

French Government releases draft Finance Bill for 2021

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Executive summary

On 28 September 2020, the French Government presented the draft Finance Bill for 2021 (the draft Bill). This draft will be discussed by the French Parliament over the following weeks and may be subject to amendments; the final version will be enacted by the end of December 2020.

This Alert summarizes two of the main direct tax reforms included in this draft that may affect corporations.

Detailed discussion

Deferral or spreading of the taxation related to the voluntary revaluation of tangible and financial assets

The draft Bill provides the ability for companies that implement a voluntary French GAAP revaluation of their tangible and financial assets (according to Article L. 123-18 of the French Commercial Code) to avoid the immediate taxation of the revaluation surplus by benefiting from a tax deferral for non-depreciable assets and from a spreading of the taxation for depreciable assets:

- For non-depreciable assets, the revaluation would be tax neutral since the deductibility of the depreciation and the capital gain or loss resulting from the disposal of such assets would be determined based on their non-revaluated value.

- For depreciable assets, the revaluation surplus would be added back to the taxable income over a 15-year period for buildings, plantations, equipment and fixtures on land that are depreciable over at least 15 years; or, over a 5-year period for other depreciable assets; however, the disposal of a depreciable asset would trigger the immediate taxation of the portion of the revaluation surplus not yet added back to the taxable income. Symmetrically, the depreciation would be deductible on the basis of the revaluated value.

This temporary and optional measure would apply to the first revaluation performed during a fiscal year (FY) ended on or after 31 December 2020, and no later than 31 December 2022.

Spreading of the capital gain resulting from a building lease-back operation

The draft Bill proposes to reactivate the spreading mechanism of the capital gain resulting from the disposal by a company of its building to a leasing company, followed by the leasing of that building by the latter to the former (as stated for in Article 39 novodecies of the French Tax Code).

This mechanism would be dedicated to buildings assigned to an operating activity¹ (as opposed to a patrimonial activity) carried out by the lessee or by a related company to which the buildings would be subleased.

Thus, the capital gain would be spread over a 15-year period or over the duration of the lease agreement if shorter. However, the purchase of the building by the lessee or the termination of the lease agreement would trigger the immediate taxation of the portion of the capital gain not yet added back to the taxable income.

This mechanism would apply to transactions for which the commitment to sell has been made on or after 28 September 2020, and no later than 31 December 2022.

Endnote

1. Commercial, industrial, craft, liberal or agricultural activity.

For additional information with respect to this Alert, please contact the following:

Ernst & Young, Société d'Avocats, Paris

- ▶ Eric Verron eric.verron@ey-avocats.com
- ▶ Xavier Dange xavier.dange@ey-avocats.com

Ernst & Young LLP (United States), French Tax Desk, New York

- ▶ Frédéric Vallat frederic.vallat@ey.com
- ▶ Mathieu Pinon mathieu.pinon1@ey.com
- ▶ Pauline Armagnac pauline.armagnac@ey.com

Ernst & Young LLP (United States), Financial Services Desk, New York

- ▶ Sarah Belin-Zerbib sarah.belinzerbib@ey.com

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EYG no. 006743-20Gbl

1508-1600216 NY
ED None

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