TAXAND

French Finance Bill for 2019

Key elements for companies

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France is transposing the Anti-Tax Avoidance Directive (EU) 2016/1164 (ATAD 1) into domestic law, in particular the general anti-abuse rule (GAAR) and the interest deduction limitation. The specific regime applicable to tax consolidated groups will also be amended to avoid potential violations of EU law.

The French GAAR would be a standard "principal purpose test". It targets arrangements or series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances. However, the broad scope of this provision might be a motive for the French Supreme Court to quash it, as it was the case recently for similar wordings. The outcome of this issue will have to be closely monitored until the vote of the Bill.

Rules governing the deduction of financial expenses would be modified

Deductible interest would now be limited to 30% of earnings before interest, taxes, depreciation and amortization (EBITDA), or EUR 3 million, whichever amount is higher. This adjusted EBITDA will be calculated from the tax result after the adjustments mentioned, thus including extraordinary gains and expenses.

Banks and inter-company transactions would be concerned by the new provision. Taxpayers would also have the possibility to carry forward non-deducted interest (for an unlimited time) or unused EBITDA capacity (for 5 years) and specific rules would apply to tax consolidated groups.

Amendment to certain neutralizations of the tax consolidated income

Currently, the tax consolidation regime allows the neutralization of all inter-company transactions, including debt waivers, and subsidies. The Finance Bill for 2019 provides that the only neutralized transactions would now be the provision of services and the sale of inventories at cost.

As from 2019, debt waivers and subsidies would not be neutralized anymore. Neither sales of tangible assets below or above their arm's length price nor provision of services and sale of inventories below their net costs would benefit from a neutralization and would trigger a tax reassessment in case of tax audit. Furthermore, dividends not subject to the parent-subsidiary regime would no longer benefit from the current neutralization at the tax-consolidated group level.

These main provisions contemplated by the Bill are still subject to modifications in the course of the legislative process, as it is often the case in France, before its implementation on January 1st, 2019.