

Overview of the main measures included in the Finance Act for 2017 and in the Rectifying Act for 2016



The Finance Act for 2017 and the Rectifying Act for 2016 were published in the Official Gazette on 30 December 2016. The main measures relating to corporations are described below.

Modification of the parent-subsidiary regime

Previous regime

The parent-subsidiary exemption was not applicable to non-voting shares unless the parent company held at least 5% of the share capital and of the voting rights of the subsidiary. Such limitation was declared unconstitutional by the French Constitutional Court.

The French tax authorities acknowledged the decision of the French Constitutional Court and agreed to no longer apply such exception to distributions made as from 3 February 2016.

Measure

The French law is modified in order to comply with the decision of the French Constitutional Court. As a consequence non-voting shares can benefit from the parent-subsidiary exemption even if the parent company does not hold at least 5% of the voting shares in the distributing subsidiary.

→ This measure applies to distributions made as from 31 December 2016.

Modification of the definition of equity securities

Previous regime

A parent company holding less than 5% of the voting rights of its subsidiary was able to benefit from the exemption of capital gains tax in case of disposal of the shares of such subsidiary if such shares were eligible to the parent-subsidiary regime.

Measure

The automatic link between the exemption of capital gains tax and the parent-subsidiary regime is removed. Therefore the qualification of equity securities is rejected, and as a consequence the benefit of the capital gains tax exemption is no longer automatically applicable, when the parent company holds less than 5% of the voting rights of its subsidiary.

→ Applicable to fiscal years open on or after 1 January 2017.

Modification of the 3% tax on dividends

Previous regime

Distributions of dividends made between two tax-consolidated companies benefited from a specific exemption of 3% tax on dividends. Such exemption was however not applicable to distributions made to foreign parent companies and to French companies not members of a tax-consolidated group. The French Constitutional Court ruled that such difference of treatment was not justified and was, as a consequence, unconstitutional.

Measure

The French law is modified in order to comply with the decision of the French Constitutional Court.

The exemption is now applicable to distributions made in favour of parent companies holding, directly or indirectly, at least 95% of the share capital of the distribution company irrespective of the fact that the companies are members of a tax-consolidated group or not, by choice or by impossibility due to the fact that the parent company is incorporated abroad (it being noted that the foreign company must be incorporated in a EU country or in a country having signed with France a convention on administrative assistance to fight against tax avoidance and tax evasion).

→ Applicable to distributions paid as from 1 January 2017.

Decrease of the corporate income tax rate in France

Current regime

The standard rate of corporate income tax is currently equal to 33.33%. This rate can be increased by additional contributions equal to:

- 3.3% for companies having an annual corporate income tax burden exceeding EUR 763,000 (aggregate rate of 34.43%); and
- 10.7% for companies having a turnover exceeding EUR 250 million for fiscal years closed between 31 December 2013 and 30 December 2016 (aggregate rate of 38%).

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A reduced rate of 15% applies to certain companies with a turnover of less than EUR 7,630,000, not belonging to another company and with fully paid-up capital at least 75% held by natural persons. The benefit of the reduced rate is capped at an amount of profit equal to EUR 38,120.

Modifications included in the Finance Act for 2017

The standard rate of corporate income tax is gradually reduced to 28% as follows:

2017	Rate of 28% applicable to all SMEs ¹ but limited to EUR 75,000 of profits.
2018	Rate of 28% applicable for all companies but limited to EUR 500,000 of profits.
2019	Rate of 28% applicable for all companies whose turnover is below EUR 1 billion.
2020	Rate of 28% applicable for all companies.

In addition the benefit from the reduced rate of 15% is extended to companies with a turnover not exceeding EUR 50m. Such modification will be applicable for financial years open on or after 1 January 2019.

Reinforcement of the auditing tools of the French tax authorities

New offsite procedure for computerised accounting

A new offsite tax audit procedure, called the "accounting examination", has been created. Within 15 days following the notice of a tax inspection, a taxpayer will be required to send to the French tax authorities a dematerialised copy of its accounting files. Even if the procedure is offsite, the tax inspector should exchange with the taxpayer which will benefit from the same rights as those applicable in case of a tax audit.

The French tax authorities have a 6 month period from receipt of the copy of the accounting files to send to the taxpayer a reassessment notice or to inform the latter that there will be no reassessment.

If the taxpayer fails to provide the French tax authorities with its accounting files, the accounting examination might be cancelled and an on-site tax audit for the same period can be launched.

→ This measure applies as from 31 December 2016.

Simplification of the dawn raid procedure

The procedural framework of the dawn raid procedure is simplified through the following new measures:

- Use of a single ordinance even when the sites to be visited by the French tax authorities are located in different jurisdictions;
- The ability, in case of emergency, to obtain from the judge an authorisation, by any means, to visit another site whose existence was revealed during the dawn raid; and
- The possibility for the judge to delegate to the French tax authorities the appointment of the judicial police officer who will be in charge of supervising the dawn raid.

→ This measure applies as from 31 December 2016.

New on-site audit for requests for VAT refunds

The French tax authorities now have the power to go on-site to investigate VAT refunds claims filed by taxpayers. The French tax authorities have a 60-day period from their first intervention on-site to render their decision, it being noted that such decision cannot be rendered more than 4 months after the notification to the taxpayer of an on-site audit.

The absence of decision from the French tax authorities within this 4 month period will amount to a tacit acceptance of the VAT refund claim.

Any decision to reject the request for a VAT refund must be justified.

This new procedure is aimed at accelerating the refund of VAT credits.

→ This measure applies to VAT refund claims filed as from 1 January 2017

Reinforcement of the CICE tax credit

The rate of the CICE tax credit increases from 6 to 7% for compensations paid as from 1 January 2017 (for monthly compensation not exceeding EUR 3,700.68).

Lowering of the threshold of the companies subject to the filing of the simplified declaration relating to transfer pricing

Previous regime

In addition to the preparation of a full transfer pricing documentation, companies (i) having a total net sales (before taxes), or total gross assets, at least equal to EUR 400m; or (ii) holding, directly or indirectly, at the closing date of the fiscal year, more than 50% of the

¹ To qualify as SME, within the meaning of Commission Regulation (EC) N° 800/2008, appendix I, a company must:

- Employ fewer than 250 persons; and
- Have a turnover not exceeding EUR 50 million, and/or an annual balance not exceeding EUR 43 million.

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capital or voting rights in a legal person having such turnover or gross assets; or (iii) being, on the closing date of the fiscal year, more than 50% held, directly or indirectly, by such legal person; or (iv) belonging to a French tax consolidated group that includes at least a legal person that meets one or more of the aforementioned criteria, must file a simplified transfer pricing documentation, at the latest six months following the deadline for filing their corporate income tax return (i.e., nine months following the closing of the relevant fiscal year).

Modification included in the Sapin II Law

The threshold of EUR 400m is lowered to EUR 50m in respect of the simplified transfer pricing documentation requirement.

→ This measure is effective for fiscal years closed on or after 31 December 2016.

Introduction of a "YouTube" Tax

Operators, established in France or outside of France, offering access in France to audiovisual content, whether for a consideration or free of charge, are subject to a 2% tax based on the sale price or right of access and on the amounts paid by advertisers and sponsors.

The revenue generated by advertisement and sponsorship is however reduced by a 4% tax allowance, increased to 66% when revenue is generated by audiovisual content created by private users for the purposes of sharing and exchange within communities of interest.

Companies for which the broadcast of audiovisual contents is only secondary as well as operators whose activity consists of the broadcast of trailers or extracts to promote cinematographic and audiovisual works are exempted from this tax.

→ The entry into force of this new measure will be set by a Decree once this measure has been approved by the European Commission.

Modification of the Free shares regime

The Finance Act for 2017 significantly modifies the tax and social regime of the free shares. The new regime is applicable to awards of free shares authorised by shareholders on or after 31 December 2016.

For the employer:

The rate of the employer contribution is increased from 20% to 30% and continues to be assessed on the fair market value of the share at the date of their acquisition.

The employer contribution continues to be paid by the employer during the month after the date of acquisition.

For the beneficiary:

The tax regime of the gain on acquisition now depends on the yearly amount of gain realised by the employee (it being noted that personal income tax as well as social contributions are due only at time of sale of the shares).

- For the fraction not exceeding a yearly threshold of EUR 300,000: the gain on acquisition continues to be subject to personal income tax in France under a regime similar to the one applicable for capital gains, i.e.:
 - subject to the normal sliding scale of personal income tax, at rates of up to 45% with an allowance based on the duration of holding of the shares (50% for shares held between 2 and 8 years and 65% for shares held more than 8 years);
 - social contributions levied at a rate of 15.5% (out of which 5.1% is deductible from the basis of assessment of income tax due in respect of the year during which such social contributions are paid). The specific allowance based on the duration of holding of the shares is not deductible from the basis of assessment of the social contributions.
- Marginal aggregate rate of 35.7% if the shares are held at least two years (39.5% if the exceptional contribution on high earners is applicable).
- For the fraction exceeding the yearly threshold of EUR 300,000: the gain on acquisition will be taxed as follows:
 - subject to the normal sliding scale of personal income tax, at rates of up to 45% without any allowance;
 - the rate of the social contribution will be decreased from 15.5% to 8% (out of which 5.1% is deductible from the basis of assessment of income tax due in respect of the year during which such social contributions are paid);
 - subject to a specific employee contribution of 10%.
- Marginal aggregate rate of 60.7% (64.5% if the exceptional contribution on high earners is applicable).

The tax regime of the gain on sale (equal to the difference between the sale price of the shares and their fair market value at time of acquisition) will continue to be treated as a capital gain (i.e. subject to a marginal aggregate rate of 35.7% if the shares are held at least

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two years – 39.5% if the exceptional contribution on high earners is applicable).

Improvement of the impatriation regime

Previous regime

Employees, as well as certain corporate officers sent to France by a non-French employer, or directly recruited abroad, to perform professional duties in France, can benefit from an exemption from personal income tax applicable to their impatriation premium. This exemption is applicable up to the end of the fifth year following the arrival of the individual in France.

Measure

The benefit of the exemption of personal income tax on the impatriation premium is extended up to the end of the eighth year following the arrival of the individual in France.

The extended regime is however only applicable to individuals having started their job in France on or after 6 July 2016 (individuals having started their job in France before that date will benefit from the impatriation regime only until the end of the fifth year following their arrival in France).

For the employers, the impatriation premium will no longer be subject to the wage tax (such exemption being only applicable to wages paid on or after 1 January 2017 to individuals having started their job in France on or after 6 July 2016).

Implementation of the at-source payment of personal income tax – what are the obligations for companies?

Current regime

Income tax is payable during the year after the income is earned (either in three instalments or 10 monthly payments). Instalments are based on the amount of income tax paid in respect of the previous year and the balance is paid no later than September 15.

Companies are in principle not responsible to pay personal income tax on behalf of their employees (except for employees being non tax resident in France).

Modifications included in the Finance Act for 2017

The payment at-source of the personal income tax will enter into force on 1 January 2018.

Companies will have the following obligations:

- An obligation to report the identity of the beneficiaries who have received wages (on a DSN form).
- An obligation to collect and apply each month the tax rate of their employees, which will be computed and transmitted by the French tax authorities (or the neutral rate for employees having elected to such rate).
- An obligation to withhold the corresponding amount of personal income tax for each of its employees.
- An obligation to report and to pay the amounts of personal income tax withheld to the French tax authorities during the month (or the trimester in case of small companies) following the one of the deduction.

Companies will therefore act as collector for the French tax authorities. Failure by a company to fulfil its obligations would lead to the application of severe penalties. Companies might even face criminal charges if they did not pay the amount of personal income taxes they have already collected to the French tax authorities.

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