16 May 2018

pwc

PwC Société d’Avocats

Agenda

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Introduction
Why invest in France ?

1

Why invest in France ?

France has many strengths to attract businesses and foreign investment

- The size of the French and European markets : situated at the **center of Europe** and with an **excellent transport network**, France provides **easy and rapid access to a market** of over 500 million consumers
- A **source of innovation and creativity** with international groups in various industries like : energy, luxury, retailing, etc
- France can also act as a **gateway into Francophone Africa**

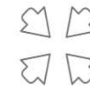
25,000 Foreign-owned companies in France

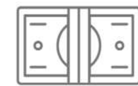
1,117 investment decisions in 2016

First destination in Europe for foreign investment in the manufacturing sector

6 reasons why you should invest in France

World-class infrastructure


A strategic position


A leading and open economy

A deep talent pool

Entrepreneur is a French word !

A leading financial center in Europe

Why invest in France ?

Key industries

- ✓ Chemical Industry
- ✓ Logistic
- ✓ Healthcare
- ✓ Aerospace
- ✓ Food Industry
- ✓ Robotics
- ✓ Automotive
- ✓ Financial services
- ✓ Information Technologies
- ✓ Cleantech

Key factors of success in France

- Gaining thorough **knowledge of the local market and culture**
- Identifying the crucial legal, social and tax issues relevant to your activities
- Developing open and trustworthy relationships with your French partners and associates

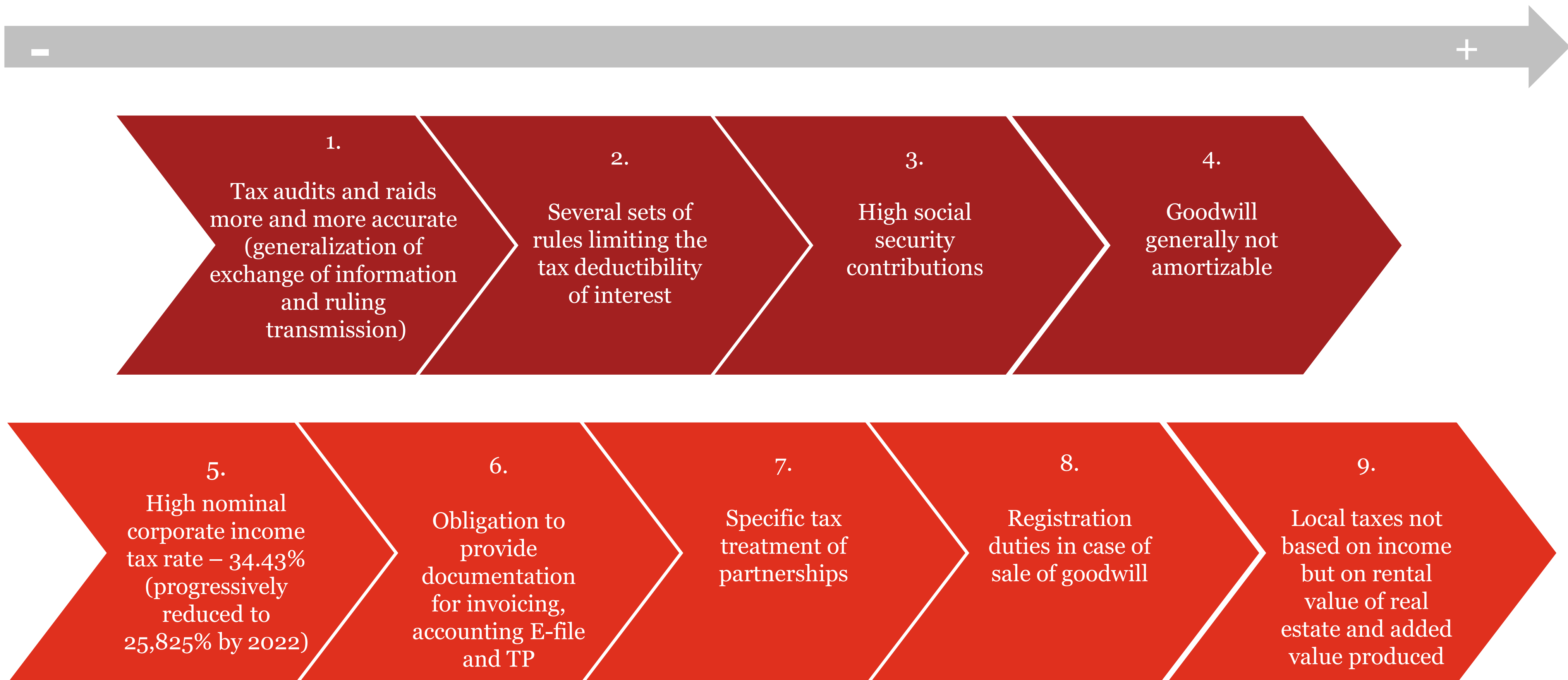
Various forms of assistance available in France to attract foreign investment

- R&D credits
- IT clusters
- Assistance of small and medium sized companies from BPI

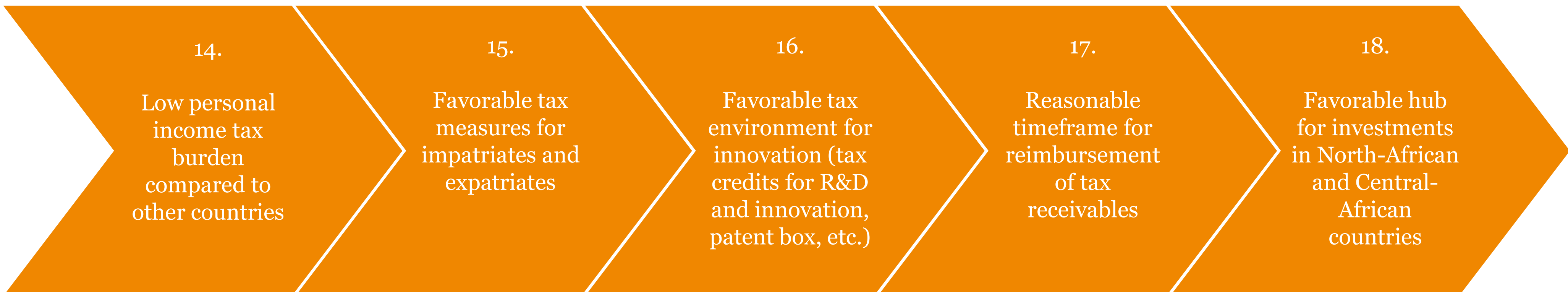
French Tax Environment

2

From constraints …



… to opportunities



2.1 Corporate Income Tax

Progressive decrease of the CIT standard rate

A progressive decrease of the standard CIT rate to 28 % by 2020 has already been enacted as part of the Finance Act for 2017. The **standard CIT rate will decrease to 25 % by 2022** (Finance Act for 2018).

FY opened as from :	01/01/17	01/01/18	01/01/19	01/01/20	01/01/21	01/01/22
Standard CIT rate (*)	**33,33 %**	**33,33 %**	**31 %**	**28 %**	**26,5 %**	**25 %**
Up to a taxable profit of K€ 500	-	28 %	28 %	-	-	-
Additional 3,3% Contribution on CIT in excess of K€ 763 if turnover > 7,63 M€	**1,099%**	**1,099 %** 0,924 %	**1,023 %** 0,924 %	**0,924 %**	**0,8745 %**	**0, 825 %**
Total Up to a taxable profit of K€ 500	**34,43 %**	**34,43 %** 28,92 %	**32,02 %** 28,92 %	**28,92 %**	**27,37 %**	**25,825 %**

The government still maintains the reduced rate of 15% to SMEs (ie with a turnover below € 7.63 million and up to a taxable profit of € 38,120).

Exceptional contributions for FYs closed between 31 December 2017 and 30 December 2018

- Exceptional 15 % contribution for companies with a turnover in excess of € 1bn : potential CIT rate of **39, 43 %**
- Additional 15 % contribution for companies with a turnover of at least € 3 bn : potential CIT rate of **44, 43 %**

Tax losses

Applicable rules?

Tax losses can be carried-forward indefinitely, unless a ‘deep’ change of activity is crystallized :

- However, the utilization of carried forward tax losses is subject to restrictions i.e. the setting-off is capped to €1m increased by 50% of taxable profit above this threshold

  For example, for a company with €10m tax losses and €5m tax result, losses can be offset up to €1m + 50% of €4m => €3m.

- The amount, exceeding this threshold, can be carried-forward over the subsequent tax years and with the same above restrictions

French participation exemption regime

Applicable rules?

France offers a favorable participation exemption applying both to dividends and capitals gains on qualifying shares.

1. ***Dividends*** received by a French parent company from qualifying entities are 95 % exempt from corporate tax. For FYs opened before 1st January 2016, the exemption amounted to 100% for dividends served within a French tax group. For FYs opened on or after 1st January 2016, the exemption amounts to 99% for dividends received by a member of the French tax group (i) from another member company or (ii) from a EU company subject to CIT which would meet the conditions to join a French tax group if it were established in France.
2. ***Long term capital gains*** on qualifying shares ("titres de participation") held for two years or more are 88% exempt from corporate income tax.

Who's concerned?

All French entities receiving dividend income.

What to do? / How can we help?

- ✓ Consider **locating a holding company** in France in order to take advantage of the local participation exemption regime
- ✓ Review the legal charts of existing French tax groups and planning of corporate restructurings to **mitigate the tax cost on dividend distributions**
- ✓ In certain instances, decide between a **share buy-back** (taxed under the capital gains regime) and a dividend distribution

Deductibility of financial expenses

Applicable rules?

French law provides for the following mechanisms which limit the tax deductibility of interest expense borne by French entities:

- ✓ ***Interest rate capping*** at 1,5% (published rate or arm's length rate, under certain conditions)
- ✓ ***Thin-capitalization rules*** (3 cumulative tests applicable as from €150k)
- ✓ ***Anti-hybrid rule*** (subject-to-tax test) interest deducted in France has to be subject to tax at the lender's level at a rate of at least ¼ of **French CIT at standard rate** (same rule applies considering the decrease of the CIT rate).
- ✓ ***Charasse Amendment*** limits the interest deduction for the buyer if the latter buys a company from an affiliate outside the French tax group and that company joins the tax group
- ✓ ***General 25% interest haircut:*** *25 %* global limitation of the tax deductibility of the net financial expenses where the company's net financial expenses exceeds €3M
- ✓ ***Carrez test:*** limited to non-EU or non-EEE groups for FYs closed on or after 31st December 2017 (decision making test + control and influence test).

Who's concerned?

All French entities with financial debt

Risks?

Non deductibility of financial expenses and in certain cases, requalification of excess interest as "deemed dividend"

What to do? / How can we help?

- ✓ **Review the calculation of the deductible interest** pursuant to the several interest limitation mechanisms
- ✓ **Review documentation** to support the corporate tax calculation on interest income
- ✓ **Review the interest haircut calculation**, in particular: selection of financial income and expenses, financial portion of financial lease agreements
- ✓ **Review of bank loans guaranteed by affiliated companies** to determine whether they fall into the scope of French thin capitalization rules
- ✓ **Review of group consolidated indebtedness ratio** ("safe harbor")
- ✓ Analyze the tax impact of these rules in the tax unity and, if needed, **challenge the opportunity of the tax unity**

A simulation of the limitation of the net financial expenses to 30% of EBITDA (ATAD I) with the elimination of the general 25% interest haircut would show a budgetary cost of 300M€. Therefore, the government is again considering seeking the exemption to allow the current provisions to continue until 2024.

Fiscal unity

Applicable rules?

- ✓ ***Vertical fiscal unity :*** French corporations and their 95% owned domestic subsidiaries may elect to file one single tax return, thus allowing the offset of profits and losses within the group. CIT is then levied on the aggregate income after certain adjustments for intra-group operations (e.g. debt waivers, dividend distributions).
- ✓ ***Horizontal fiscal unity :*** it is also possible to create a fiscal unity between French sister companies that are directly or indirectly held by a parent company established in a EU or EEA country.

Who's concerned?

Foreign groups with at least two French companies or branches subject to corporate income tax and having the same date of year-end closing.

Opportunity?

Implementation of a fiscal unity may generate positive cash impact for the future and may help securing – from a tax standpoint - transactions between the companies member of the fiscal unity.

What to do? / How can we help?

- ✓ **Identify opportunities to create a vertical or horizontal fiscal unity in France**
- ✓ **Check if the conditions** for such creation are satisfied
- ✓ **Determine the potential tax saving**
- ✓ **Prepare or review the documentation** needed for such creation

The adjustment of French tax group regime is currently under discussion (i.e. public consultation launched in May 2018).

Corporate simplification

Available Opportunity?

Corporate simplification can help eliminate inefficiencies and reduce the overall tax burden of the group. However, such a goal does present some challenges and in particular :

- Anticipate, where applicable, any labor law obstacles in France, and quickly avoid any potential roadblocks in order to streamline implementation of the simplified group structure in a cost-efficient manner ;
- Identify any change in tax legislation that might create potential leakage on cash repatriation from France within foreign groups in order to address such leakages prior to the reorganization;
- As from 1 January 2018, changes in the law create additional restructuring opportunities eg; prior ruling is no longer required for certain cross border reorganizations and in case of a partial contribution of a complete branch of business, the contributing company no longer needs to undertake to keep the shares received for 3 years to benefit from the tax favorable regime.

Who's concerned?

Any foreign groups having numerous legal entities in France and who would like to rationalize their group from a legal, tax and operational perspective by simplifying their Group's corporate structure.

Next steps? How we can help?

- ✓ **Review of the rationality of the current and desired** Group structure (tax, legal and financial due diligences)
- ✓ **Advice on available options** by means of a cost-benefit analysis
- ✓ **Preparation of and support in implementing** the chosen scheme with an eye toward maximizing internal resources

2.2 Tax Audit & compliance

Transfer Pricing documentation

Applicable rules?

1. Full documentation :

The full transfer pricing documentation should be made available to the FTA upon tax audit. It should include general information on the group covering more specifically foreign related companies entering into transactions with the French company and specific information on the French company, in particular functional analysis, economic analysis, amounts of intragroup flows and benchmarks. For FYs opened as from 1 January 2018, the documentation requirement is strengthened and aligned with BEPS requirements (action 13).

2. Simplified documentation :

Summarized information related to the consolidated group and to the French entity should be provided in the form 2257 to the FTA within 6 months of filing of tax return.

Who's concerned?

1. Full documentation: French entities with a turnover or gross assets on the balance sheet exceeding €400m or with a more than 50% direct or indirect shareholder or subsidiary interest meeting this threshold.
2. Simplified documentation: the threshold is decreased to €50M for FY closed on or after 31st December 2016.

Risks?

Failure to provide a **full TP documentation** within 30 days of formal notice could lead to a minimum €10k fine or, if higher, 0.5% of the amount of undisclosed transactions (if not reassessed) or 5% of the tax reassessment.

Failure to file the **simplified documentation** is subject to a fine of €150 and could increase the risks of tax audit and/or tax reassessments.

What to do? / How can we help?

- ✓ **Implement a TP analysis, realize benchmarks and prepare a full documentation where required by the law**
- ✓ Or, perform a **TP assessment** in order to verify that the transfer pricing methodology already in place complies both with OECD and French standards
- ✓ Help to ensure **consistency of the simplified documentation** with information disclosed in the full documentation
- ✓ When the company already has TP methodologies and documentation: **review the justification of the documentation**
- ✓ At the end of each FY, **check the right application of the TP method and its outcome in the FY financial sheets**

Tax raid practice

Rules applicable?

The FTA have the right to perform a tax raid if there is a presumption of tax avoidance for CIT or VAT purposes (PE, substance, TP,…).

Tax raids must be allowed by a judge whose decision indicates the scope of the visit (most of the time very wide).

The FTA have the right to seize, on site and everywhere else, evidence and documents, whatever the medium used, relating to the existence of fraudulent acts (except documents covered by the client/attorney privilege).

Who's concerned?

Increased use by tax authorities against companies, focusing on major international groups particularly in the following situations:

- ✓ Groups having a principal structure in Switzerland and Luxembourg and performing distribution activities in France (conversion scheme);
- ✓ Transfer of French IP to foreign countries;
- ✓ Hybrid structure allowing significant deductions in France (e.g. financing/royalties);
- ✓ Potential French PE of foreign companies;
- ✓ Foreign companies being managed and controlled from France;
- ✓ More generally, complex structure implying Switzerland, Luxembourg, Ireland or other low taxed jurisdictions.

Risks?

- Increased reassessments and no access to competent authorities
- Significant penalties (quasi-systematic application of the 40% bad faith penalty, in some cases application of the 80% abuse of law penalty)
- Potential implementation of the criminal liability of the managers particularly in case of fraud

What to do? / How can we help?

✓ **Before any tax raids:**

- Meeting with management to explain raid practice (matter and procedure)
- Diagnostic of the company processes

✓ **In case of tax raids:**

- During the raid, assistance of a dedicated and specialized task force
- Analysis of the documents seized and assessment of the potential risks for the French company, the group and the legal representatives
- Assistance in the frame of the following litigation process

Accounting electronic file : French "FEC"

Rules applicable?

Tax payers should be compliant with the obligation to provide the FTA with the "FEC" (accounting entries files from the information system of the companies) in case of a tax audit. The e-file has to be generated each year by the company's accounting software.

The e-file must be provided to the tax inspector at his first visit on site.

Who's concerned?

This requirement applies to French companies, French branches or Permanent Establishments of a foreign company.

Risks?

- For each FY, failure to comply with this requirement triggers a €5k penalty which can be increased, in case of reassessment, to 10% of the additional tax assessed ;
- Tax authorities may self-assess the taxable income (based on the opposition to a tax audit process). A potential 100% penalty on additional tax to be paid may be assessed on the items at issue;
- The opposition to a tax audit process could give rise to a €25k fine (plus a 6 month jail in case of recidivism).

What to do? / How can we help?

✓ **Test the compliance to the obligation of providing the «FEC » in terms of:**

- Capacity to extract technically the FEC
- Mapping between the 18 compulsory fields of the FEC and the existing fields in the ERP of the enterprise
- Conformity of the accounting data in the FEC
- Legibility of the FEC by the FTA

✓ **Reviewing the compliance of the « FEC » extracted by the enterprise**, notably in terms of content, format and medium

✓ **Test and evaluate correctives measures**

✓ **Identify the tax risk areas** generated by the communication of the full accounting data provided in the accounting electronic file

✓ If needed, **adapt accounting and tax processes to reduce these tax risk areas**

VAT : E-invoicing and Audit trail

Applicable rules?

Since 1st January 2013, invoicing rules have been implemented by the European and French authorities. The authenticity of the origin, the integrity of the content and the legibility of an invoice, either in paper or electronic format (other than EDI or advanced electronic signature) have to be ensured through a reliable audit trail (e.g. the evidence of the reality of the transaction).

Different business controls should be put in place from the invoice's date of issuance through the end of the archiving period. In practice a specific and VAT dedicated documentation needs to be drafted, updated each year and provided upon request in case of a tax audit ("VAT audit trail").

Companies are required to check the validity of the VAT identification numbers of their suppliers and customers. As from 2017, the FTA are granted extended investigation powers in order to verify the validity of VAT refund claims and new e-invoicing rules have been implemented for companies for their sales and purchases invoices (Loi Macron, Chorus Platform for Public sales, etc.).

Who's concerned?

All French VAT registered companies issuing and receiving invoices.

Risks?

- If the VAT invoicing regulation is not complied with, all purchases and sales invoices issued by companies may potentially be rejected.
- Accordingly, the input VAT recovery right could be rejected and VAT invoicing penalties could be applied (€15 for any missing invoicing data, 5% to 50% of the amount of the invoice for sales without invoices, €150 for non production of invoices, etc.).

What to do? / How can we help?

- ✓ **Anticipate** the invoicing constraints / rules
- ✓ **Make sure** that the invoicing and archiving solutions are compliant with the French rules
- ✓ **Review** the compliance of the invoicing and archiving systems implemented by the company
- ✓ **Safeguard** the tax deductibility of input VAT by preparing a full documentation commenting on VAT audit trail
- ✓ **Assistance** in the course of the VAT refund claim audit
- ✓ **The PwC VAT ID tool** is available to help companies check the VAT identification numbers of their customers and suppliers

2.3 BEPS compliance

Base Erosion Profit Shifting - BEPS

Applicable rules?

In 2015, the OECD launched an action plan based on 15 different actions to fight against BEPS to ensure more coherence, substance and transparency. In 2016, the EU adopted ATAD, to be implemented in principle by 1st January 2019, unless a deadline extension is granted (2024).

As of today, the French measures already adopted :

- ✓ Anti-hybrid rules on interest since FY13 and dividends since FY14
- ✓ Interest deduction: currently 6 rules, more restrictive than the 30% EBITDA test
- ✓ Application of the anti-abuse clause under the parent/subsidiary regime and the withholding tax exemption on dividends
- ✓ Exchange of rulings
- ✓ Multilateral Instrument (MLI) : France signed on 7 June 2017 -conservative approach on MLI options (e.g., taxation of capital gains on real estate companies, PE exclusions subject to the "preparatory or auxiliary" criteria,etc).
- ✓ Transfer pricing documentation : Master file and local files requirements strengthened and aligned with BEPS for FYs opened as from 1 January 2018
- ✓ CBCR (applies to FYs opening on or after 1st January 2016)
- ✓ Exit tax already applied
- ✓ CFC: existing rules with a wider scope than in ATAD (no change planned)

The **measures under discussion** :

- ✓ Transposition of interest deduction rules : 30% EBITDA
- ✓ Patent box regime to be aligned on the nexus approach

What to do? / How can we help?

- ✓ **Identify hybrid mismatch arrangements**
- ✓ **Review the corporate and contractual structures** and decide on the existence of a permanent establishment; in case of doubt apply for a non-PE ruling to secure the position
- ✓ **Review the transfer pricing policy** in the light of the new methodology provided to assess risks, functions and intangible assets, especially for R&D, IP and financial functions
- ✓ **Review the financing structures**
- ✓ **Provide recommendations on "good practices"**

2.4 Personal Income Tax measures

New individual income withholding tax system from 1st January 2019

Scope

Employer obligation to withhold on most employment income, with some compensation component exemptions (i.e., qualified option and shares schemes).

Who's concerned?

French employer and non-French, offshore employers will be obligated to register and remit withholding.

Practical aspects

- Withholding individual income rate will generally be determined by the FTA based on historical tax liability information
- 2018 « blank year » - credit for tax on regular income on 2018 tax return filed in 2019 to minimize double taxation cash flow issue:
  - « Exceptional income » not eligible for credit – currently includes e.g. severance, relocation allowances, pension capital payments
  - Expected scrutiny on preventing abusive shifting (i.e. shift income to 2018)

What to do? / How can we help?

- ✓ **Inventory the France touching population and applicable payrolls**
- ✓ **Register non-French employers** as required, identify a local representative in France
- ✓ **Roll out of procedures** to all applicable French payrolls, aligning processes
- ✓ **Confirm how to handle 2018 "blank year"** credit for tax equalization purposes – continue French home hypothetical for 2018?

Tax on real estate property

Purpose?

Amend the wealth tax (so-called "*ISF*") so that it applies exclusively to real estates.

Applicable rules?

Since 1st January 2018, the ISF is replaced by a tax on real estate properties (so-called "*l'impôt sur la fortune immobilière*" or "*IFI*"). The IFI is applicable to real estate properties held for personal purposes and not attributed to the professional activity of the owner.

Accordingly, IFI is payable by residents with net real estate assets in excess of €1.3 million. The tax rate starts at 0.5% and tops out at 1.5% for net assets over €10 million, the total tax liability being capped to 75% of the annual income.

Scope of application and taxable base re-centered on non-professional real estate property.

- ✓ Reduced deductible debts (limited to the taxes related to taxable real estate assets, excluding income tax, …).
- ✓ The tax reduction called "ISF-PME" is eliminated.
- ✓ The anti-abuse "cash box" is maintained.

Who's concerned?

All taxpayer meeting the conditions detailed above.

What to do? / How can we help?

- ✓ **Identify the real estate properties eligible**
- ✓ **Quantify the impact of the IFI**
- ✓ **Help with the compliance**

Incentives and Cash opportunities

3

3.1 Incentives

R&D Tax Credit

Key figures

French R&D tax credit (RDTC) exists since 1983 and has been improved several times to become top-ranked amongst OECD countries. Some positive impacts to date:

- ✓ Increase of patents applications in France: + 1.7%;
- ✓ Increase of the number of foreign groups R&D laboratories located in France: from 23 to 73;
- ✓ Opening of Microsoft and Google R&D facilities in France.

RDTC represents a volume of €5 to €6 billion per years.

General rules:

RDTC corresponds to **30% of research and technological development expenses** incurred by a French company during a calendar year.

- ✓ Eligible R&D expenses are still deductible for CIT purposes;
- ✓ RDTC is in principle offset against the CIT liability, any excess credit may be carried forward for 3 years, and the unused portion is refunded at the end of this period.

Process

Determination of the eligible activities: determination of the activities/projects meeting the scientific eligibility criteria for the purpose of the RDTC computation.

Determination of the eligible expenditures: determination of the eligible expenditures attached to the eligible projects.

What to do? / How can we help?

- ✓ Eligibility criteria should be duly justified in the event of a tax audit, **by an appropriate documentation** following the FTA's "guidelines" and "best practices"
- ✓ Quality of the scientific documentation is a key subject in view of audits undertaken by the FTA/Ministry of Research
- ✓ **Implementation/review:**
  - Determination of the eligible projects to be included in the RDTC basis, and help preparing the scientific documentation with our experts;
  - Interviews R&D
  - Assistance to R&D Tax Credit audit

R&D Tax Credit

Eligible expenses

1. **Tax deductible depreciation/amortization expenses** relating to fixed assets, created or acquired newly, and assigned to eligible R&D works/project, including patents acquired
2. **R&D Staff Cost**
3. **Operating costs** corresponding to (i) 50% of the staff costs, (ii) 75% of eligible assets' depreciation and (iii) increased to 200% when relating to new graduate PhD
4. **Subcontracting expenses related to eligible R&D project**
5. **Expenses linked to patents**
6. **Public subsidies** related to R&D eligible projects must be deducted from eligible expenses

What to do? / How can we help?

✓ **Implementation/review:**

- Computation of the RDTC: determination and review of eligible expenses
- Requesting of a complete list of information
- Interviews R&D
- Item-by-item valuation (tax allowances, R&D Staff Cost, Subcontracting expenses, etc...)
- Review of supporting documentation

Competitiveness and Employment Tax Credit ("CICE")

Applicable rules?

Competitiveness and employment tax credit was introduced and is effective for eligible wage expenses from 1st January 2013.

The tax credit is calculated as a percentage of the wages paid, during the calendar year, to employees receiving less than 2.5 times the French minimum wage (SMIC), the 2018 gross monthly SMIC is € 1,498.

The rate of the CICE is decreased from 7 % to 6 % as from 1st January 2018 and repealed as from 1st January 2019**. It will be compensated by a decrease of employer social security contributions.**

The CICE is credited against the CIT payable by the company in respect of the year in which the remuneration, which was taken into account for the calculation of CICE, was paid; any excess credit may be carried forward for 3 years, and the unused portion is refunded at the end of this period.

Cash effects should be significant in 2019 as the CICE effect (wages paid in 2018) will cumulate with the reduction of employer social security contributions.

Who's concerned?

All French companies meeting the conditions detailed above.

What to do? / How can we help?

- ✓ **Review the CICE basis and the CICE computation**
- ✓ **Assess the impact of the change in the law as from 2019**

In 2019, the CICE will be converted into a direct reduction of employer social security contributions.

The French patent box regime

Applicable rules?

The French patent box legislation allows a 15% CIT rate to patents and patentable IPs on both (i) royalty income and (ii) capital gains on sales to unrelated buyers rather than a 33,33% CIT rate (to be reduced to 25% by 2022). This legislation is being challenged as unfair to the European Union single market (viewed as a state aid) as there is no nexus condition.

The OECD's BEPS reforms call for compliance with the **modified nexus approach**.

The modified nexus approach is intended to ensure that, in order for a significant proportion of IP income to qualify for benefits, a significant proportion of the actual R&D activities must have been undertaken by the qualifying taxpayer itself.

Accordingly, a ratio must be applied on the IP income :

- ✓ The qualifying expenditure includes : R&D expenditure incurred by the taxpayer itself and subcontracting expenses to unrelated parties.
- ✓ Overall expenditure includes : the qualifying expenditure, acquisition costs and subcontracting expenses to related parties.

This approach intends to reallocate the patent box benefit where R&D activity is undertaken.

Who's concerned?

All French companies meeting the conditions detailed above.

What to do? / How can we help?

✓ **Analysis :**

- Track R&D expenditure and contract nature
- Reviews of remuneration conditions and cost centers taken into account
- Reviews of the assets concerned and their location

✓ **Workaround :**

- Redefinition of cost centers for a better targeting of R&D costs and a separation of other costs
- Revenue tracking of technologies embedded in products
- Adaptation of IT tools to collect the necessary data
- Analyze the location of technology and R&D

The French patent box regime under discussion (i.e. public consultation launched between April and May 2018), to align this regime on the nexus approach.

3.2 Cash opportunities

3% distribution tax

Applicable rules?

Dividend distributions and deemed dividend distributions made by French companies and French branches of non EU entities used to be subject to a 3 % tax, except for distribution taking place within a French tax consolidated group. This 3% distribution tax was not deductible from the CIT basis.

Following an ECJ judgment and a French Constitutional Court ruling, the contribution was held contrary to the parent/subsidiary directive and to French constitutional law.

The contribution is repealed for dividends paid as from January, 1st 2018.

Who's concerned?

Multinationals operating in France should consider claiming in order to seek the refund of the tax they have paid.

Opportunity?

It is possible to file refund claims for the 3% tax paid in respect of dividends paid until 31st December 2017. Setting aside specific situations (such as tax audit), claims can be filed until 31st December 2018 for the 3% tax paid in 2016. Additionally, based on tax procedural argument, we believe that a tax refund could be claimed even for statute barred fiscal years (legal vacuum).

What to do? / How can we help?

- ✓ **Identify possible litigation actions in order to maximize your chance of success.**
- ✓ **Prepare or review documentation to support the claim**
- ✓ **Claim as soon as possible in order to secure the company's rights.**

Litigation related to the 5% lump sum on dividends – "Steria"

Rules applicable?

By application of the participation exemption regime, dividend distributions made to a parent company were 95% CIT exempt, due to the taxation of a 5 % lump sum.

For FYs opened until 31 December 2015, the 5 % lump sum was neutralized within a French fiscal unity that could only be entered into between French companies. As a result, distributions within a fiscal unity were 100% exempt. The ECJ ruled in September 2015 that this regime was contrary to EU law.

Who's concerned?

French companies that received dividends.

Opportunity?

Based on this ECJ case, French companies which have applied the 5% lump sum taxation on dividends received from 95% held EU companies are eligible to claim for the reimbursement of the corresponding CIT paid.

Statute of limitation has to be analyzed on a case-by-case basis. The claims should in any case be filed as soon as possible.

What to do? / How can we help?

- ✓ **Identify possible litigation actions** in order to maximize your chance of success
- ✓ **Prepare or review documentation** to support the claim
- ✓ **Claim before 31st December 2018** to avoid the running of the limitation period for dividends paid in 2015 (if CIT was paid in 2016).

Thank you !

Any questions ?

Contacts

The Dutch French initiative – a coordinated approach

The Dutch desk in France …

Rémi Montredon
Tax Partner
Paris

Eve Castex
Tax Director
Paris

… together with your Dutch champions for France

- **Jan-Willem Thoen**
- **Michel van Dun**
- **Manoel de Goeij**