French Finance Act for 2023

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Local taxes

1. Abolition of the CVAE (FA Art. 55)

This tax, introduced in 2010 to replace business tax, is, along with the business property tax (CFE), one of the components of the territorial economic contribution (CET).

The finance act for 2023 repeals the CVAE over two years from 2023. In practice, the CVAE rate will be halved in 2023 before the tax disappears in 2024. It is worth noting that the CVAE rate had already been reduced by 50 % since 2021.

In practice, the reduction in the CVAE rate that will apply to the contribution due in respect of 2023, will not impact the calculation of the CVAE due in respect of 2022 for which liquidation and payment of the balance will occur in 2023. On the other hand, the new rate may be used to calculate the 2023 CVAE instalments to be paid in June and September 2023.

In parallel with the abolition of the CVAE, the rate of the cap on territorial economic contribution (CET) according to value added, currently set at 2 %, will be lowered to 1.625% in 2023 and then to 1.25% from 2024. From the same year, the cap will become a de facto cap on the sole CFE.

On the legislative side, it should be noted that, following the repeal of the articles of the FTC relating to the CVAE, the provisions relating to the methods of calculating the value added will remain unchanged but will only be used for the calculation of the cap according to value added and will be transferred, from 2024, in the part of the FTC relating to this mechanism.

2. Postponement of 2 years of the updating of the rental values of business premises for property tax and business tax (FA Art. 103)

Article 24 of the amending Finance Act for 2010 implemented the reform of the rental values of business premises used for the establishment of the property tax (“taxe foncière”) on built properties and the business property tax (CFE) with

the aim of better reflecting the state of the rental market. The new rental values were applied for the first time in 2017. The reform also instituted a triple mechanism for regularly updating rental values consisting of:

- an annual update of the tax rates, by applying a coefficient corresponding to the average of the annual change in rents for the three years preceding that of the update ;
- a possible modification of the location coefficients during the third and fifth year following the renewal of municipal councils.
- finally, a six-year update of all the parameters for assessing rental values (delimitation of assessment areas, determination of tariffs and application of location coefficients).

The Finance Act for 2021 had, by way of derogation from this last rule, provided that the six-year update would be carried out for the first time in 2022 and not in 2021, to be taken into consideration in the tax bases in 2023.

However, due to the difficulties encountered by the departmental rental value commissions (CDVL) in charge of the updating work, it was decided to postpone the integration of the new parameters into the tax bases for two years. The updating of rental values should therefore only take place for the tax bases of 2025.

For 2023, rental values will only be updated on the basis of the annual update mechanism.

NOTE: No cap on the annual update of rental values for premises other than business premises

Pursuant to the provisions of the FTC, the rental value of premises other than business premises (industrial premises in particular), is automatically revalued each year by applying a coefficient determined according to the evolution of the harmonized consumer price index of INSEE published in November.

For 2022, the application of this revaluation led to a 3.4% increase in rental values. In the absence of legislative intervention, the increase in rental values for 2023 is estimated at a range **of 6 to 7 %** and will therefore lead, for companies, to an increase in property tax and CFE in the same proportions (before taking into account any change in rates by local authorities).

An amendment adopted by the Finance Committee during the 1st reading of the Finance Bill provided for the capping at 3.5% of the update of rental values for 2023, in order to limit the tax burden. However, this amendment was not included in the text finally voted.

French Corporate income taxes

1. Temporary contributions to tackle high energy prices

On 6 October 2022, the Council of the EU adopted a regulation implementing an emergency intervention to deal with high energy prices (Regulation (EU) 2022/1854, published in the OJEU on 7 October and entered into force on 8 October).

This Regulation endorsed a set of measures, including:

- the introduction of a temporary solidarity contribution (hereafter “TSC”) for EU companies and permanent establishments operating in the crude oil, natural gas, coal and refining sectors ;
- the introduction of a mechanism to cap market revenues obtained by electricity producers (so-called "inframarginal" revenues) throughout Europe.

The Finance Act for 2023 transposes these two contributions into domestic legislation.

1.1 New temporary solidarity contribution (TSC) for companies in the petroleum, natural gas, coal and refining sectors (FA Art. 40)

The contribution introduced by the Finance Act reproduces the provisions of the Regulation. Although it only marginally concerns France, through the sole activity of refining, this contribution is intended, as provided by the European Regulation, to allow States to support, budgetarily, households and companies most affected by the energy price crisis. The objective is also that companies in the fossil fuel sector that have made windfall profits as a result of this crisis contribute to financing these support schemes. This new contribution is exceptional and temporary and applies **for the first financial year beginning on or after 1 January 2022.**

- **Scope**

The persons or permanent establishments carrying on business in France or whose profits are taxed in France by an international double taxation convention and whose turnover for the financial year concerned derives for at least 75 % from economic activities in the crude oil sectors, natural gas, coal and refining, as defined in point 17 of Article 2 of the Council Regulation (EU) 2022/1854 of 6

October 2022, shall be liable to pay the TSC. As mentioned above, the TSC should only cover refining activity in France.

- **Basis**

The TSC base is equal to the difference, if positive, between the taxable result recorded for the financial year beginning on or after 1st of January 2022 and 120 % of the amount equal to one quarter of the algebraic sum of the taxable results recorded for all the financial years beginning between the 1st January 2018 and 31st December 2021, multiplied by the ratio between four years and the cumulative duration of all these periods. If this amount is negative, it is deemed to be zero.

It is also specified that the results used as a basis for calculating the difference mentioned above are those actually subject to corporation tax, before tax reductions, tax credits and tax claims of any kind.

- **TSC rates and regime**

The TSC rate is set at 33 %. The contribution is not considered as a deductible expense for the determination of the taxable result.

- **Various details**

In a tax consolidated group, the TSC is payable by each group member that individually fulfils the conditions for entry into the scope of the TSC. The contribution for each member of the tax group is based on the results which would have been taxable in its own name for corporate tax purposes, had they been taxed separately.

For look-through entities (Article 8 of the FTC), the base of the TSC is reduced, by the base of the contribution due, where applicable, by the partners or members of these entities, in proportion to the rights held by each of them.

In the event of a merger, division or partial transfer of assets which has the direct effect of increasing or reducing the above-mentioned difference and which serves as a basis for calculating the TSC, this basis is corrected accordingly.

- **TSC Payment**

The contribution must be paid spontaneously at the latest on the date set for payment of the corporate income tax balance. Tax reductions, tax credits and tax claims of any kind are not deductible from the contribution.

Finally, the TSC will be established, audited and collected like corporate income tax and under the same guarantees and sanctions.

1.2 Mandatory cap on market revenues for electricity producers (FA Art. 54)

The implementation of this system is reflected by the introduction of a contribution which rules are determined by the provisions of Book I of the Code of Taxation on Goods and Services ("CIBS"), supplemented by more specific provisions from the Finance Act for 2023 and subject to the terms of application that will be determined by decree.

- **Scope**

The infra-marginal profits generated by electricity production facilities located in Metropolitan France are subject to this contribution, provided that:

- it is not a storage facility within the meaning of Article 2 (60) of Directive (EU) 2019/944 of 5 June 2019
- it does not supply a small isolated or connected system within the meaning of Article 2 (42) and Article 2 (43) respectively of that directive.
- the technology does not rely on any of the following processes:
    - transformation of hydraulic energy stored in reservoirs, under certain conditions ;
    - production by means of certain controllable installations that can be operated at short notice ;
    - combined heat and power using natural gas by an installation belonging to a grouping of installations meeting certain conditions ;
    - combustion of certain carbon products including coal gases, coal and solid fuels obtained from coal and coke and semi-cokes of coal, lignite or peat ...

Facilities operated by an undertaking for which the combined installed capacity of the electricity generation facilities does not exceed 1 megawatt are exempt.

- **Basis of contribution**

The contribution is equal to the fraction of the market income of the operator of the installation exceeding a fixed threshold, less a 10% abatement.

Such fraction is defined by the Law as the fixed margin corresponding to the difference between the sum of market revenues and a lump-sum deduction.

Market revenues are those resulting from all supply contracts, whether corresponding to sales or purchases by the operator, for resale or for its own consumption of electricity, and derivatives relating to electricity supplied during each of the periods of application of the contribution, including, where appropriate, public aid payable to the operator in substitution for a fraction of the selling price provided for in such contracts or intended to compensate for loss of income relating to such contracts induced by a State decision on the levels of sales tariffs to final consumers. Market revenues include certain economic advantages obtained by the operator or certain financial regulations directly determined from a quantity of electricity and taking place in the context of the actions of the system operators.

In particular, the following are excluded:

- revenues received by EDF under the historic Regulated Access to Nuclear Energy scheme ("ARENH") ;
- revenues resulting from certain contracts concluded or negotiated before 11 February 2000 between EDF or local distribution companies and electricity producers ;
- certain revenues from installations eligible for the purchase obligation or additional remuneration under the support scheme for the production of electricity from renewable energy. In particular, where the entry into force of the support scheme has been postponed after the start of production or after the conclusion of the contract, revenues from the quantities of electricity produced during the deferral period are not to be taken into account;
- the revenues of the winning installations of the Calls for Proposal for the use of innovative renewable energies ;
- certain revenues resulting from the actions of network operators to prevent congestion or ensure the safety of the electricity system, determined by joint decree of the ministers responsible for the economy and energy taken after consulting the Commission for Energy Regulation ("CRE") ;
- public aid received for the activity of electricity production.

For offers with regulated tariffs, the income from the catch-up component (Law 2021-100 of 30 December 2021, Art. 181, VII) and for other offers, the payment payable by energy suppliers are deducted (above-mentioned Law, Art. 181, IX).

Specific provisions for calculating market revenues are taken into consideration:

- where the transfer of electricity includes supply to final consumers ;
- when the income is exchanged between companies belonging to the same group within the meaning of Article L 233-16 of the French Commercial Code ;
- where a long-term supply contract is specifically concluded between the operator and a consumer to finance for at least 10 years the costs of constructing and operating an installation producing electricity from renewable sources through the transfer of electricity at predetermined prices fixed irrespective of changes in wholesale market levels.

The lump sum to be deducted is equal to the product of, on the one hand, the quantities produced which generated the market revenues and, on the other hand, a fixed threshold, expressed in euro per megawatt hour and determined based on the production technology and, where applicable, the electrical capacity of the installation expressed in megawatts.

For example, this threshold corresponds to:

- €90/MWh for nuclear;
- €100/MWh for wind power;
- €175/MWh for biogas combustion;
- 145 €/MWh for thermal waste treatment.

Where applicable, the costs incurred for the acquisition of fossil fuels or biomass burned for electricity production and the costs of EU greenhouse gas emissions allowances specific to the installation are added. Various other cases of increase in the lump sum are provided for, in particular so that it can cover the costs, the return on investments and the risk of operating the installations.

Where the same producer operates several installations, the fixed margin is in principle assessed separately for the production of each installation. However, certain adjustments are planned, in particular in the case of undifferentiated

prices. Specific rules apply where the operator makes transfers of electricity generating market revenues both to final consumers and on wholesale markets or where the operator makes transfers of electricity generating market revenues to final consumers both on the basis of long-term supply contracts and on the basis of other supply contracts.

Certain payments or fees are deducted from the amount of the contribution as they depend on the quantities produced or the market income considered for determining the fixed margin.

Specific rules for determining market income and the fixed threshold apply where a non-thermal waste treatment plant combines the production of heat and power from the combustion of natural gas or biomass.

- **Payment of the contribution**

The contribution is payable by the company operating the installation. The taxable event is the production of electricity by means of a covered installation during one of the following tax periods, it being specified that the amount of the contribution is assessed separately over each of these periods:

- July 1st , 2022 to November 30, 2022;
- December 1st , 2022 to June 30, 2023;
- July 1st , 2023 to December 31, 2023.

The taxable event occurs, for each of those periods, at the end of the calendar year in which it ends. Where market income is received after the taxable event has occurred, the balance of the contribution resulting from such income becomes due on the date of receipt.

The Law also provides that the payment of the contribution is subject to advance payments.

Finally, where the fixed margin determined for a period is negative, the contribution is zero for that period and that negative amount may, up to a limit of 80 %, be added, in whole or in part, to the fixed margin for one or more subsequent tax periods.

2. Corporate Taxes

2.1 New tax regime for reinsurance captive companies (FA Art. 6)

The Finance Act creates a specific tax regime for certain rcaptive reinsurance companies defined in Article L.350-2.3° of the Insurance Code. Accordingly, a captive reinsurance company is defined as an undertaking owned either by a financial undertaking (with certain exceptions) or by a non-financial undertaking, the object of which is the provision of reinsurance cover relating exclusively to the risks of the undertaking or undertakings to which it belongs, or to the risks of one or more other undertakings in the group of which it forms part.

The purpose of this provision is to facilitate the creation of captive reinsurance companies in France by offering them a favorable tax regime in order to promote a better insurance offer, by allowing them to negotiate with third-party insurers ("fronters") insurance coverage more adapted to their needs. For several years, French companies have been facing price increases, increases in deductibles and, in some cases, refusals by insurers to cover certain risks, which can lead to a deterioration in their insurance coverage. This trend is particularly marked with respect to insurance against damage (particularly related to natural disasters), business interruption insurance (especially in the event of a pandemic) and civil liability. Cyber risk is also subject to downgraded coverage by French companies.

Reinsurance captives have certain specificities. Unlike traditional reinsurance companies, they are dedicated to the reinsurance of risks borne by a single policy holder (the company or the group) and therefore cannot diversify and pool their risk between their policy holders. However, current French legislation does not provide them with an appropriate legal or tax framework. In particular, from a tax point of view, the provisions relating to equalisation provisions (FTC Art. 39 quinquies G et seq) apply only to certain limited categories of risks. Comparatively, other legislations allow captives to provision most of their risks tax-free (provision for fluctuation of claims or “PFS” in Luxembourg for example) and thus to better protect themselves against most risks. From a regulatory point of view, captive reinsurance companies are also fully subject to the provisions of the Solvency II Directive, which includes strict requirements, in particular in terms of equity.

In this context, Article 6 of the Law adds to article 39 quinquies G of the FTC a second paragraph (II) which provides that **captive** reinsurance undertakings held

by an undertaking other than a financial undertaking and whose object is the provision of reinsurance cover relating exclusively to the risks of undertakings other than financial undertakings may constitute, tax-free, **a provision to cover expenses relating to accepted reinsurance operations** whose insurance risks fall within the categories **of damage to professional and agricultural property, natural disasters, general civil liability, pecuniary losses and pecuniary damage and losses resulting from damage to information and communication systems and transport.**

Coverage will thus be limited to the risks precisely listed by reference to Article A.344-2 of the Insurance Code in its version in force on 31 December 2022. According to the explanatory memorandum supporting this article, these categories include the risks whose intensity is the most volatile, which are the most sold in reinsurance and whose tightening of the conditions of cover penalizes companies. The new scheme is presented as targeting market segments where lack of insurance coverage has been identified.

The limit within which the annual allowances may be deducted from profits and that of the overall amount of the provision will be set by decree, respectively according to the importance of the technical profits and the average, over the last three years, of the minimum equity required within the meaning of Article L. 352-5 of the Insurance Code.

The provision will be used, from oldest to newest allowances, to offset the negative balance of the technical profit and loss account for the financial year for all the corresponding risks.

Annual allowances which, within fifteen years, cannot be used in accordance with this purpose are reported to the taxable profit of the sixteenth year following that in which they were made.

The conditions for accounting and declaring these provisions will be set by decree.

Finally, it is expected that the Government will present to Parliament, no later than 30 September 2025, an assessment of the main characteristics of the beneficiaries of this new mechanism, specifying its effectiveness and cost.

These provisions come into force on January 1, 2023.

2.2 Allocation of shares under Article 115.2 bis of the FTC (FA Art. 25)

Article 115, 2 of the FTC allows a company to allocate to its partners the shares it has received in exchange for a partial contribution of assets, without this operation being treated as a distribution.

This rule applies automatically if the contribution is placed under the favorable regime of Article 210 A of the FTC, which requires that a complete branch of activity be transferred, that the transferring company still owns at least one complete branch of activity after the contribution and that the allocation of the shares received in exchange, proportional to the rights of the partners in the capital, takes place within one year of the contribution. When these conditions are not met, Article 115, 2 bis of the FTC allows to seek the same benefit by way of a ruling. Additional conditions then apply and the ruling is subject in particular to the operation being justified by an economic reason, as well as by an association between the parties, which must be formalized by an undertaking for the shareholders of the transferring company to retain, during the three years following the contribution, the shares of the transferring company as well as the shares of the company receiving the contribution that have been allocated to them. This undertaking must, in particular, be made by the partners holding at least 5% of the voting rights of the transferring company. While this measure made the application of the preferential regime conditional on the commitment of certain minority shareholders reaching the 5% threshold, it was seen as an obstacle to the reorganization of groups of companies.

To remedy this, the Finance Act repeals the above-mentioned commitment for shareholders holding at least 5% of the voting rights when:

- the transferring company is not controlled by a shareholder or a group of shareholders acting together within the meaning of Article L. 233-3 of the French Commercial Code (“action de concert”);
- the shares of the transferring company are listed on a French or European regulated market;
- the shareholder holding at least 5% of the voting rights of the transferring company does not exercise a significant influence on the management of the latter within the meaning of Article L. 233-17-2 of the French Commercial Code.

These provisions apply from 1 January 2023, which seems to mean that they also concern rulings already issued.

2.3 Taxation of certain subsidies (FA Art. 32 and Art. 65)

Article 42 septies of the FTC allows, upon election, the staggered taxation of certain subsidies granted to a company by the EU, the State, public authorities or any other public body, for the purpose of the creating or acquiring certain fixed assets. These subsidies are then taxed at the same time and at the same pace as depreciation of the asset. Where the fixed asset acquired is non-depreciable, the subsidies are added, in equal fractions, to the taxable profit of the years during which the fixed asset is non-transferable under the contract granting the subsidy, or, in the absence of a non-transferability clause, over the ten years following the award of the subsidy. If the fixed asset is disposed of, the untaxed part of the subsidy is included in the taxable profit of the financial year in which the disposal takes place.

Article 65 of the Law extends the benefit of this measure to sums paid in respect of operations allowing the achievement of energy savings giving entitlement to the award of energy saving certificates ("CEE"), when they are allocated to the creation or acquisition of fixed assets, whether depreciable or not. This provision applies in practice to subsidies paid by energy suppliers to their customers to encourage them to save energy by modifying their equipment. The administration had indicated in a ministerial response (Rep. Menonville, OJ Senate 7-10-2021 page 5769) that these sums should be included in the taxable result of the year in which they were granted, the provisions of Article 42 septies of the FTC being limited to public subsidies. As a result of this new measure, the favorable taxation regime will now be applicable in this situation.

In addition, Article 32 of the Finance Act extends the scope of Article 42 septies of the FTC to subsidies paid by bodies created by the institutions of the European Union.

For the same reasons and for consistency, the text of Article 236, I bis of the FTC is also amended. This article provides that certain subsidies allocated to the financing of capitalized research costs are to be added to taxable results up to the depreciation of such costs at the end of each financial year. Until now, this system has been limited to subsidies paid by the State, local authorities and public institutions specializing in support for scientific or technical research. The Finance Act extends its scope to subsidies paid by the European Union or bodies set up by its institutions.

These measures apply to financial years ending from 31st December 2022 for companies subject to corporate income tax.

2.4 Young Innovative Companies (FA Art. 33)

The status of Young Innovative Company ("JEI") allows companies meeting certain conditions to benefit from various tax reliefs, including a period of total exemption from income tax for the first financial year, followed by a period of reduction of 50%, each for a maximum duration of 12 months. This regime is extended and will apply to companies created until 31st December 2025 (instead of 31st December 2022). This extension will apply to corporate income tax as well as property tax and territorial economic contribution.

In addition and while the Finance Act for 2022 had extended the benefit of this regime to companies created less than eleven years before (against eight years previously, a condition assessed at the end of the financial year in respect of which the company claims the benefits), the present law reduces by three years the period of eligibility of companies for this status, which will therefore again be reserved for companies created less than eight years before.

2.5 Reduced corporate tax rate of 15 % for SMEs (FA Art. 37)

At present, SMEs with a fully paid-up share capital held at least at 75 % by natural persons or companies that do not have the status of parent company and whose turnover is less than €10 million benefit, within the limit of a profit of € 38,120 from a reduced corporate tax rate of 15 % (Article 209 I-b of the FTC). This ceiling of €38,120 had not been modified since 2002.

Article 37 of the Finance Act for 2023 therefore raises this ceiling from €38,120 to **€42,500** in order to take into account, partially, accumulated inflation since 2002.

As a reminder, the Finance Act for 2021 raised from €7.63 million to €10 million the turnover threshold below which SMEs can benefit from the reduced rate of 15%.

VAT & Customs

1. Main new VAT measures

1.1 Absence of a taxable transaction in the case of a transfer of a universality of goods (FA Art. 58)

This article makes a semantic change to article 257 bis of the French Tax Code ("FTC") which, prior to this modification, used to release from VAT the supply of goods and services, carried out between VAT taxpayers, in the event of the transfer for valuable consideration or free of charge, or in the form of a contribution to a company, of a total or partial universality of goods.

The new wording of the article no longer mentions a VAT "release" and now allows to consider that no supply of goods or services is deemed to take place during the transfer for consideration, free of charge or in the form of a contribution to a company of a total or partial universe of goods carried out between VAT taxpayers.

This means that it is now possible to consider that no transaction within the scope of VAT has taken place, rather than a release from taxation.

This modification follows a decision of the French Supreme Court in which it was held that the VAT release of article 257 bis of the FTC was not applicable to a transfer placed outside the scope of VAT (CE, May 31, 2022, n° 451379, S.A. Anciens établissements Georges Schiever et fils). Such a transaction could not therefore be considered as released from VAT pursuant to article 257 bis of the FTC, it being specified that such a release could only benefit a transaction subject to VAT.

The amendment at the origin of this reform rightly emphasizes that the former wording suggested that operations exempt from VAT or occurring at the time of a transfer of universality of goods carried out free of charge were excluded from the first paragraph of article 257 bis of the FTC.

The wording proposed by this article is closer to the wording of the VAT Directive than the former wording and should make it possible to give legal certainty to the French VAT rules.

This article therefore aims to give the provisions of the VAT directive (articles 19 and 29) their full scope in French tax law and to allow, in particular, the supply of real property completed more than five years ago, which is exempt from VAT (article 261, 5, 2° of the FTC), to benefit from this release of taxation.

1.2 Updating of the methods for securing invoices issued in electronic form and clarification of the storing methods (FA Art. 62)

- Introduction of a new method for securing invoices : the qualified electronic stamp

The generalization of electronic invoicing under the 2024-2026 French e-invoicing and e-reporting reform was seen by the French legislator as an opportunity to introduce a new method of securing invoices in the French Tax Code. As a reminder, as of July 1st, 2024 (e-reception obligation), and by January 1st , 2026 (e-invoicing and e-reporting obligations - depending on the size of the company), electronic invoicing will be mandatory for all transactions between companies.

Currently, the deduction of VAT on invoices is possible if the invoices issued include all the statements required by the French tax code (article 242 nonies A of annex II to the FTC), and if, whatever their form (paper or electronic), the authenticity of their origin, the integrity of their content and their readability are guaranteed from the moment of their issuance until the end of their retention period, under the conditions set out by article 289 of the FTC.

In this respect, article 289 of the FTC currently states that, in order to ensure the authenticity of the origin, the integrity of the content and the readability of the invoice, VAT taxpayers can issue or receive invoices:

- either in electronic form using any technical solution other than the qualified electronic signature or the structured message, or in paper form, as long as documented and permanent controls are put in place by the company and make it possible to establish a reliable audit trail (“Piste d’audit fiable”) between the invoice issued or received and the supply of goods or services on which it is based ;
- either by using the qualified electronic signature procedure ;
- or in the form of a structured message according to a standard agreed upon by the parties, which can be read by computer and processed automatically and univocally.

A fourth possibility will now be added to ensure this objective: it will be possible, for documents and records drawn up from the publication of the Finance Act for 2023, to use the qualified electronic stamp procedure within the meaning of Regulation (EU) No. 910/2014 of the European Parliament and of the Council of July 23, 2014 (the "eIDAS" Regulation applicable since July 1, 2016 for most of its provisions), thereby allowing an alignment with this regulation.

A decree will specify the conditions for issuing, stamping and storing these invoices.

- Retention period for electronic documents

The same article also provides that books, registers, documents or records drawn up or received in electronic format must be kept in that format for a period of six years from the date of the last transaction mentioned in the books or registers or from the date on which the documents or records were drawn up.

Previously, article L102 B, I of the French Tax Procedure Book (“Livre des procédures fiscales”) provided that items established or received in electronic format had to be kept for three years on an electronic medium, with the possibility to choose another medium for the following three years.

This new retention period for electronic documents is applicable for documents and records established after the publication of the Finance Act for 2023.

2. Main new customs measures

2.1 Right of communication (FA art. 81)

The right of communication, provided for in articles 65 and following of the Customs Code, allows the customs administration to access documents and papers of all kinds held by natural and legal persons which could be necessary for the accomplishment of their missions of control.

With the development of new technologies, it was necessary to modernize the right of communication to enable the customs administration to better identify the flow of goods and the activities exposed to fraud. In this context, the implementation of the new article 65 bis A of the Customs Code will allow the customs administration to request information relating to unidentified persons. This may thus make it possible to request lists of customers, suppliers and users in order to detect undeclared or understated or even hidden transactions.

This evolution of the right of communication in customs matters is equivalent to changes made in recent years in tax and social matters, pursuing the objective of harmonizing the law.

2.2 Other customs and environment measures

- Tariff shield measure: extension of the reduction of excise tariffs applicable to electricity (FA Art. 64)

Following the Russian-Ukrainian conflict, the government intended to set up a tariff shield to fight against rising energy prices. The Finance Act thus provides for an extension of the tariff shield until 31 January 2024 by maintaining the excise tariff on electricity at the minimum levels provided for by European law. The effects will be amplified following the integration of the municipal tax on the final consumption of electricity ("TCCFE") into the excise duty on electricity so that natural and legal persons as well as households do not bear the additional cost.

- Measures relating to green taxation

To enable France to achieve its European objectives in terms of reducing greenhouse gas emissions by 55% by 2030, the Finance Act for 2023 contains tax measures favorable to the energy transition:

- Increase in reduced excise tariffs on energy (FA Art. 65): the Finance Act provides for an increase of €3.2/MWh over two years in reduced excise tariffs on coal. This measure will enter into force from 2023 ;
- Inclusion of low-carbon hydrogen in the TIRUERT (FA Art. 67): the Finance Act for 2023 integrates low-carbon hydrogen into the TIRUERT, as of 1st January 2024, which will apply in addition to the support mechanism for the production of certain categories of hydrogen ;
- Legalization of used frying oils as fuel (FA art. 68 bis): the Finance Act for 2023 provides for the legalization of the use of used cooking oil as fuel. These oils will be subject to internal consumption taxes ("ICT") ;
- Repeal of the TGAP on extraction materials (FA Art. 69): the Finance Act creates an exemption from the TGAP on residues received by hazardous waste storage facilities when these residues come from the treatment of polluted sludge, soil or sediment and the treatment operation is carried out on the same land ;

- With the same logic, this article exempts from TGAP the storage of residues that do not fall within the traditional waste production circuit and that are part of projects to clean up polluted soil, sludge and sediments that meet certain environmental requirements.
- Alignment of excise tariffs applicable to aviation gasoline and jet fuels with the excise tariff applicable to road gasoline (FA Art. 70) : all fuels used in private tourist aviation, including own-account transport carried out for needs of companies' staff, are affected by this measure, which will enter into force on 1 January 2024.

- Transfer of the collection of certain taxes from the customs authorities to the tax authorities (FA Art. 80)

  The Finance Act further implements the unification of the collection of certain taxes and fines by the tax authorities, as initiated by the Finance Act for 2019. Accordingly, the competence for the recovery of the TICPE and similar taxes are transferred from the customs authorities to the tax authorities. The customs will retain the authority for monitoring and product management, while the establishment and control will be the responsibility of the tax authorities. This measure will take effect on January 1, 2025.

  In addition, the management and collection of customs fines imposed by a court will be transferred from the customs authorities to the tax authorities. These provisions will come into force on April 1, 2023.

Other measures

1. Changes to the scope of the Digital Services Tax (“DST”) (FA Art. 30)

Article 30 of the Finance Act provides various clarifications concerning the scope of the DST. These new provisions draw, in particular, the consequences of the cancellation by the French Supreme Court (CE 31 March 2022, No. 461058) of

some of the comments published by the French tax authorities, following the entry into force of this new tax.

As a reminder, the tax on digital services was introduced by Law No. 2019-759 of 24 July 2019 and is codified in Article 299 of the FTC. According to paragraph II of that article, taxable services are, on the one hand, digital intermediation services, ie. the provision by electronic communications of a digital interface which enables users to contact and interact with other users, and, on the other hand, targeted advertising services which enable an advertiser to place targeted advertising messages on a digital interface based on the data collected with users.

According to that same article, making a digital interface available does not constitute a taxable service where the digital interface purports principally to provide users with digital content, communication services or payment services (within the meaning of Article L 314-1 of the Financial and Monetary Code). In that context, the digital intermediation service is then only ancillary to the service provided.

The Finance Act makes two amendments to the provisions of Article 299 of the FTC concerning the scope of the DST.

- The ancillary provision of a digital interface is no longer a taxable service

From now on, Article 299 of the FTC provides that the provision of a digital interface is not a taxable service when the interactions between the users of the interface are ancillary, within the meaning of Article 257 ter of the FTC, to the provision of the services it offers. Moreover, the new text specifies, as regards digital content, that that exclusion from taxable services is without prejudice to the taxable liability of such digital content where the latter constitutes, in itself, a digital interface distinct from the one by means of which it is supplied.

- Services provided within the same group are excluded from taxable services

The last paragraph of II of Article 299 of the FTC provides that services provided between companies which are in a relationship of control within the meaning of II of Article L. 233-16 of the Commercial Code are not taxable services.

In their comments in the BOFiP (BOI-TCA-TSN-10-10-10, No. 80), the French tax authorities indicated that to the extent that the same service cannot be individualized, the exclusion condition is applied globally. Consequently, where

a taxable service is supplied to more than one customers, it cannot benefit from the exclusion even if some of the customers are related parties.

The French Supreme Court (above-mentioned decision of March 31st, 2022) ruled that these comments added to the law. Following this decision, the French tax authorities therefore deleted these comments in its latest version of the BOFiP.

Article 30 of the Finance Act amends the last paragraph of II of Article 299 of the FTC in order to expressly provide that only services provided exclusively to group companies are considered as non-taxable. This new wording thus makes it possible to legalize the administrative position initially censored. A service supplied to companies of the same group is thus regarded as taxable if the same service is also supplied to third parties.

This provision comes into force on December 31, 2022. According to the explanatory memorandum, the changes made to the text of Article 299 of the FTC apply to the tax whose chargeable event will occur from 31 December 2022. It is to be noted that the chargeable event for the tax is the end of the calendar year in which the provider received a compensation in return for the supply of taxable services in France.

2. Other

The Finance Act for 2021 provided for an exemption from the “forfait social” for the years 2021 and 2022 for employer contributions to company savings plans (“PEE”) supplementing voluntary payments by employees, for the acquisition of shares or investment certificates issued by the company (L. n° 2020-1721, 29 December 2020, art. 207). This measure is extended by one year and will therefore also apply for 2023 (FA Art. 107).