

Tax alert : Finance Act for 2024

Tax alert no.1 – January 11th, 2024





SUMMARY

A – Finance Act for 2024

01 – Corporate tax

02 – Individual taxation

03 – Audit and litigation

B – Focus on topics to follow

Introduction

The bill was definitively adopted without a vote by the National Assembly on December 21, 2023.

In its decision no. 2023-862 DC of December 28, 2023, the “Conseil constitutionnel”, which had been seized by more than 60 deputies on December 22, 2023, ruled that the Finance Act for 2024 (hereinafter, “**FA for 2024**”) was partially incompatible with the French Constitution : on this basis, it censured (i) article 31 of the FA for 2024 providing for tax exemption for international sports federations recognized by the International Olympic Committee and their employees domiciled in France for 5 years, and (ii) 12 “cavaliers budgétaires”, i.e. provisions outside the scope of finance laws.

The FA for 2024 was published in the “Journal officiel” on December 30, 2023.



Finance Act for 2024

Corporate tax & VAT



Corporate tax

Key corporate tax measures

Presentation of the key measures

Adjustment of the abolition of the CVAE (FA for 2024, article 79)

While the Finance Act for 2023 provided for the abolition of the CVAE over two years starting in 2023 (Finance Act for 2023, article 55), its definitive abolition will now be **postponed until 2027**.

As a result, the maximum CVAE tax rate is lowered to :

- 0,28% in 2024 ;
- 0,19% in 2025 ;
- 0,09% in 2026 ;
- **Total abolition in 2027.**

The CET capping rate will also be gradually lowered over 4 years.

Changes to the timetable for the introduction of electronic invoicing (FA for 2024, article 91)

Following on from the Government's press release informing of the postponement of the entry into force of this reform, article 91 of the FA for 2024 sets out **a new timetable for its application** :

- Concerning the receipt of electronic invoices : mandatory for all taxable persons, from September 1, **2026** ;
- Concerning the issuing of electronic invoices and e-reporting :
 - For large companies, mid-sized companies and single taxable persons (VAT groups) : mandatory from September 1, 2026 ;
 - For micro-businesses and small and medium-sized enterprises (SMEs) not members of a single taxable entity : mandatory from September 1, 2027.

Corporate tax

Key corporate tax measures

Presentation of the key measures

Article 33 of the FA for 2024 transposes into domestic law Directive 2022/2523 of December 15, 2022 which aims at ensuring **a minimum worldwide tax level at 15%** for multinational and large-scale national corporate groups, known as “Pillar 2”.

The main purpose of this measure is to levy an additional tax on the parent company of a group with consolidated annual sales of €750 M or more (in at least two of the previous four financial years) when the effective tax rate of the group’s constituent entities located in the same country or territory, taken together, is less than the minimum tax rate of 15%. The effective tax rate is determined, for each state or territory in which the Group operates and for a given financial year, by the ratio between (i) the amount of “covered” taxes (i.e. income taxes and equivalent taxes borne by the constituent entities) established in that state or territory, including deferred taxes, and (ii) the income earned by these entities, subject to specific restatements.

The additional tax is independent of corporate income tax and is not deductible from the latter.

In addition, where this rule does not apply, a rule on under-taxed profits provides that the additional tax is paid by all the entities making up the group, which share this tax on the basis of an allocation key.

The group’s parent company will be required to file an information return in respect of the additional tax and a statement of settlement of the additional tax due. The tax authorities have **until the end of the fifth year following the year in respect of which the tax is due** to initiate a tax audit.

Article 33 of the FA for 2024 specifies that these measures will apply to **fiscal years beginning on or after December 31, 2023** with the exception of the rule on under-taxed profits, which will in principle apply to **fiscal years beginning on or after December 31, 2024**.

Pillar 2 directive (FA for 2024, article 33)

Corporate tax

Key corporate tax measures

Presentation of the key measures

Strengthening transfer pricing controls for multinational companies (FA for 2024, article 116)

- Lowering the threshold for documentary requirements

The obligation to document transfer prices (Tax Procedure Book, article L. 13 AA) is extended to smaller companies than those currently concerned, since the threshold currently set at 400 million euros is **lowered to 150 million euros (total annual sales excluding VAT or total gross assets)**.

- On the increase in the amount due in the event of failure to submit or partial submission of transfer pricing documentation

Failure to respond to formal notice to produce or complete documentation is punishable by a fine of up to 0,5% of the amount of undocumented transactions or 5% of the profits transferred relating to such transactions, **but not less than €10,000** (French Tax Code, article 1735).

Article 116 of the FA for 2024 raises this minimum amount to **€50.000**.

- Introduction of a new presumption of indirect profit transfer

Article 116 of the FA for 2024 introduces a new presumption of indirect profit transfer by a legal entity where a difference is found between (i) the transfer price determined according to the method actually used by the company and (ii) the transfer price that would have been achieved if the method described in the documentation made available to the tax authorities had been used.

This measure aims at **making the documentation drawn up for the tax authorities enforceable against the legal entity**.

This is **a simple presumption**, which can be fought by providing the absence of a transfer of profit or loss, either by increasing or decreasing purchase or sale prices, or by any other means : the company will have to show that the arm's length principle has been respected, even if the method used is not the one described in the documentation.

Corporate tax

Key corporate tax measures

Presentation of the key measures

- Tighter control over the transfer of intangible assets

Article 116 of the FA for 2024 enshrines in domestic law the approach proposed by the OECD in its Transfer Pricing Guidelines for Multinational Enterprises, and provides that **the value of a difficult-to-value transferred asset or intangible right may be adjusted on the basis of results subsequent to the financial year in which the transaction took place.**

These include **intangible assets and rights that are difficult to value**, as defined in article 1649 AH, II-E-2° of the FTC (DAC6 markers).

The tax authorities may use actual results after the year in which the intangible asset in question was transferred to presume that the item was undervalued or overvalued at the time of transfer, under the conditions described in the OECD guidelines. However, the presumption will be **a simple one** : the taxpayer will be able to fight the presumption by proving a fair valuation, by (i) providing detailed information on the forecasts used at the time of the transfer to determine the price, and (ii) establishing that the significant difference between these forecasts and actual results is due to the occurrence of unforeseeable events at the time of determining the price, or to the realization of foreseeable events (if their probability has not been significantly underestimated or overestimated).

However, such an adjustment would not be possible in cases where (i) the transfer of the intangible asset or right in question is covered by a prior bilateral or multilateral price agreement between the jurisdiction of the transferee and the jurisdiction of the transferor, (ii) the difference between the valuation resulting from the provisions established at the time of the transaction and that resulting from actual results is less than 20%, or (iii) a marketing period of five years has elapsed after the year in which the asset or right first generated revenues from an entity unrelated to the transferee, and during this period the difference between the forecasts established at the time of the transaction and actual results is less than 20%.

The tax authorities will have a reinforced right of recovery, expiring **at the end of the 6th year** following the year in which the tax is due. Lastly, a derogation has been introduced from the prohibition on repeating an accounting audit for these “ex post” adjustments to intangible assets.

Article 116 of the FA for 2024 specifies that these changes will apply to **fiscal years beginning on or after January 1, 2024.**

Strengthening transfer pricing controls for multinational companies (FA for 2024, article 116)

Corporate tax

Key corporate tax measures

Presentation of the key measures

Modification of the young innovative companies (JEI) scheme and introduction of young growth companies (JEC) (FA for 2024, articles 44 et 69)

- On adjusting the tax system for young innovative companies (called in French “jeunes entreprises innovantes” or JEI)

Article 69 of the FA for 2024 stipulates that the **income tax exemption for JEI will cease to apply to companies created on or after January 1, 2024** (rather than those created on or after January 1, 2026), with no impact on exemptions from local taxes or social security contributions.

- On the introduction of young growth companies (called in French “jeunes entreprises de croissance” or “JEC”)

Article 44 of the FA for 2024 **introduces a new status for innovative companies** that will be eligible for tax and social security breaks.

SMEs created less than eight years ago, whose share capital is held under the same conditions as JEIs, which are not created as part of a merger, restructuring, extension or takeover of pre-existing activities (FTC, article 44 sexies-0 A, 1°, 2°, 4° and 5°) and which (i) have carried out a volume of research expenditure representing between 5% and 15% of expenses, excluding foreign exchange losses and net expenses on disposals of marketable securities, and (ii) meet defined economic performance indicators (the details of which will be specified by decree) would qualify as JECs.

It is specified that, for the calculation of the research expenditure ratio, no account will be taken of expenses incurred with other JECs or JEIs carrying out research and development projects.

In the absence of such clarification, this provision will apply **from January 1, 2024**.

Corporate tax

Key corporate tax measures

Presentation of the key measures

Bringing the parent-subsubsidiary regime into line with European Union law (FA for 2024, article 52)

Article 52 of the FA for 2024 brings the regime for income from investments received from European subsidiaries into line with European Union law.

As a result, the reduced rate of the share of costs and expenses (i.e. 1%) will be **extended to dividends qualifying for the parent-subsubsidiary regime, received from a European subsidiary that meets the conditions of the tax group regime** with a company that has renounced its status as parent company or member of a group with other French companies.

With regard to investment income not eligible for the parent-daughter regime, **the condition that non-participation in a group does not depend solely on the absence of options and agreements to be formulated has been removed** : thus, a company which is not tax integrated will be able to benefit from the reduced rate on dividends received from a European subsidiary, provided that the latter would have met the conditions for forming a tax consolidated group if the distributing company was located in France.

However, these extensions are subject to the fact that the conditions for tax consolidation must have been met for more than one financial year.

In the absence of any clarification to this effect, these provisions will come into force for **financial years ending on or after December 31, 2023**.

Corporate tax

Key corporate tax measures

Presentation of the key measures

Bringing the accommodation services regime into line with the VAT directive (FA for 2024, article 84)

Following an opinion issued by the “Conseil d’Etat” on July 5, 2023, which considered article 261-D-4° of the FTC partially incompatible with the VAT directive, article 84 of the FA for 2024 proposes to rewrite this article, making a **distinction** between :

- **accommodation services provided within the hotel sector or sectors with a similar function** (whatever the qualification) which would be subject to VAT if, cumulatively, they (i) are offered to the customer for a period not exceeding thirty nights (with the possibility of booking for a longer period) **and** (ii) include the provision of furnished premises and at least three of the following services, among which breakfast, regular cleaning of the premises, the supply of the household linen and the reception, even if not personalized, of customers ; and
- **rental of furnished residential accommodation in other sectors** (student residences, senior residences, etc.), which would be subject to VAT if they were accompanied by three of the above-mentioned services.

The purpose of this amendment is to make a clear distinction between (i) the hotel sector and sectors with a similar function and (ii) the residential sector.

As a result, the provisions relating to the rate applicable to the provision of accommodation have also been amended : the intermediate rate now applies both to the provision of accommodation in the hotel sector or sectors with a similar function, and to the letting of furnished accommodation for residential use in other sectors, where these meet the above conditions.

In the absence of any clarification to this effect, these provisions will apply [from January 1, 2024](#).

Corporate tax

Key corporate tax measures

Presentation of the key measures

Modification of VAT territoriality rules relating to leases of tangible movable property supplied to non-taxable persons established outside the European union (FA for 2024, article 112)

Article 112 of the FA for 2024 amends the territoriality rules applicable to rentals of tangible movable goods, other than means of transport, supplied to non-taxable persons established outside the European Union, **in order to make them subject to VAT in France when these goods are used there**, with the aim of combating tax fraud.

Until now, rentals of tangible movable goods other than means of transport were not subject to VAT in France when supplied to a non-taxable person established outside the EU, **even if the supplier was established in France and the rented goods were used there**. Nor were such rentals generally subject to VAT in the lessee's country of residence.

As a result, a number of tourists residing outside the EU escaped taxation on the rental of sports and leisure equipment during their stay in France.

Article 112 of the FA for 2024 corrects this situation, which runs counter to the principle of equality before the tax, by amending article 259 C of the FTC, which now deems the location of rentals of tangible movable goods, other than means of transport, to be in France, provided to non-taxable persons who have not established or do not have their domicile or habitual residence in an EU member state, **when the actual use or operation of these services takes place in France, regardless of the place of establishment of the service provider** (France, another EU Member State or a third country).

The criterion of effective use or operation will have to be analyzed on a case-by-case basis, taken into account the nature of the service and the conditions under which it is used or operated. In this context, the duration of the stay in France of customers established in a third country may only be temporary (CJEU, April 15, 2021, case 593/19).

In the absence of any clarification to this effect, these provisions will apply to leases of tangible movable goods entered **into or after January 1, 2024**.

Individual taxation



Individual taxation

Key personal tax measures

Presentation of the key measures

New definition of activities eligible for the “Dutreil” exemption on donation of shares (FA for 2024, article 23)

- On the exclusion of asset management activities from activities eligible for the “Dutreil” exemption

Both the “Cour de cassation” and the “Conseil d’Etat” have ruled that furnished rental activities were eligible for the “Dutreil” exemption, casting doubt on the eligibility of these activities to the “Dutreil” exemption.

Article 23 of the FA for 2024 **amends the definition of eligible business activities by referring to articles 34 and 35 of the FTC**, thus **excluding** activities relating to the management of one’s own movable or immovable assets, i.e. furnished rental activities and the activities of lessors of commercial or industrial establishments equipped with the furniture or equipment necessary for their operation.

- On the inclusion in the law of the eligibility of companies carrying on a mixed activity or a managing holding activity.

Article 23 of the FA for 2024 amends articles 787 B and 787 C of the FTC to stipulate that :

- the eligible activity must be carried out “on a principal basis”, thus explicitly including companies with a mixed activity ; and
- **a managing holding company**, defined as a company which, in addition to managing a portfolio of holdings, **has at its principal activity the active participation in the management of the policy of its group**, made up of directly or indirectly controlled companies carrying on an industrial, commercial, craft, agricultural or liberal activity, and to which it renders, where applicable and on a purely internal basis, specific administrative, legal, accounting, financial and real estate services, **is considered as having a commercial activity.**

Article 23 of the FA for 2024 stipulates that these changes apply to [donations of shares taking place on or after October 17, 2023](#).

Individual taxation

Key personal tax measures	Presentation of the key measures
<p>Remunerations for services rendered abroad : extension of the scope of article 155 A (FA for 2024, article 10)</p>	<p>Article 155 A of the FTC is designed to “catch up” with individuals who try to evade income tax by having a third party domiciled/established in a foreign country receive remuneration for services rendered by these taxpayers in France.</p> <p>Where this provision was applicable only in the case of remuneration for the provision of services, article 10 of the FA for 2024 extends its scope to include royalties, i.e. sums paid <u>in return for the commercial exploitation of rights attached to the image, name or voice of one or more persons, the use of copyright or related rights, or industrial or commercial property or similar rights</u>, thereby overturning current case law.</p> <p>Article 155 A of the FTC is also supplemented by a provision stipulating that, when the person domiciled or established outside France <u>transfers to the person domiciled or established in France all or part of the sums taxed on its basis</u>, the tax corresponding to this income is deemed to have already been paid (reservation of the “Conseil constitutionnel”, following its decision 2010-70 QPC).</p> <p>Article 10 of the FA for 2024 specifies that this provision applies to <u>income received from January 1, 2024</u>.</p>
<p>Wealth tax (“IFI”) anti-abuse measure (FA for 2024, article 27)</p>	<p>With a view to standardizing the rules governing the deductibility of debts, article 27 of the FA for 2024 stipulates that, for the purpose of determining the taxable value of units or shares representing real estate, <u>debts contracted directly or indirectly by a company or organization that are not related to taxable assets are not taken into account</u>, thus generalizing the non-deductibility of debts when they are not related to taxable assets.</p> <p>There are <u>two limits</u> to this new rule :</p> <ul style="list-style-type: none">• if the IFI taxable value of the securities held by the taxpayer resulting from the application of this new rule is <u>higher than the market value of the units or shares</u>, the IFI taxable value of these securities will be capped at their market value ;• if the IFI taxable value of the securities held by the taxpayer resulting from the application of this new rule is <u>lower than the market value of the units or shares</u>, the IFI taxable value of these securities will be the market value of the company’s taxable assets in proportion to the taxpayers’s interest in the company. <p>In the absence of any clarification to this effect, this measure will apply to the <u>“IFI” payable from 2024 onwards</u>.</p>

Individual taxation

Key personal tax measures	Presentation of the key measures
Introduction of “home residence” status in France for non-residents (FA for 2024, article 147)	<p>With the aim of facilitating the return of taxpayers to France, article 147 of the FA for 2024 provides for <u>a reduction in council tax on secondary residences for taxpayers domiciled outside France, in respect of the year of their return to France, on the dwelling that constituted their principal residence at the time of their expatriation.</u></p> <p>This applies to <u>taxpayers returning to France following a call to leave their area of residence or a collective return operation,</u> the list of which will be set each year by joint decree of the Foreign Affairs and Budget Ministers.</p> <p>This rebate will be obtained on presentation of a claim before December 31 of the year following the assessment of the tax.</p> <p>This measure will come into force <u>on January 1, 2024,</u> i.e. for the “taxe d’habitation” due in 2024.</p>
Increase in the allowance applicable to business transfers free of charge and for valuable consideration (FA for 2024, article 22)	<p>Articles 732 ter and 790 A of the FTC provide for an allowance of €300,000 <u>on the value of the business or customer base, or on the fraction of the value of the shares representing the business or customer base,</u> for the purposes of calculating the registration duties (sale) and gratuitous transfer rights (gift) payable in the event of the takeover of a business by its employees and members of the family circle, when certain conditions relating in particular to the activity carried out and the status of the purchaser are met.</p> <p>Article 22 of the FA for 2024 raises this allowance <u>to €500,000.</u></p> <p>In the absence of any clarification to this effect, this measure will apply to <u>sales and transfers carried out on or after January 1, 2024.</u></p>

Individual taxation

Key personal tax measures

Presentation of the key measures

Exit tax : extent of possible relief from social security contributions and adjustment of penalties (FA for 2024, article 11)

- On the scope of a possible rebate or refund for transfers of domicile that took place before January 1, 2024

Article 11 of the FA for 2024 extends **the possibility for taxpayers who transferred their domicile outside France between March 3, 2011 and December 31, 2013 to benefit from a rebate (or refund) of social security contributions**, provided that they can prove that they have held the securities corresponding to the unrealized capital gains for a period of eight years.

- On tougher penalties for failure to comply with reporting obligations

When a taxpayer has transferred his or her tax domicile outside France and an event occurs that gives rise to a tax rebate or refund (return to France or expiry of a deadline following the transfer of the tax domicile outside France, for example), he or she is required to declare, in the year following the occurrence of this event, the nature and date of the event giving rise to the request for a rebate or refund of the tax paid at the time of departure.

Article 11 of the FA for 2024 stipulates that **failure to file this declaration, or omission of all or part of the information required, will result in immediate payment of the deferred tax**, unless the situation is **rectified within 30 days of formal notice**.

Article 11 of the FA for 2014 specifies that this provision applies to events occurring as from 2023.

Individual taxation

Key personal tax measures

Presentation of the key measures

Tax reduction available to taxpayers subscribing to the capital of JEIs and JECs (FA for 2024, article 48)

Article 48 of the FA for 2024 introduces a variant to the IR-PME scheme, creating **an income tax reduction open to taxpayers domiciled in France for tax purposes who subscribe to the capital of (i) JEIs/JECs/JEUs or (ii) holding companies subscribing to the capital of JEIs/JECs/JEUs between January 1, 2024 and December 31, 2028.**

Companies must qualify as JEIs/JECs/JEUs **on the date of the taxpayer's capital subscription** (which would mean that only subscriptions to capital increases would be eligible for the tax reduction).

The rate of this tax reduction is 30% ; it is increased to 50% when the company receiving the payment is a JEI/JEC whose research expenditure represents at least 30% of its expenses.

However, payments are **limited** to €75,000 for single, widowed or divorced taxpayers, and €150,000 for taxpayers who are married or in a civil solidarity pact and subject to joint taxation.

These thresholds are lowered to €50,000 for single, widowed or divorced taxpayers, and €100,000 for taxpayers subject to joint taxation, when subscribing to the capital of particularly innovative young companies (with research expenditure accounting for at least 30% of expenses).

In addition, the combination of this benefit and the tax reduction available to taxpayers who have subscribed to the capital of SMEs **may not result in a cumulative tax reduction of more than €50,000 € over the period from January 1, 2024 to December 31, 2028.**

Audit and litigation



Audit and litigation

Main audit and litigation measures	Presentation of the key measures
<p>More stringent reporting requirements for sales of shares in property companies (FA for 2024, article 119)</p>	<p>In order to fight the fraudulent transfer of real estate through a company with a preponderance of real estate assets, deeds and declarations concerning the transfer of an interest in a legal entity with a preponderance of real estate assets <u>must expressly state whether</u> :</p> <ul style="list-style-type: none">• this legal entity is a transparent co-ownership real estate company (FTC, article 1655 ter) ;• the shareholdings transferred give the transferee, directly or indirectly, the right to use real estate or parts thereof ;• the transferee has paid or undertakes to pay any debts contracted with the transferor by this legal entity, specifying the amount where applicable. <p>These new obligations are intended to apply to <u>sales realized both in France and abroad</u>.</p> <p><u>As the text does not provide for any specific penalties in the event of non-compliance with these new obligations</u>, the general penalties for insufficient declaration (FTC, article 1729) should apply, i.e. 40% in the event of deliberate failure to declare or 80% in the event of abuse of rights, fraudulent maneuvers or concealment of part of the price stipulated in a contract.</p> <p>In the absence of any clarification to this effect, this measure will come into force <u>on January 1, 2024</u>, i.e. for deeds drawn up and declarations made on or after this date.</p>
<p>Extension of the scope of home visits to fraud involving tax credits for businesses (FA for 2024, article 122)</p>	<p>Article 122 of the FA for 2024 <u>extends the scope of home visits to cases where there is a reason to suspect that a taxpayer is making inaccurate declarations with a view to benefit from tax credits</u> available to companies liable to income or corporation tax.</p> <p>In the absence of any clarification to this effect, this measure will apply from <u>January 1, 2024</u>.</p>



Focus on topics to follow

In international taxation

On September 12, 2023, the European Commission unveiled a proposal for a directive on the **BEFIT** initiative (for “Business in Europe : Framework for Income Taxation”).

Its aim is to establish a **common framework for company taxation in the EU**, based on a common tax base and a flat-rate method of apportioning profits, along the lines of the previous “CCCTB” proposal.

In short, the proposal envisages a tax consolidation of results for large international groups, before being subject to various adjustments, and then a share of this tax result would be allocated to each of the member entities of the BEFIT group according to a specific distribution key, which would allow the payment of corporate income tax in each EU Member State concerned.

If adopted, it should be transposed by EU Member States before January 1, 2028, for application from July 1, 2028.

In international taxation

In addition to the BEFIT proposal for large international groups, on September 12, 2023, the European Commission unveiled a second proposal for a directive to **simplify taxation for VSEs and SMEs operating in several EU Member States via permanent establishments.**

As a result, VSEs and SMEs with a permanent establishment in another Member State (and not groups made up of subsidiaries) would be able, by option, to calculate the tax base of this permanent establishment in accordance with the rules of the Member State in which they have their registered office.

In principle, the option would be valid for 5 years and renewable, subject to certain conditions relating to VSE or SME status and the fact that sales thresholds are not exceeded, i.e. a balance sheet total of €25M, net sales of €50M and a workforce of 250 (medium-sized enterprise thresholds).

The option would be global and would apply to all the company's permanent establishments located in the EU, including those created during the period of validity of the option.

If adopted, the directive would be transposed by Member States by December 31, 2025 to come into force on January 1, 2026.

In corporate taxation / BSPCE

At the 10-year anniversary of FrenchTech on October 19, 2023, the French Minister for the Digital Economy, Jean-Noël Barrot, announced a number of measures in favor of start-ups.

At the time, he raised the idea of authorizing JEIs issuing business creator share subscription warrants (called “bons de souscription de parts de créateur d’entreprise” or **BSPCE** in French) to apply an illiquidity discount, in order to enhance their attractiveness and facilitate their ability to attract talent.

Thanks to this discount, companies would be able to offer BSPCEs at a much lower price than the share price, enabling them to offer bonuses to their employees, without cash out, and representing a much higher potential gain for beneficiaries.

While numerous measures concerning JEIs have been adopted as part of the FA for 2024, none concern this possible illiquidity discount.

However, this measure could be included in the administrative doctrine, at an unspecified date ; it would therefore not be enshrined in law but would result from an administrative tolerance, which has less normative scope.

Contact us

Phone number

+33 1 44 17 07 70

Website

<https://everlaw-tax.fr/>

