

# EXCEPTIONAL TAX DEPRECIATION EXTENDED FOR GREEN SHIPPING INVESTMENTS

8 FEBRUARY 2022 • ARTICLE



The French Finance Act for 2022 amended Article 39 decies C of the French Tax Code, which promotes energy transition in the maritime transport sector. As of 1 January 2020, shipowners and lessors may apply an exceptional tax depreciation when acquiring equipment using decarbonised energy for the main or auxiliary propulsion of a vessel.

"The French Finance Act for 2022 extends the scope of equipment eligible for the application of the 105% exceptional tax depreciation."

## 1 EXTENSION OF THE SCOPE

### 1.1 New energies eligible for the main propulsion

French companies can, subject to satisfying certain conditions, deduct from their taxable basis an amount equal to:

- 125% of the additional costs accounted for as assets on their balance sheet (excluding financial costs) which are directly linked to the installation of new equipment, using hydrogen or any other decarbonised propulsion as the primary propulsive energy for (i) ships carrying goods or persons or (ii) the production of electrical energy used for main propulsion; and
- 105% of the additional costs accounted for as assets on their balance sheet (excluding financial costs) which are directly linked to the installation of new equipment using liquefied natural gas (LNG) as the main propulsive energy as per above.

The additional costs accounted for as assets as mentioned above are equal to the difference between (i) the historical value (excluding financial costs) of such new equipment and (ii) the historical value (excluding financial costs) of similar equipment using heavy fuel oil or marine diesel as the main propulsive energy for a vessel, or (iii) as required to comply with EU law (as the case may be).

The French Finance Act for 2022 extends the scope of equipment eligible for the application of the 105% exceptional tax depreciation to equipment allowing the use of liquefied petroleum gas, compressed natural gas, ammonia, methanol, ethanol or dimethyl ether as a vessel's main propulsion energy. This measure applies to contracts for the acquisition of equipment or the construction of vessels concluded **from 1 January 2022 to 31 December 2024**. It also applies to new equipment leased under a financial lease contract (French "*crédit-bail*" or "*location avec option d'achat*") concluded during this same period.

## 1.2 Increase of depreciation right for eligible auxiliary propulsion equipment

In addition to the exceptional tax depreciation mentioned above, companies can also deduct:

- 85% of the additional costs accounted for as assets on their balance sheet (excluding financial costs) which are directly linked to the installation of new equipment for the treatment of sulphur dioxide, nitrogen oxide, and fine particles included in exhaust gas; and
- 20% of the historical value of equipment (excluding financial costs) acquired to be installed on an operating ship and used for the supply of electricity during stops by the onshore network or by means of auxiliary engines using LNG.

According to the French Finance Act for 2022, equipment enabling to complete the main propulsion of the ship by a decarbonised propulsion system is entitled to an exceptional tax depreciation of 85% of their original value (previously 20%). This measure applies to equipment acquired from 1 January 2022 until 31 December 2024. It also applies to new equipment leased under a financial lease contract concluded during this same period.

## 1.3 Simplification of the conditions of eligibility

**"Equipment enabling to complete the main propulsion of the ship by a decarbonised propulsion system is entitled to an exceptional tax depreciation of 85% of their original value."**

Prior to French Finance Act for 2022, only vessels flying the flag of an EU country or of the European Economic Area and which fulfilled one of the following conditions could benefit from the exceptional tax depreciation:

- 30%+ of stops on any given journey being in French ports; or
- 30%+ of total navigation time on any given journey being in the French exclusive economic zone.

The above two conditions have now been removed by the French Finance Act for 2022. However, the requirement relating to a vessel's flag remains applicable.

## 2 NEW CAPS

The French Finance Act for 2022 provides two caps on additional costs eligible for the exceptional tax depreciation, that are assessed independently:

- a cap of €15m per ship on additional costs benefiting from the 105% exceptional tax depreciation mentioned above; and
- a cap of €10m per ship on additional costs benefiting from the 85% exceptional tax depreciation mentioned above. The historical value of equipment newly benefiting from the exceptional tax depreciation at this rate (equipment acquired to complete the main propulsion of the ship by a decarbonised propulsion) is also included in the cap.

## 3 SIMPLIFICATION OF THE CONDITIONS FOR THE APPLICATION TO LESSORS

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Prior to the French Finance Act for 2022, for equipment covered by a financial lease contract, tax depreciation could be made by the leasing company. The lessor could also benefit from the regime provided that (i) the benefits of the exceptional tax depreciation were passed on in full to the lessee in the form of rent reductions granted at the same time and at the same rate as the depreciation was made and (ii) the lessee did not benefit from the exceptional tax depreciation.

The French Finance Act for 2022 removes this second condition which is replaced by the condition that the lessee elects for the French tonnage tax, which still has the consequence of excluding the ability for the lessee to use the exceptional depreciation. The condition that the lessor pass on the benefits to the lessee by means of rent reductions is maintained.

## 4 APPLICATION PERIOD

Initially scheduled to end on 31 December 2022, this regime has been extended by two years by the French Finance Act for 2022 until 31 December 2024.

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