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Government Publishes 2012 Finance Acts, Amended 2011 Act

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COUNTRY DIGEST

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Following their adoption by the French Parliament, the Fourth Amended Finance Act for 2011 and the Finance Act for 2012 were published in France's official journal on December 29. The Social Security Finance Act for 2012 was published on December 22. This article focuses on the notable tax aspects of these three bills. (For prior coverage of the modified 2011 finance bill, see *Tax Notes Int'l*, Aug. 1, 2011, p. 322, *Doc 2011-15914*, or *2011 WTD 142-1*.)

Businesses

Corporation Tax

Exceptional Additional Surcharge Contribution

For financial years 2011 and 2012, companies with turnover exceeding €250 million (about $319 million) will pay an additional surcharge contribution equal to 5 percent of the amount of the corporation tax (33.33 percent) owed, resulting in an effective corporate income tax rate of 36.1 percent.

Interest Deduction

The deduction of financial costs relating to the acquisition of shares will be disallowed when the acquiring company is unable to demonstrate that decisions relating to the shares are actually made by the acquiring company or another company established in France belonging to the same economic group, and that the control or influence over the acquired company is actually exercised by the acquiring company or its affiliate.

This provision applies to acquisitions of shares made on or after January 1, 2012, and to those carried out during the eight previous financial years, but only for the remaining reinstatement period.

The reinstatement must be made in the same financial year that the acquiring company must demonstrate the decision-making power and control or influence on the acquired company, and it should end at the end of the eight years following the acquisition.

This new provision does not apply if:

- the total value of the shares does not exceed €1 million (about 1.28 million);
- the acquisition was not financed by a loan; or
- the debt ratio of the group to which the company belongs is greater than or equal to its own debt ratio.

Thin Capitalization

Thin capitalization rules no longer apply to interest paid on loans taken in a safeguard proceeding or a receivership, or to interest paid on loans from financial institutions concluded by a real estate property developer when those loans are secured by their shareholders.

Tax Loss Carryforwards

The use of tax losses carried forward in the statutory employees' profit-sharing computation is currently limited to the amount of tax loss carryforwards made during the last five years. The carryforward was capped by the Second Modified Finance Law for 2011, dated September 8, 2011. The new provision abolishes this five-year limit. Therefore, the net taxable income used to compute the employee profit-sharing is now the same as the one determined for the corporation tax liability.

This measure is effective for annual periods beginning on or after September 21, 2011.

Intragroup Sales of Shares

Beginning January 1, 2012, only short-term capital losses arising on an intragroup sale of shares (that is, for shares held for less than two years) can benefit from a tax deferral. Capital gains will therefore be taxed immediately.

Industrial Property

A new provision reinforces the antiabuse clause (article 11 of the 2012 Finance Act) when industrial property rights are licensed between related companies. When there are dependent relationships between licensors and licensees, the license must be real and profitable for the full deduction of royalties paid by the licensee to be allowed. The provision also amends the sublicense regime, in particular to avoid the situation where holding the industrial property rights abroad is more favorable than the regime applicable when the rights holder is located in France.

The provisions of article 11 will apply to the results for fiscal years beginning on or after October 13, 2011.

VAT

A new reduced VAT rate of 7 percent has been created to supplement the current 5.5 percent reduced rate. The latter rate will continue to be applied to products specified as bare necessities.

The new rate applies beginning January 1, 2012, to most product sales on which VAT is payable.

Individuals

Income Tax

Tax Brackets

The income tax brackets remain unchanged — that is, between 0 and 41 percent.

Surcharge Contribution for High-Income Earners

A 3 percent surcharge contribution applies to the portion of income between €250,000 and €500,000 for a single person, and between €500,000 and €1 million for a couple. For income exceeding €500,000 for a single person or €1 million for a couple, the surtax is 4 percent. The contribution applies to income from 2011 and will continue to apply until the tax year during which the public deficit disappears.

Passive Capital Income

Withholding Taxes on Dividends and Interest

The following changes will apply to the final withholding tax, the *prélèvement forfaitaire libératoire* (PFL):

- the withholding tax rate applicable to dividends is increased from 19 percent to 21 percent;
- the standard withholding tax rate payable on income distributed to nonresidents is increased from 25 percent to 30 percent (when no tax treaty applies);
- the reduced rate for dividends and similar distributions received by individuals who are tax resident in an EU country, Iceland, Norway, or Liechtenstein is increased from 19 percent to 21 percent;
- the increased rate for income paid in a noncooperative state or territory is increased from 50 percent to 55 percent; and
- the rate of withholding tax applicable to interest on fixed income investment is increased from 19 percent to 24 percent, but the rate remains 50 percent for interest paid in a noncooperative state or territory when the debtor is established in France.

These changes apply to income received on or after January 1, 2012.

Specific Regime for SIICs and SPPICAVs

Dividends paid to individuals by SIICs (listed real estate investment companies) and SPPICAVs (real estate companies with variable capital) will no longer benefit from a 40 percent deduction and cannot benefit from the PFL.

Also, related shares will no longer be eligible for a shares saving plan (*plan d'épargne en actions*, or PEA).

This measure came into force October 21, 2011, but SIIC titles that were already in a PEA up to that date may remain, and their owners may continue to benefit from the specific exemptions applicable to securities lodged in a PEA.

Capital Gains

Sale of Securities

The measure planned for 2012 that would have exempted some capital gains on securities after an eight-year holding period has been replaced by a general mechanism for tax deferral, subject to the following conditions:

- the owner and some members of his family must have held at least 10 percent of the securities, directly or indirectly, continuously for over eight years from January 1 of the acquisition year;
- the company must be liable for corporation tax, have an activity other than portfolio management or real estate management, and be located in the European Union;
- at least 80 percent of the proceeds from the sale of shares or rights must be invested, within 36 months, in the cash subscription to the initial capital or an increase in capital of a company (the securities received in exchange for the cash contribution must represent at least a 5 percent stake in that company); and
- neither the taxpayer nor members of his family must have been a shareholder of the company before the capital contribution, and they could not be members of the top management during the five-year holding period.

In addition, to benefit from a definitive capital gains tax exemption, the shares received in exchange must be kept for at least five years.

The tax deferral must be specifically requested and cannot be combined with other tax benefits (income tax or wealth tax reduction).

Sale of Residential Property Other Than Main Home

Capital gains realized on the first sale of a residential property are now exempted if the seller does not own a main home and applies the product of the sale to the acquisition (purchase or construction) of a principal residence within 24 months of the sale. The seller must not have owned a principal residence during the previous four years.

This exemption applies to capital gains arising on disposals made on or after February 1, 2012.

Exit Tax

The First Amended Finance Law of 2011, dated July 6, 2011, created an exit tax for taxpayers transferring their tax residence abroad, holding a direct or indirect participation in excess of 1 percent in the profits of a company subject to corporation tax, or holding a value of at least €1.3 million. This threshold was determined for each stake in a company.

The new provision extends the application of this threshold to all the shares held by a taxpayer rather than to each stake.

Tax Benefits

For 2012 income, the tax benefits available from tax reduction regimes or tax credits are reduced by 15 percent.

From January 1, 2012, the global ceiling for tax benefits is reduced to €18,000 plus 4 percent of the taxable income (from €18,000 plus 6 percent).

Real Estate Investment

The tax reduction available under the Scellier regime for fully refurbished and restored homes (performed by the seller before the acquisition) will now be reserved exclusively for BBC standard homes. A new ceiling per square meter (depending on the location of the property) now applies to the cost price taken into account for the tax reduction.

As part of the 15 percent tax niche reduction, the tax reduction is decreased to 13 percent for BBC housing and to 8 percent for non-BBC housing acquired in 2012 but for which planning permission was granted before December 31, 2011.

Capital Subscriptions in SMEs

The tax reduction can now only be applied to cash subscriptions to the capital of small and medium-size enterprises that have fewer than 50 employees, have an annual turnover or balance sheet value below €10 million, and were created within the last five years and are in their start-up phase.

Tax on High Rents of Small Housing

A tax on rental income from housing that is smaller than 13 square meters size and located where there is an imbalance between the offer and demand will apply when the monthly rent exceeds an established amount between €30 and €45 per square meter. The tax rate will be between 10 and 40 percent.

The tax applies to rental income received on or after January 1, 2012.

Taxation of High Pensions

From January 1, 2012, a new 21 percent rate applies for annuities above €24,000.

Registration Duties on Sale of Shares

Transfers for Shares in French Companies

The registration duty on such shares was 3 percent, capped at €5,000 per transfer. The new provision ends this cap and changes the rates to the following:

- 3 percent for the portion of the value below €200,000;
- 0.5 percent for the portion of the value between €200,000 and €500 million; and
- 0.25 percent for the portion of value exceeding €500 million.

Also, the registration duty now also applies to the sale of shares of companies based in France that are made by way of a deed executed overseas. A tax credit, equal to the amount of the duty actually paid in the foreign country, can be used up to the amount of the French registration duty that is due.

A few exceptions to this proportional duty can apply for:

- the acquisition by a company of its own shares;
- the acquisition of a company under safeguard proceedings or in receivership;
- transfers made between companies that are members of the same French tax group; and
- contributions to which the merger-favorable regime is applied.

These provisions are effective for transfers occurring on or after January 1, 2012.

Transfers for Shares in Real Estate Companies

The registration duty on such shares was 5 percent per transfer based on the market value of the shares (after the deduction of the company's debts).

From January 1, 2012, the taxable basis takes into account only the liabilities related to the acquisition of these shares. All other liabilities are excluded.

Social Contributions

Specific Social Contribution

Since January 1, 2009, employers have been subject to a specific social contribution (*forfait social*) on certain payments excluded from the base of social security contributions, but subject to the supplementary social security contribution (CSG) on earnings. The rate of this specific social contribution is increased from 6 percent to 8 percent from January 1, 2012. This increase is the third since the creation of this contribution, having already been increased from 2 percent to 4 percent on January 1, 2010, and to 6 percent on January 1, 2011.

Severance Payments

Beginning in 2013, the exempt portion of social contributions related to severance payments cannot exceed two annual social security ceilings (instead of three) — that is, a limit of €72,744 based on the ceiling for 2012.

A transitional regime applies for 2012 payments. For these payments, if the compensation exceeds this amount, the exempt part applies up to an amount of €109,116. ◆

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