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Main provisions concerning the companies of the real estate sector

1. Reform of the limitation to the tax deduction of the financial expenses

The current rules on the general limitation of 75% and on the thin-capitalization limitations are replaced by a regime applicable to enlarged financial expenses providing for an alternative ceiling (fixed amount or part of the "tax" EBITDA) varying depending on whether the company concerned is treated as being thin-capitalized or not (ceiling of 1M€ /10% of the "tax" EBITDA or 3M€ /30% of the "tax" EBITDA)

- **The new mechanism is applicable to fiscal years opened as from January 1st, 2019, thus leaving time necessary to review the existing financing structures in view of their modification, if necessary, before end of fiscal year 2019,**
- **Moreover the application of the "old" rules to fiscal years opened until December 31, 2018 will have to be determined taking into account the decision of the Montreuil court (18-1-2018 no 1702561) relating to the interest rate swap expenses.**

2. Introduction of an anti-abuse rule for Corporate Income Tax (CIT) purposes

When determining the CIT basis, the Authorities can ignore the non-genuine arrangements (i.e. not put in place for valid business reasons reflecting economic reality) having as main objective, or among main objectives, a tax advantage contrary to the applicable tax law.

- **This provision is applicable to fiscal years opened as from January 1st, 2019, corresponding to the enlargement of the anti-abuse clause of the parent-subsidiary regime (on income from movable property), and is applicable in addition to the general anti-abuse rules (article L34 LPF). This rule will have to be taken into account (notably) when setting-up international shareholding structures and when reviewing risk exposure for the existing ones.**

3. Modification of the valuation rules of the industrial plants for real estate taxes ("taxe foncière", " CFE ")

The accounting method for valuation of industrial premises (instead of the price valuation method) will be excluded when the technical facilities, equipment and industrial tools will have a value not exceeding 300K€.

- **This exclusion is applicable as from 2020**
- **The finance bill also includes a smoothing mechanism over a 3 year period of the variations > to 30% of the rental value, variations due to a change in the valuation method (or to a change in the premises' industrial/professional-use, or professional/industrial-use)**

¹ Loi n° 2018-1317 du 28 décembre 2018

4. Easing of the currently irrevocable election for CIT of the transparent companies

Renouncement to the CIT election is authorized until the fifth fiscal year following the fiscal year during which the election was filed.

➤ **This easing is applicable for the fiscal years closed as from December 31, 2018**

5. Adjustments of some tax group rules and enlargement to non-tax-consolidated companies

The adjustments mainly concern the distributions regime, the sales of equity shares and the possibility to invoice at cost price within a tax-group..

➤ **The adjustments are applicable to fiscal years opened as from January 1, 2019**

They include a reduction of the rate (from 12% to 5%) of the portion of cost and expenses remaining taxable on the sales of equity shares, which shall benefit to number of operations (except on shares of real estate oriented companies)

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Main provisions concerning the individuals

Easing of the implementing provisions of the *Exit Tax*

The provisions will mainly concern :

- (i) The reduction to 2 years, or 5 years when the total value of shares exceeds M€2,57, of the cancellation delay – or refund- of the taxation of the latent capital gains under tax deferral – or paid - when moving tax residency outside France (instead of the 8 years for moves before 2014 and, 15 years from moves between 2014 and 2018),
- (ii) Enlargement of the automatic deferral of payment to the moves in a State not being EEE member (excluding uncooperative countries) with a mutual administrative convention against fraud and tax evasion and by a mutual assistance for recovery convention.

➤ **The easing provisions are applicable to moves made as from January 1st, 2019**

Easing of the "*Pacte Dutreil*" mecanism (further to the "*Loi Pacte*")

The provisions will mainly concern :

- (i) Facilitating the contribution of shares to a holding company,
- (ii) Challenge of the duties exemption (75% of the value of the donated shares) only partial for the beneficiary breaking the conservation collective undertaking further to a sale/donation of part of his/her shares to another partner also signatory of the "*Pacte Dutreil*"

➤ **The easing provisions are applicable as from January 1st, 2019**

Creation of a "mini abuse of law process" applicable to all taxes

It will allow the French Tax Administration to disregard the arrangements having for main purpose obtaining a tax advantage in addition to the general abuse of law process allowing to disregard the arrangements having for sole purpose obtaining a tax advantage.

- **The process will be applicable as from 1st January 2021, for arrangements/deeds done or completed as from 1st January 2020**
- **It may concern the donations of real estate bare-ownership which tax treatment is favorable regarding inheritance taxes**