

# Tax Alert:



## Adoption of the 2012 Budget in France – key measures affecting companies

French Parliament has adopted the 2012 Budget, which is now in force. Most of the measures presented by the French Government to reduce the public deficit have been adopted. Here is an update of the key measures that were voted and affecting companies:

- **An exceptional 5% increase to corporate income tax:** it will apply to companies with turnover exceeding **EUR 250 millions**. This measure will apply for fiscal years ending between 31 December 2011 and 31 December 2013. Fiscal years 2011 coinciding with the calendar year will be affected by this measure. The additional 5% contribution generates an accrued overall CIT rate at 36.1% (35% for the fraction of net annual income up to EUR 763,000) against the general 33.33% rate (34.43% respectively).
- **Creation of an intermediate 7% VAT rate, applicable to selected goods and services that are currently subject to the reduced 5.5% VAT rate with the exception of first necessity products** restrictively listed: food products, dining hall, equipment and services for the disabled, gas and electricity supply contracts, as well as renewable energies supply contracts.
- **Exclusion from the thin capitalization limitations of interest payments related to forced refinancing pursuant to bankruptcy procedures.** This exclusion results from the extension of the thin capitalization limitations to all facilities contracted out with non-related companies and whose repayment is guaranteed by a company related to the debtor for fiscal year closed as from 31 December 2010.

**An immediate cash effect should be expected by companies, since companies will not be able to pay this added tax by means of tax credits, or by carry back receivables.**

■ **Non deduction of financial charges on share participation acquisitions when the target company is not effectively managed by the company holding the shares, by a French-based company controlling the owner, or by a French company controlled by the owner.** This measure applies to fiscal years starting on 1 January 2012.

This measure does not apply:

- ▶ when the share value does not exceed EUR 1 million;
- ▶ when the purchase was not financed with debt;
- ▶ when the company demonstrates, upon purchase of the shares, that the financing relates to items other than the shares, or that the debt-equity ratio of the group to which it belongs is equal or greater than its own debt-equity ratio.

■ **As from 1 January 2012, share transfers (except share transfers on certain French medium-cap companies – e.g. SARL’s) will now be subject to a progressive registration duty as follows:**

- ▶ 3% for transfers not exceeding EUR 200,000 in value;
- ▶ 0.5% between EUR 200,000 and EUR 500 millions;
- ▶ 0.25% beyond EUR 500 millions.

Share transfer duties will no longer be capped. Up until now, share transfer duties were levied at a flat 3% rate, and capped to EUR 5,000.

In addition, the territorial scope of share transfer registration duties has been extended to transfers executed out of France when the target is a French-based company.

Share transfers, as well as share transfers on certain French medium-cap companies, will be exempt from registration duties in the following situations:

- ▶ Company’s share buy back or capital increase;
- ▶ Share transfer operations within bankruptcy procedures;
- ▶ Transfer of share when the seller company and the buyer company are members of the same tax consolidation group;
- ▶ Share transfers realized under the favourable spin-offs regime (FTC art. 210 B).

Other measures affecting companies were also voted as part of the Budget. Salans will present a complete summary of these measures during our annual “Finance Bill” presentation in the course of January, as well as in upcoming tax alerts.

This measure is inspired by the “Charasse” financial charges limitation, but its scope is wider since it applies also absent any tax consolidation group.

We are currently recommending an analysis of its impact on leverage buyout operations.

For the record, share transfers on certain French medium-cap companies remain subjected to the 3% flat rate.

Share transfers on “Real estate predominant companies” also remain subject to the former flat rate (5%) but the taxable basis has been extended.

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