft Bill, the definition of financial charges is wide and notably includes:

- remunerations paid to lenders (bank and related party loans) for making funds available to the borrowers;
- financial lease expenses; and
- rents payable to related parties.

The amount of financial lease expenses or rents will be reduced by lease expenses reduced by an amount equal to the amortisation accounted for by the lessor with respect to the good rented and by ancillary expenses invoiced by the lessor to the lessee (which do not constitute financial expenses). Parliamentary preliminary works specified that the definition of financial expenses had to be further clarified by way of administrative guidelines.

These rules apply in addition to thin capitalization rules. Thus, non-deductible interest based on thin capitalization rules are not taken into account with a view to computing the financial expenses that need to be added back to the taxpayer’s taxable income under these new rules.

For tax consolidated group, the limitation is based on the net financial expenses incurred by each member of the tax group and deriving from financing granted by companies outside of the tax consolidated group. The €3m threshold is assessed

at the tax group's level (i.e. the limitation does not apply where the net financial expenses incurred by the group is lower than €3m).

This new rule should apply for FY ending on 31 December 2012.

3. Increasing the tax burden: additional burden for the capital gain participation-exemption regime

The current participation exemption regime provides for an exemption of capital gains triggered upon disposal of eligible securities, but for a 10% portion assessed on the net capital gain earned by the taxpayer in respect of a given FY (the so-called "*Quote Part de Frais et Charges*" herein after the "**QPFC**").

The proposed amendment of the participation exemption regime aims at changing the computation basis of the QPFC. For FY starting on 1st January 2013, the QPFC will be computed based on the gross amount of the capital gain generated by the taxpayer.

From a practical standpoint, where a company would realize a gain of €100 on securities A and a loss of €200 on securities B, it would still be taxable on 10 (10% x 100) notwithstanding the fact that at the FY end, it would be in a net loss position.

4. Extension of the extraordinary contribution on CIT applicable to biggest companies

The 5% additional surtax applicable to companies which turnover exceeds 250m€ introduced by the amended Finance Bill for 2011 for fiscal years ending between the 31 December 2011 and 30 December 2013 is extended to FY ending on 30 December 2015. As a result, companies which fiscal year matches with civil year (and which turnover exceeds 250m€ for these two years) will still be subject to this additional surtax for fiscal years 2013 and 2014.
