

Overview of the main measures interesting corporations and managers in the French Finance Act for 2018, the Rectifying Finance Act for 2017 and the Social Security Financing Act for 2018



The Finance Act for 2018, the Rectifying Finance Act for 2017 and the Social Security financing Act for 2018 were published in the Official Gazette. The main measures relating to corporations and managers are described below.

The Finance Act for 2018

Enactment of a new timetable for the decrease of the rate of the corporate income tax

The Finance Act for 2018 provides for a new progressive reduction of the current corporate tax rate.

Turnover	Taxable income	Fiscal year opened on:				
		2018	2019	2020	2021	2022
T < 7,63m€	0 at €38,120	15%	15%	15%	15%	15%
	€38,120 at €75,000	28%	28%	28%	26,5%	25%
	€75,000 at €500,000					
> €500,000	33,1/3%	31%				
7,63m€ < T < 50m€	0 at €38,120	28%	28%	28%	26,5%	25%
	€38,120 at €75,000					
	€75,000 at €500,000					
> €500,000	33,1/3%	31%				
T > 50m€	0 at €500,000	28%	28%	28%	26,5%	25%
	> €500,000	33,1/3%	31%			

Decrease of the rate of the tax credit for employment and competitiveness (CICE)

The CICE rate is now equal to 6% (compared to 7% for calendar year 2017) for all remuneration paid as from January 1st, 2018.

Financial expenses borne for the acquisition of shares: the scope of the Carrez amendment is narrowed

Previous regime

The Carrez amendment provides for a limitation of the deductibility of financial expenses borne for the acquisition of shares.

In practice, when the French acquiring company (or a French related entity) is not able to demonstrate, by whatever means, that the following cumulative conditions are met, the Carrez amendment limits the deductibility of the financial expenses:

- it constitutes an autonomous decision centre that has the power to acquire the shares and to manage them; and
- it has a control or influence over the company whose shares are acquired.

Measure

Given the existing doubts relating to the non-compliance with the EU law of this measure, the Carrez amendment is amended in a way that it is no longer applicable when the management and control over the company, whose shares have been acquired by a French entity, is exercised either by

the French acquiring entity (or another French related entity) or by a related entity established in the EU or in the EEA.

→ This measure applies to fiscal years closed on or after December 31, 2017.

Repeal of the 3% tax on dividends

The Finance Act removes definitely the 3% tax on dividends

In theory, this repeal applies only to the distributions whose payment is made on or after January 1st, 2018. In practice, this tax has disappeared since the declaration of constitutional invalidity which came into effect on October 8, 2017, date of the publication of the decision of the French Constitutional Court.

Deletion of the payroll tax top rate

The Finance Act for 2018 removes the 20% rate of the payroll tax for the wages paid on or after January 1st, 2018. Payroll tax, if applicable, is now levied with a top rate equal to 13.60%.

Introduction of a new mechanism for the calculation of the CVAE (contribution on business value-added) in groups

Previous regime

The effective rate of the CVAE ranges between 0 to 1.5% depending on the Company's turnover.

The previous regime provided that the effective CVAE rate applied to members of a tax consolidated group was based on the sum of the turnovers of all members of the group. However, such specific rule was declared unconstitutional by the French Constitutional Court on May 19, 2017 in such a manner that the effective CVAE rate was since then only based on the turnover of each corporation, no matter if the company, was or was not, member of a tax-consolidated group.

Measure

The Finance Act for 2018 provides for a new regime in order to comply with the decision of the French Constitutional Court. A new turnover consolidation regime is created to replace the previous unconstitutional one.

Therefore, when a corporation fulfils the conditions of detention of the share capital to be member of a tax-consolidated group, the CVAE rate is based on the sum of its turnover and the turnover of the other corporations which satisfies the same condition to be member of the group, except if the aggregated amount of turnover is lower than €7,630,000.

→ This measure applies as from 31 December 2017.

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The corporations must carefully consider this new regime particularly for the computation of their next instalments of CVAE payable no later than June 15, 2018 and September 17, 2018.

Modification of the Transfer Pricing documentation

The Finance Act for 2018 modifies the contents of the Transfer Pricing documentation that companies' members of big multinational groups have to prepare on a yearly basis. Those amendments update the contents of the current French documentation so as to make it compliant with the standard developed by the OECD in the context of the 13th action of the BEPS Project. The OECD standard has already been implemented by several other states.

The main modifications relate to the following issues:

- intangible assets;
- intra-group financial activities of a multinational group;
- allocation of the profits deriving from intra-group transactions;

→ The update of the Transfer Pricing documentation applies to fiscal years opened as from January 1st, 2018.

Introduction of a new 30% flat-tax

Introduction of a flat-tax

Financial income and capital gains whose taxable event occurs on or after January 1st, 2018 are now subject to a flat tax for personal income tax purposes.

The flat tax is made of a flat rate of personal income tax equal to 12,8% and a flat rate of social security contribution, equal to 17,2% (including the increase of the rate of the CSG included in the Social Security Financing Act for 2018). The global rate is equal to 30%.

The main types of income affected by this reform are:

- Dividends (more broadly all the distributed income and the deemed distributed one);
- Attendance fees;
- Fixed-income investments (obligations, debts, current accounts ...);
- The amounts apportioned by FCP and FPI.

Finally, a new flat allowance of €500,000 is introduced under certain conditions for the managers selling their shares and retiring. This flat allowance is applicable regardless of the method used to tax the capital gains (application of the flat tax or global option for the progressive scale of personal income tax). This allowance is however not cumulative with the allowances for duration of holding of the shares (both the standard allowances and the accelerated ones).

Global option for the taxation under the progressive scale of personal income tax

Taxpayers can however still have their financial income and capital gains subject to the progressive scale of personal

income tax. This is subject to a formal election, it being noted that such election is applicable to all the financial income and capital gains realized during the calendar year at stake.

In that case, some income will continue to benefit from certain specific allowances:

- 40% allowance for dividends and assimilated incomes;
- For the shares held before January 1st, 2018:
 - standard allowance of 50% (shares held for at least 2 years and less than 8 years) or 65% (shares held more than 8 years);
 - accelerated allowance for shares of SMEs incorporated less than ten years of 50% (shares held for at least one year and less than four years), 65% (shares held for at least four years and less than eight years) and 85% (shares held more than eight year).

Capital gains derived from shares purchased or subscribed as from January 1st, 2018 are excluded from the scope of the allowances for duration of holding.

The timing of the taxation is maintained

The non-definitive flat-tax applicable during the year during which incomes, such as dividends or interests, are paid is maintained. Its rate is aligned with the rate of the flat-tax. This way it is lowered at 12.8%.

Modification of the free shares and the BCPCE regime

Free shares

For qualifying free shares granted pursuant to a plan approved by an extraordinary general meeting after December 31, 2017, the gain on acquisition is now taxed as follows:

- The gain, or the part of the gain not exceeding €300,000, will be taxed under the progressive scale of personal income tax after the application of a 50% allowance (or, if applicable, after the application of the new €500,000 flat manager allowance).
- The part of the gain exceeding €300,000 remains subject to the progressive scale of personal income tax without any allowance and does not benefit from the 30% flat tax.

Note that the new flat allowance of €500,000 for retiring managers will also apply for the free shares authorized by an extraordinary general meeting decision took between August 8, 2015 and December 31, 2017. However, this flat allowance is applicable only if the taxpayer gives up its right to benefit from the allowances for duration of holding of its shares (both the standard and the accelerated allowances). The new flat allowance shall be offset in priority on the gain on sale. The remaining amount, if any, will then be offset against the gain on acquisition.

Note that the Social Security Financing Act for 2018 provides for a decrease from 30% to 20% of the employer social contribution (see below for additional information).

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BSPCE

The tax regime of the BSPCE is reviewed due to the introduction of the flat-tax.

When the holder of the BSPCE has been working for at least three years for the company, at the time the shares under BSPCE are sold, the gains are subject to the 30% flat tax. These gains can also benefit from the €500,000 flat allowance for retiring managers if certain conditions are fulfilled.

For the holder of BSPCE who has been working for less than three years for the company, at the time the shares under BSPCE are sold, the gains are subject to personal income tax at a flat rate of 30%. Social security contributions will be added at a rate equal of 17.2%. The new flat allowance for retiring managers will not be applicable.

→ This new regime applies to BSPCE granted as from January 1st, 2018.

Repeal of the French wealth tax and enactment of a new real estate wealth tax

The Finance Act for 2018 repeals the French wealth tax which is replaced by a new wealth tax reoriented to target only real estate assets.

The new tax (called IFI) picks up a lot of characteristics of the previous French wealth tax including notably, the taxable person, the taxing event (which remains set as of January 1st of each year), the tax threshold (still fixed at €1.3m) and the progressive scale (whose top tax rate is equal to 1.5%).

In addition the taxable person will be able, as they used to for French wealth tax purposes, to benefit from tax reductions for donations made in favour of public interest entities.

Finally the capping mechanism remains applicable in the same conditions.

The most important modification concerns the taxable basis of the IFI which is made of all the real estate assets held directly or indirectly, via companies or collective investment vehicles when these real estate assets are not used to carry out the business of those entities, by the taxpayer. As for the wealth tax, assets having a professional nature remain out of the scope of the IFI.

Main measures included in the Rectifying Finance Act for 2017

Simplification of the conditions to benefit from the specific regime for mergers, divisions and partial contribution of assets

The purpose of the modification of the French law is to draw the consequences of the Europa Park Services jurisprudence. The ECJ ruled that the preliminary approval procedure laid down by article 210 C of the French tax code in the case of a contribution of assets made by a French legal entity to a foreign legal entity, is non-compliant with EU law (ECJ March 8, 2017, C-14/16 and French Supreme Administrative Court June, 26 2017 n° 369311).

Several modifications are therefore implemented to the specific regime for mergers (and assimilated operations) in order to harmonize it with EU law.

→ These modifications are effective for operations realised as from January 1st, 2018.

Cross-border merger: removal of the prior approval and introduction of a new declarative obligation

Article 210 C of the French tax code is modified in order to provide for the automatic application of the specific tax regime to mergers, divisions of a company or in case of partial contribution of assets of complete branches of activity, when the transferred assets are recorded in the balance sheet of a French permanent establishment of the foreign company.

The prior approval is therefore no longer required for operations triggering the transfer of one or several complete branches of activity and there is no minimum holding requirement of the shares received for these operations. The specific tax regime would however not be applicable if the transferred assets are not recorded in the balance sheet of a French permanent establishment.

In return, the article 210-0 of the French tax code integrates a new declarative obligation to allow the French tax authorities to appreciate the motivation and the consequence of the operation (the contents of this declaration will be fixed at a later stage by decree). This declaration is only applicable for operations benefiting from the specific tax regime.

Introduction of an anti-abuse clause compliant with the merger directive

The French tax code is enriched by a new anti-abuse clause for domestic and cross-border mergers (and assimilated operations).

As a consequence, the specific tax regime shall not apply when the mergers, divisions or partial contributions of assets agreements have as a main purpose, or one of its main purposes, tax fraud or tax evasion. The specific tax regime would therefore not be applicable to operations not implemented pursuant to a legitimate economic reason, such as a reorganisation or a rationalisation of the activities of the companies involved in the operation.

Companies participating to cross-border mergers (and assimilated operations) will be allowed to request a written confirmation from the French tax authorities that the economic reasons for the merger are valid. The confirmation would be deemed to be granted if the French tax authorities do not answer within a six month time period after the request was submitted in good faith by the taxpayer.

Partial contribution of assets and divisions: easing of the conditions relating to the holding requirement of the shares received and of the commitment to compute the future capital gains

The condition relating to the holding of the shares received in case of a partial contribution of assets or of a division benefiting from the specific tax regime is deleted when the

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operation relates to the transfer of at least one complete branch of activity (or two in case of a division).

The commitment to keep the shares received during at least three years remains however required when the partial contribution of assets, or the division, does not trigger the transfer of a complete branch of activity.

Finally, the contributing company, in a partial contribution of assets, is no longer required, to benefit from the specific tax regime, to commit to compute the future capital gains on the shares received by reference to the tax value of the assets contributed. In practice, this method of computation will however continue to be applicable.

Modification of the definition of "complete branch of activity"

The transfer of shares, representing less than 50% of a company's share capital in another company that already holds more than 50% of the first company's capital is now considered as a complete branch of activity.

The withholding tax paid abroad, pursuant to a double tax treaty, is not tax deductible in France

Previous regime

The elimination of double taxation is generally achieved in double tax treaties via the grant of a tax credit to the French entity benefiting from the foreign source income and which has borne the foreign withholding tax. When a company cannot take advantage of this tax credit because of it has been loss making, some double tax treaties allowed the company to deduct from its tax result the amount of tax paid abroad.

Measure

The French tax code is modified and provides now that the withholding taxes paid abroad, in accordance with a double tax treaty, are no longer deductible for tax purposes.

If there is no double tax treaty, the withholding taxes paid abroad remain deductible for tax purposes in France.

→ This measure is effective for fiscal years closed on or after December 31, 2017.

The expenses relating to the lending of workforce can, if specific conditions are met, be tax deductible even if they are only partially charged back

Article L 8241-2 of the French labour code (introduced by the article 33 of the decree n° 2017-1387 dated September 22, 2017 relating to the flexibility and predictability of the labour relations) created a new legal framework for not-for profit lending of workforce to promote the mobility of the staff of big companies towards small companies so as to allow SMEs to benefit from the skills of executives of big companies without having to bear their entire payroll costs which they generally cannot afford.

The French tax code has therefore been amended to provide that this partial rebilling does not constitute, for tax purposes, an abnormal act of management for the invoicing entity.

→ This specific tax regime, restricted to operations of lending of workforce governed by article L 8241-3 of French labour code, is applicable as from January 1st, 2018.

Decrease of the late interest and default interest rate

The standard rate of the late and default interest is cut in half and is now equal to 0.2% per month, i.e. 2.4% per year.

The new rate is applicable since January 1st, 2018.

Confirmation that personal income tax will be paid at source in respect of income received as from January 1st, 2019

The Rectifying Finance Act for 2017 does not affect the starting date for the at source payment of personal income tax which has been set as at January 1st, 2019 by a decree dated September 22, 2017.

The Rectifying Finance Act for 2017 does not amend the already voted reform but only makes some minor technical modifications in order, notably, to alleviate certain penalties applicable to taxpayers or companies acting as collecting entities for the at source payment of personal income tax.

Main tax modifications included in the Social Security Financing Act for 2018

Increase of the rate of the CSG for 2018

The rate of the CSG is increased by 1.7%.

For capital gains realised upon the transfer of shares, the increase of the rate of the CSG is applicable to capital gains realised as from January 1st, 2017.

For income deriving from investment (interest, dividends notably), the increase of the rate of the CSG is however applicable only to income whose taxing event occurs on or after January 1st, 2018.

For certain income subject to the progressive scale of personal income tax (salaries for example), the increase of the rate of the CSG is deductible (i.e. the deductible fraction of the CSG is therefore increase to 6.8% instead of 5.1% before the increase).

In 2019 the CICE will be replaced by a decrease of the employers social contributions

The reduction will be equal to 6% and will involve employees whose remuneration does not exceed 2.5 times the minimum wage in France. This decrease will be calculated according to the rules laid down for the general decrease of the employers social contributions.

It will notably be applicable to employers subject to the French general social security regime.

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→ This decrease will apply to employer social contributions owed as from January 1st, 2019.

Free shares: decrease of the rate of the employer social contribution

The rate of the employer social contribution is decreased to a rate equal to 20% (against 30% previously) for qualifying free shares granted pursuant to a plan approved by an extraordinary general meeting after December 31, 2017.

Contact



Sophie Jouniaux
Partner, Tax
Sophie.Jouniaux@osborneclarke.com

Contact



Benoit Ménez
Associate, Tax
benoit.menez@osborneclarke.com