

FRENCH FINANCE BILL 2020: EXCEPTIONAL DEPRECIATION FOR SHIPOWNERS AND LESSORS (PART 3/3)

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INTRODUCTION

The French Parliament adopted several new corporate tax, individual income tax and tax litigation measures in the 2020 Finance Bill, which was passed on 28 December 2019. Most of these new tax rules came into force on 1 January 2020. This is the third and final linked articles focussing on specific aspects of France's 2020 Finance Bill we believe will be of the special interest to our readers. This article explores the new depreciation regulations for green investments in the maritime sector.

"The exceptional depreciation for "green" investments for ships has been amended to comply with EU rules."

NEW EXCEPTIONAL DEPRECIATION FOR "GREEN" INVESTMENTS FOR SHIPOWNERS AND LESSORS

As a reminder, the 2019 Finance Bill introduced the new exceptional depreciation described below for "green" investments made by shipowners and lessors (Article 39 decies C of the FTC):

Companies subject to French individual income tax or CIT could, subject to satisfying certain conditions, deduct from their taxable basis an amount equal to:

- 30% of the historical value (excluding finance expenses) of goods- or people-carrying ships that use hydrogen or any other low-carbon fuel if the shipbuilding contract is entered between 1 January 2019 and 31 December 2021;
- 25% of the historical value of goods- or people-carrying ships that use liquefied natural gas ("LNG") if the shipbuilding contract is entered between 1 January 2019 and 31 December 2021; and
- 20% of the historical value of new goods acquired for installing on an operating ship and used for the supply of electricity during stops by the on-shore network or by means of auxiliary engines using LNG or any low-carbon fuel, as well as goods enabling the main propulsion of the ship by low-carbon fuel.

Under the 2019 rules, exceptional depreciation was accounted for on a straight-line basis on the normal period of use of each asset. It only applied to commercial vessels that flew the flag of an EU or EEA Member State and which, for each year of the normal period of use, stopped in French ports more than 30% or where 30% of navigation time was spent within the French exclusive economic zone. It was also applicable to the lessor in a "crédit-bail" operation, subject to certain conditions being satisfied.

If, during the normal period of use of a vessel, the taxpayer ceased to satisfy the conditions described above, it lost the right to this additional tax deduction and any sums deducted during that year and any prior years were disallowed in calculating the taxable profits of the company.

Part of the 2019 rules were considered contrary to EU rules. Consequently, the 2020 Finance Bill amends the exceptional depreciation regime as follows:

Companies subject to French individual income tax or CIT may, subject to satisfying certain conditions, deduct from their taxable basis additional depreciation for the following amounts:

- **125%** of the additional expenditure accounted for as assets in their balance sheet (excluding finance expenses) which are directly linked to the installation of new equipment, using hydrogen or any other low-carbon fuel as the main propulsive fuel, for (i) ships carrying goods or persons or (ii) the production of electrical energy used as main propulsion;
- **105%** of the additional expenditure accounted for as assets in their balance sheet (excluding finance expenses) which are directly linked to the installation of new equipment using LNG as the main propulsive fuel, for (i) ships carrying goods or persons or (ii) the production of electrical energy used as main propulsion;
- **85%** of the additional expenditure accounted for as assets in their balance sheet (excluding finance expenses) which are directly linked to the installation of a new device for the treatment of sulphur dioxide, nitrogen oxide and fine particles included in exhaust gas; and
- **20%** of the historical value of a device (excluding financial expenses) acquired for installing on an operating ship and used for the supply of electricity during stops by the on-shore network or by means of auxiliary engines using LNG or any low-carbon fuel as well as devices.

"The "permitted maximum intensity" is equal to the income tax rate of the company (e.g. 28%) multiplied by the tax rates mentioned above (20% to 125%)."

The "additional expenditure" accounted for as assets mentioned above is equal to the difference between (i) the historical value (excluding finance expenses) of the new equipment and (ii) the historical value (excluding finance expenses) of similar equipment using heavy fuel oil or marine diesel as the main propulsive fuel of the ship, or necessary to comply with EU law (as the case may be).

This exceptional depreciation is subject to a new "permitted maximum intensity" limitation defined as the following:

- 60% of the eligible expenditure for small companies (fewer than 50 employees and annual turnover or total assets lower than €10 million);
- 50% of the eligible expenditure for medium-sized companies (between 50 and 250 employees and annual turnover between €10 million and €50 million or total assets of up to €43 million); and
- 40% of the eligible expenditure for all other companies.

The "permitted maximum intensity" is equal to the income tax rate of the company (e.g. 28%) multiplied by the tax rates mentioned above (20% to 125%).

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In addition, this exceptional depreciation cannot exceed €15 million per company and per investment project.

The new measure applies **to shipbuilding contracts entered into between 1 January 2020 and 31 December 2022**. The 2020 Finance Bill provides that, for lease agreements, the lessor can benefit from the new rules described above provided that the corresponding tax advantages are fully transferred to the lessee.

READ PART ONE HERE OR READ PART TWO HERE.

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