

Tax Flash – The French finance law for 2021



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The French finance law for 2021, which went into force on 30 December 2020, contains numerous tax measures aimed at supporting enterprises impacted by the Covid-19 crisis.

This tax flash aims at raising awareness for some of those measures and briefly highlights their main general aspects.

1. Tax consequences of free revaluations of assets can be deferred

A temporary mechanism to neutralize the tax consequences of free revaluation of certain fixed assets has been introduced. This is meant to support companies affected by the current economic and health crisis to improve their equity values and thus increase their capacities to borrow and finance their projects. This optional mechanism applies to the revaluation of assets recorded in financial years ending between 31 December 2020 and 31 December 2022.

As per the new rules, companies may defer the taxation on the revaluation spread (i.e., the difference between the reevaluated current market value and the original book value) occurring in principle during the financial year in which the revaluation is carried out. The tax neutralization methods are differentiated according to whether the revalued fixed assets are depreciable or not:

- For non-depreciable fixed assets: taxation on the revaluation difference is deferred until their subsequent disposal, at the condition that the enterprise computes the capital gain on the non-revalued value of the disposed asset.
- For depreciable fixed assets: the revaluation spread is taxed in equal portions over an incremental period of 5 to 15 years, depending on the nature of the asset. When the asset is sold before the end of the incremental period, the remaining taxable spread is immediately taxed.

2. Two preferential tax regimes are extended to support the cash flow of companies in conciliation

The finance law extends to conciliation proceedings (i.e., proceedings which concern companies in financial distress but which are not defaulting on payments for at least 45 days) two preferential tax regimes.

The extension of these mechanisms concerns debt write-offs and tax loss carryback receivables realized as of 1 January 2021.

For debt write-offs, in order to encourage them in favor of companies in conciliation proceedings, a specific provision of the French Tax Code is supplemented to allow for the unconditional deduction of debt write-offs of a commercial nature and granted pursuant to an agreement recorded or approved under the conditions provided for in the French Commercial Code.

For tax loss carryback receivables, the extension of the preferential regime allows companies which are in conciliation proceedings, to request the immediate refund of their tax loss carryback receivables from the date of the opening of said conciliation proceedings (instead of having to wait a period of five years following the year in which the loss-making financial year was closed).

3. Rent waivers in favor of enterprises

The law introduces a tax credit for the benefit of landlords (corporate bodies or individuals) who, no later than 31 December 2021, grant rent waivers for the month of November 2020 to tenant companies that are particularly affected by the consequences of the restrictive measures taken to combat the Covid-19 pandemic as part of the state of health emergency.

Tenant companies must fulfill certain specific conditions such as, but not limited to, that they were within the scope of the legal ban on receiving the public during the month of November 2020 or to carry out their main activity, that their number of employees is less than 5,000 and that they were not in financial distress (as specified by the new provision).

The tax credit is in principle equal to 50% of the total amount of the rent waiver (for tenants with at least 250 employees the credit is capped up to two thirds of the rent waiver).

4. The regime for the capital contribution of a debt claim repurchased at a discounted value is made more flexible

The finance law broadens the scope of application of the regime for the capital contribution of a debt claim repurchased from a third party at a discounted value to facilitate the recapitalization of companies undergoing financial difficulties.

Under this regime, applicable to companies subject to corporate tax, a company which repurchases at a discounted value from a third party a claim held on a target company and then incorporates it into the latter's share capital via a capital contribution of said claim is taxed on the difference between the real value of the equity shares received in consideration (and not on the par value of these shares) and the repurchase value of the claim. This regime is in principle subject to the condition that neither the issuing company nor the company acquiring the shares are related to the company transferring the claim, assessed over the 12 months preceding and following the date of acquisition of the shares.

The present measure removes the condition relating to the absence of dependency between the initial creditor and the debtor company, when the capital increase is carried out within the framework of:

- a conciliation protocol recorded or approved under the conditions provided for in the French Commercial Code, or
- a safeguard or recovery plan.

However, the condition of absence of dependency between the initial creditor and the capital contributing company is maintained in order to avoid facilitating potentially artificial schemes.

This measure applies to financial years ending on or after 31 December 2020.