FRENCH BUDGET 2025 – SIGNIFICANT PROVISIONS AFFECTING INDIVIDUALS

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Management Packages
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Social Contribution

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INTRODUCTION

Th French Budget for 2025 reflects significant political instability caused by two factors. The first is the fragmentation of the French Parliament after elections last summer. The second is a significant budgetary deficit.

The French Finance Act for 2025 was adopted on February 14, 2025, after an earlier Finance Bill was rejected in December 2024, resulting in a change of government. Due to the use of Article 49.3 of the French constitution, parliamentary debates were limited. After an unusually stable period in French tax policy dating back to 2017, important measures were introduced. More are expected in future Budgets.

BUDGET AT A GLANCE

Key measures to note for individuals include the following:

- Introduction of a new contribution on high incomes, with an instalment due in December 2025
- Reform of the tax and social security treatment of management packages, including those already in existence
- Overhaul of the tax framework for the B.S.P.C.E., one of the main employee shareholding tools
- Tax incentives for gifts received to acquire a new primary residence or to finance energy-efficient renovations
- Clarification on the supremacy of treaty law in determining tax residency
- Expansion of the partial exemption from transfer taxes imposed on the transfer of rural property
- Introduction of a special reassessment period in cases of misreported tax residence.

Key measures to note for businesses include the following:

- Additional contribution for companies with revenues over a €1 billion
- Tax on capital reductions linked to share buybacks by companies with revenues exceeding a €1 billion
- Strengthened measures against dividend arbitrage schemes such as “Cum-Cum” transactions

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- Adjustments for the implementation of Pillar 2
- Postponement of the abolition of the C.V.A.E., a local business tax
- Increase in the financial transaction tax.

Other notable measures:

- Temporary 0.5% increase in registration duties on real estate acquisitions
- Crypto-asset reforms, including the transposition of DAC-8 and the adoption of new compliance measures
- Clarification of the tax regime for the new *société de libre partenariat spéciale*

The balance of this article focuses on the principal tax reforms affecting individuals and provides insights into foreseeable changes for high net worth individuals in France.

MANAGEMENT PACKAGES/INCENTIVE PLANS

Previous Landscape for Management Packages and Incentive Plans

In France, management packages are typically divided into two main categories.

The first category includes legally framed incentive plans, *i.e.*, the French commercial code and tax code contain dedicated provisions that specify the legal features, procedures, and tax regimes. Three schemes benefit from a dedicated legal and tax regime:

- **Stock Options**. Due to a lack of tax advantages, stock options have rarely been used in recent years.
- **Free Shares**. Typically used by larger or more mature companies once B.S.P.C.E.'s are no longer available, due to certain tax benefits. However, the employer's social security contribution on the acquisition gain has been increased from 20% to 30% under the Social Security Finance Act 2025.
- **B.S.P.C.E.** ***(Bons de Souscription de Parts de Créateurs d'Entreprise).*** These are essentially Founder Warrants. The B.S.P.C.E. regime benefits from the most advantageous tax treatment. However, they are subject to strict conditions. The company must be in existence for less than 15 years, unlisted, or a small cap (<€150m), with minimum equity held by individuals, either directly or through an intermediary. This management package has features that are similar to those of stock options, such as a strike price. A recent court ruling allowed tax deferral on share-for-share transactions involving B.S.P.C.E.-subscribed shares and a management company, an arrangement that was challenged unsuccessfully by French tax authorities.

The second category encompasses all other incentive plans or management packages. They typically include warrants, commonly referred to as B.S.A.'s (*Bons de Souscription d'Actions*), golden shares, and hybrid instruments. These plans are designed to allow managers to recognize capital gains subject to a more favorable tax rate than salary income.

Over the past decade, the French Supreme Administrative Court (*Conseil d'État*) for taxation and the French Supreme Judicial Court (*Cour de cassation*) for social security have progressively established a framework for reclassifying such gains as salaries. A milestone ruling was issued by the *Conseil d'État* on July 13, 2021 (n°428506, n°435452, and n°437498), distinguishing three types of taxable gains:

- **Acquisition Gain.** The difference between the acquisition price and the fair market value is taxed as salary.
- **Exercise Gain (if applicable).** The difference between the fair market value and the exercise gain is taxed as salary.
- **Capital Gain Upon Sale.** Generally taxed under the capital gains regime, unless there is evidence linking the gain to the beneficiary's role as an employee or executive.

Commonly followed practices in drafting management packages remove or adjust conditions designed to limit the connection between employment at the company and the gain recognized in a transaction involving company shares. Nonetheless, uncertainty surrounding taxation and risks of severe penalties have limited the use of these arrangements. This led advisers to call for a clear legal framework for management packages, similar to those that exist in other jurisdictions.

New Legal Framework for Management Packages and Incentive Plans

Effective for transactions occurring on or after February 15, 2025 even for plans already in existence, capital gains realized upon the sale of shares realized by an employee or director of the company issuing the shares are subject to taxation as salaries. The top rate of tax for such salaries is 59%, a substantial increase from the rate of 34% for classical capital gains. This applies to all management packages and incentive plans, whether covered by a dedicated legal and tax framework or not, subject to certain exception.

Under certain conditions and within specific limits, capital gains on the sale of shares can fully or partly remain taxable under the capital gains regime:

- The transferred shares must contain a risk of loss compared to their acquisition or subscription value.
- A holding period of at least two years is required, except for legal incentive plans which usually have their own conditions on holding periods.

The portion eligible for capital gains taxation is limited to the following formula:

> Subscription price ("S.P.") × financial performance multiple (*i.e.* 3 × fair market value of the company / fair market value of the company at the subscription date) minus the S.P.

The fair market value is defined by law as the fair market value of the equity plus shareholder and related-party loans to the company, with adjustments to account for capital operations between the subscription date and the sale date.

Also, management packages could previously be combined with a highly favorable tax wrapper known as the P.E.A. (*Plan d'Épargne en Actions*) or Savings Plan in Shares, provided that strict conditions were met and capped at certain limits.

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However, this combination was often challenged by the French tax authorities and became increasingly restricted over time. Now, management packages are explicitly excluded from this tax wrapper.

The new legal framework leaves certain questions unanswered.

- The first fact pattern involves a cashless reorganization of shares received as a result of management packages or incentive plans, typically a transfer of such shares into a Managers Company ("ManCo"). The Finance Act of 2025 overruled a favorable decision in a recent case and made it clear that B.S.P.C.E.'s exercise gain is taxable. Remaining unanswered is whether the tax on capital gain is imposed immediately or is deferred until the ManCo shares are sold.
- The second fact pattern involves gifts of shares received as a result of management packages or incentive plans. Ordinarily, French tax law allows a step-up in cost basis upon a gift resulting from the actual taxation of the gift. Here, the donor would remain taxable upon the disposal of the shares by the donee. What is the tax basis of the donor? Would there be an elimination of double taxation involving capital gain tax and gift tax?
- If the taxpayer relinquishes tax residence in France, will exit tax be imposed on the gain or is the inherent gain free of French exit tax since it now has the character of salary?
- Will the refinancing or repayment of shareholder loans impact the fair market value used for the computation of the gain's portion subject to capital gain tax rather than tax on salary?
- What reporting obligations will apply?

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SPECIAL REASSESSMENT PERIOD IN CASES OF MISDECLARED TAX RESIDENCY

Existing French tax law provides tax authorities strong tools to combat international tax evasion, notably extended statutes of limitations and a flexible definition of individuals' tax residency. The French Budget for 2025 enhances those provisions by introducing an extension of the statute of limitations to ten years in cases where an individual falsely claims tax residency abroad. Highlights regarding income tax and other taxes are as follows.

- **Income Tax**. In principle, French tax authorities have three years after the after the close of the relevant tax year to reassess income tax. However, in specific cases such as hidden activities or undeclared foreign financial assets, the period extends to ten years. The new law confirms that this ten-year applies to false claims of tax residence abroad.

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- **Registration Duties, Gift Tax, Inheritance Tax and Real Estate Wealth Tax ("*Impôt sur la Fortune Immobilière*" or "I.F.I.").** French tax authorities can reassess such taxes up to three years or six years after the relevant tax year, depending on the efforts needed to proceed to reassessment. In addition, French tax authorities can reassess unreported foreign assets such as offshore bank accounts, insurance contracts, and trusts for up to ten years. The ten-year period explicitly covers cases of false claims of tax residence abroad.

The reform completes the already existing extension of statutes of limitations. This reinforcement makes detailed analysis of tax residence more critical than ever. It is not unusual for an individual to become a tax resident unknowingly. In comparison to the substantial presence test in the U.S. and comparable rules in the U.K., French domestic law contains no mathematical approach that looks to residence based solely on the number of days on which an individual is present in France. Instead, an individual is considered to be a French tax resident by satisfying any of the following criteria:

- **Home (or Principal Place of Stay in rare cases).** A person is considered a tax resident in France if a primary home (*foyer*) or a principal place of residence exists in France. The primary home refers to the place where the individual habitually resides and family life is centered.
- **Professional Activity.** A person is considered a tax resident in France if a professional activity is conducted in France, whether salaried or non-salaried, unless the activity is shown to be incidental to an activity that is regularly carried on abroad.
- **Center of Economic Interests.** A person is considered a tax resident in France if the center of the person's economic interests is in France. This includes the location where most of the income is derived, or the place where the main investments are made, or the place where the assets are managed.

These criteria are far from clear and are subject to differing interpretations by taxpayers, tax authorities, and courts. In cases of dual tax residency involving a country that has an income tax treaty in effect with France, the tiebreaker test for residence under the income tax treaty applies, taking precedence over French domestic law. Tiebreaker tests under income tax treaties generally provide the order in which tests are applied, and once an earlier test confirms a conclusion as to sole residence, the matter is settled.

In addition to extended statutes of limitations, significant fiscal and criminal penalties may be imposed when a person makes a misdeclaration of residence. Though mistakes in tax residence are clearly possible, they are no longer tolerated. A thorough review of tax residency status is now essential for individuals with ties to multiple jurisdictions.

On a side note, it is worth noting that French tax authorities access publicly available information on online platforms, including those that require account registration. It reported that they can engage targeted individuals in electronic exchanges, just like undercover agents in movies. Digital footprints are problematic.

MINIMUM TAXATION RATE FOR HIGH NET WORTH INDIVIDUALS

France has developed a strong capacity to multiply the number of taxes that are imposed on individuals, possibly to avoid an overt increase in tax rates. While different taxes may share similar mechanisms, such as application to revenue or benefits, they often have unique characteristics, which allow certain classes of individuals to be taxed, but not other classes of individuals.

The following list illustrates several of the multiple classes of taxes that may apply to individuals' income:

- **Income Tax.** Up to 45% in general, 12.8% flat tax in principle for dividends, interest and capital gain on shares, 19% flat tax on capital gain on real estate
- **C.S.G. (Social Contribution).** Usually 9.2%
- **C.R.D.S (Other Social Contribution).** Usually 0.5%
- ***Prélèvement de Solidarité* (Another Social Contribution).** 7.5% on passive income
- **E.C.H.I. (Exceptional Contribution on High Income).** Up to 4%

The 2025 Finance Act implemented a differential contribution on high income aimed to serve as a minimum tax of 20%. Such 20% minimum tax does not account for the social contributions mentioned in the above list but only income tax and E.C.H.I. The differential contribution has a scope and tax base similar to the E.C.H.I., with a triggering threshold of €250,000 of income for a single person and €500,000 of income for a couple filing jointly. The tax amount corresponds to the difference between 20% of their adjusted annual income and the sum of income tax plus E.C.H.I. applicable to that income. Exceptional income would be considered at one-quarter of its amount, and the same adjustment applies to the related tax. At the time or writing, the definition of exceptional income has not been published

In practice, this minimum taxation seeks to mitigate the favorable tax rate of 30% to 34% (including E.C.H.I.) applied to dividends, interest, and capital gains, which could now reach an effective rate of 37.2%.

The initial installment of the differential contribution is due in December 2025, based on a preliminary computation of income received between January and November and an estimate of December income, along with related income taxes.

The differential contribution was originally intended to last for three years. However, further steps are considered to combat planning strategies such as the use of holding companies to manage income that is eventually received at the personal level. As a result, the reform is limited to 2025, and the current government is considering a broader overhaul for ultra-high net worth individuals starting in 2026, which would shift the tax base from income to wealth. The reform would resemble the policy of O.E.C.D. Pillar 2, the minimum global tax for large businesses. The government initially proposed a 0.5% global tax on wealth, excluding professional assets. However, an alternative bill, supported by the left-wing but not by the government, proposes a 2% global wealth tax that includes professional assets, with a threshold set at €100 million.

CONCLUSION

France has long been eager to combat tax evasion and aggressive tax planning with a comprehensive set of anti-abuse measures, extended reassessment periods, and significant penalties. The 2025 Finance Act exacerbates an already stringent system, where tax increases often appear as the most immediate solution to projected deficits in public finance.

The news is not all bad, however, as France continues to maintain several relatively stable and competitive tax regimes, such as the inpatriate regime for newcomers, which can be combined with the U.S.-France Income Tax Treaty to offer favorable benefits for U.S. citizens arriving in France as senior corporate executives.

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