NEWS ALERT
OCTOBER 2012

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 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 31st of 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 2013, 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 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 includes interest expenses (bank and related party loans) as well as the financial component of financial lease expenses.

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.

CONTACT : FABRICE RYMARZ & CHLOE NESSIM
frymarz@racine.eu & cnessim@racine.eu
WWW.RACINE.EU

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.

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CONTACT : FABRICE RYMARZ & CHLOE NESSIM
frymarz@racine.eu & cnessim@racine.eu
WWW.RACINE.EU