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Practice Group:

Tax

Enactment of the French Second Amending Finance Act for 2012: Key Corporation Tax Measures

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The French Second Amending Finance Act for 2012 was adopted by the French Parliament on July 31, 2012 and was enacted on August 17, 2012 [the **"Act"**]. The core objective of the Act is to reduce the government deficit below 4.5% of GDP for 2012, pursuant to the Council of the European Union's Recommendation on France's 2012 national reform program. This objective has mainly been implemented by increasing taxes borne by the largest companies.

The key corporate tax measures of the Act are as follows:

- Financial support (subsidies, forgiveness of debt etc.) granted by companies to related or unrelated French or non-French companies or permanent establishments is no longer permitted[1] as a deductible expense when such financial support does not have a commercial purpose, unless the assisted company is subject to collective insolvency proceedings;
- Dividends distributed to shareholders by French companies will be subject to an additional tax of 3% at company level which does not qualify as a deductible expense in determining the company's taxable income. Dividends paid in shares or distributed by collective investment undertakings, as well as by small and medium-size enterprises (SME) not belonging to a group, are not subject to such tax. Distributions between companies which are members of the same tax group are also excluded;
- The availability of tax rulings which are necessary to preserve the carry-forward of tax losses in the context of restructuring operations (i.e. mergers, demergers or partial transfers of assets) has been restricted[2] so that they can no longer be obtained where there is significant change in the loss-making activity of the acquired company either before or after such operation;
- The restriction of the right to carry forward tax losses as a result of a major change in the company’s activity is considerably expanded. The new provisions apply the restriction where the means of production are not retained by the company during a period exceeding 12 months, or in situations where there is an addition of new activities or partial abandonment of existing activities, provided that such addition or abandonment is significant. Loss carry-forward which is denied as a result of the latter measures can nevertheless be preserved in certain cases where a prior ruling is obtained;
- The right for parent companies to combine the tax exemption of dividends received from subsidiaries under the parent subsidiary regime with the deduction of a loss corresponding to the decrease in value of said subsidiary has been abolished[3] for (a) property trading companies and (b) subsidiaries merged into their parent company less than two years after having been acquired;

[1] Starting with financial years ending on or after July 4, 2012
[2] Starting with financial years ending on or after July 4, 2012
[3] Starting with financial years ending on or after July 4, 2012

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- CFC legislation: French companies deriving profits from countries outside the European Union identified as tax havens shall bear the burden of proving[4] that the main purpose and effect of their subsidiaries' operations are not tax-driven;
- Capital losses resulting from the sale by a parent company of shares in a subsidiary issued in exchange for a capital contribution are no longer tax-deductible [5] where such disposal occurs within two years;
- No withholding tax[6] shall be levied on dividends distributed to foreign UCITS, pooled real estate funds and property investment funds similar to their French counterparts and located within the European Union or in a country which has signed a convention of administrative assistance with France, exception being made for (a) distributions made by French SIICs (listed real estate investment companies) or SPPICAVs (open-ended real estate investment companies) to French or foreign mutual investment funds and for (b) distributions made to beneficiaries established in so-called Non-Cooperative States and Territories.

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[4] Starting with financial years ending on or after December 31, 2012
[5] Starting with sales of shares in exchange for contributions dated on or after July 19, 2012
[6] Starting with distributions dated on or after August 17, 2012