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# France

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Despite the elections receiving much of the attention, it has been a busy year for French tax developments.

### Companies

An additional 5 percent surcharge contribution applies in 2012 when turnover exceeds €250 million.

The deduction of financial expenses upon an acquisition of equity security is forbidden during the eight years following the acquisition, except:

- if the decisions relating to the shares are taken by the acquiring company or another French company belonging to the same economic group, and the control or influence over the acquired company is actually exercised by the acquiring company or its affiliate; or
- if the shares' total value is below €1 million, the acquisition is not financed by a loan, or the group debt ratio to which the company belongs is greater than its own debt ratio.

Additional conditions have been placed on companies' abilities to transfer the tax losses following a merger or to carry them forward in case of a change or reorganization of the company's activity.

A new 3 percent tax applies on all dividend distributions, except for small and medium-size enterprises or when the participation exemption regime applies. Financial debt waivers are not deductible.

### Individuals

The dividends withholding tax rate was increased to 21 percent. For nonresidents, it is 30 percent (when no tax treaty applies) and 21 percent when received by individuals located in an EU country, Iceland, Norway, or Liechtenstein.

The rate for income paid to residents of noncooperative states rose to 55 percent. The interest's withholding tax rate rose to 24 percent. The dividends paid by SIICs (listed real estate investment companies) and SPPICAVs (real estate companies with variable capital) to individuals are included in their ordinary taxable income with no allowance.

The taxation of capital gain on securities differs subject to the following conditions:

- continuous 10 percent holding for over eight years;
- reinvestment within a 36-month period of a minimum 80 percent of the sale proceeds in order to receive at least a 5 percent stake in a company;
- a minimum five-year holding period for the new shares; or
- exclusion of top management members during this five-year period.

The tax niches (exceptional regimes) were reduced by 15 percent with a 4 percent global ceiling of the taxable income. A wealth tax contribution applies for 2012, using a progressive scale between 0.55 and 1.80 percent. The ceiling for the inheritance/gift tax exemption was lowered to €100,000 per child.

Foreign tax residents are liable for social contributions on their income from French real estate.

#### Stock Options and Free Shares

The employer contribution rose to 30 percent and the employee contribution to 10 percent.

#### Financial Transaction Tax

A 0.2 percent tax applies on the sale of listed shares and some derivative contracts involving companies located in France whose market capitalization exceeds €1 billion.

#### Social Contributions

The rate of social contributions rose to 15.5 percent; for the specific social contribution (*forfait social*), the rate rose to 20 percent.

AP Photo/Michel Euler

*France's François Hollande defeated Nicolas Sarkozy in the May elections, bringing with him a host of new taxation measures, including a top tax rate of 75 percent.*

### Registration Duties

Registration duties apply to the sale of French companies' shares made through a deed executed overseas. A 0.1 percent rate on the sale of shares of an SA, SAS, or SCA applies. The taxable basis for real estate companies' shares excludes liabilities unrelated to their acquisition.

### International Tax Fraud

The criminal fine rose to €500,000 (€750,000 if no invoice, no real transactions, or for an unjustified tax refund). In case of tax fraud through the use of tax havens, the penalty is now seven years in prison and a €1 million fine.

## Expected Measures

### Companies

The deduction of interest expenses would be limited to 85 percent in 2013 and 75 percent from 2014 if the net amount is above €3 million. Long-term capital losses would not be offset against long-term capital gains. The rate for tax loss carryforwards would drop from 60 percent to 50 percent.

### Individuals

A new 45 percent income tax rate would apply to income exceeding €150,000. A new 18 percent tax contribution would apply in 2013 and 2014 on the part of the income generated by activities (capital income excluded) exceeding €1 million per person, for a global taxation rate of 75 percent.

Dividends and interest would be included in the ordinarily taxable income with a down payment of 21 percent (dividends) or 24 percent (interest). Social contributions would apply, with 5.1 percent being deductible.

Capital gains would be included in the ordinarily taxable income, except for sales in 2012 (fixed rate of 24 percent). Social contributions would apply, with 5.1 percent being deductible. An allowance of 20 percent would apply when shares are held for more than two years, 30 percent for more than four years, and 40 percent for more than six years. The tax rate applicable to nonresident individuals holding a substantial participation would be increased to 45 percent.

A fixed rate of 19 percent would apply to capital gains realized by entrepreneurs if all the following conditions are met before the sale:

- the company whose shares are sold has exercised continuously an effective business activity during the last 10 years;
- the shares have been held constantly for at least five years;
- the shares represented 10 percent of the capital of the company for at least two years during the last 10 years and still represent 2 percent of its capital at the time of the sale; and
- the seller was an employee of the company or exercised a management activity for the last five years, an activity for which its remuneration represented more than 50 percent of its professional income.

The current deferral mechanism for net capital gain would be softened. For real estate capital gains, an exceptional tax allowance of 20 percent would apply in 2013. Capital gains on a building lot would be included in the ordinary taxable income with no allowance.

Acquisition gains on stock options and free shares would be included in the ordinarily taxable income, with social contributions of 8 percent. The rate of the employee contribution would increase to 17.5 percent (22.5 percent in case of sale within four years (for stock options) or two years (for free shares) of their granting).

The following changes would apply to grantings made after September 28, 2012:

- the global ceiling for tax niches would be reduced to €10,000;
- the wealth tax rate would be between 0.5 and 1.5 percent; a cap would be introduced to limit to 75 percent of a taxpayer's net income the total of wealth tax and income tax; and
- the withholding tax rate on income paid to residents of non-cooperative states would increase to 75 percent. ◆

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