SALMON-LEGAGNEUR & ASSOCIÉS
AVOCATS À LA COUR

TAX ALERT
October 11, 2018

Provisions of the French draft Finance Bill for 2019 concerning companies of the real estate sector[1]:

(**1**) Introduction of a general anti-abuse rule for CIT purposes enabling to ignore non-genuine arrangements which do not meet valid commercial reasons which reflect economic reality.

(**2**) Replacing the current rules relating to the limitations of deduction of financial expenses (general limitation and thin cap limitations) by regime:
- **applicable to enlarged financial expenses/borrowing costs** (notably the interest under derivative instruments or hedging arrangements related to borrowings, and capitalized interest included in the balance sheet value of an asset),
- **limiting the deduction of net financial expenses to the higher of the following ceilings:**
(i) 3M€ or 30% of "tax EBITDA"[2] for enterprises <u>not</u> "thin capitalized"[3],
(ii) 1M€ or 10% of "tax EBITDA" for enterprises "thin capitalized",
- allowing deferral of the exceeding financial expenses without time limitation and deferral of the unused interest deduction capacity upon the 5 following fiscal years.

The new regime includes specific rules (on additional deduction) in case of belonging to an IFRS consolidated group and/or a French tax consolidated group.

The above two measures correspond to the transposition in France of the "Atad" Directive (UE/2016/1164) dated July 12, 2016, applicable to fiscal years opened as from January 1st, 2019.
Concerning the new regime of limitations of deduction of financial expenses, it could be unfavorable to enterprises or favorable depending on each case and on investment phase. Moreover, in certain cases, equity restructuring (recapitalization) could enable currently "thin-capitalized" enterprises to benefit from above-mentioned ceilings (i) and to improve their deduction capacities.

For further information regarding this alert, please contact:

Sybille Salmon-Legagneur
E: ssalmon-legagneur@sl-avocats.fr

Marie Dessimond
E: mdessimond@sl-avocats.fr

Salmon-Legagneur & Associés
Avocats à la Cour
A.A.R.P.I.
34 avenue George V
75008 Paris
Tel. : +33(0)1 56 89 20 20
www.SL-avocats.fr

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[1] 2nd draft amended Finance Bill for 2017 (n°384)
[2] Tax EBITDA corresponds to tax result (subject to full rate) before tax (and before tax losses) adjusted with (a) net financial expenses in scope of the regime, (b) net depreciation admitted as deductible and (c) provisions after reversal admitted as deductible.
[3] An enterprise is "thin capitalized" when the average of its debts towards controlled companies exceed 1.5 times its equity.