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# GES NewsFlash

## France — Budget Law Enacted

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On 29 December 2012, France's Constitutional Court issued its decision on measures in the 2013 Finance Law, striking down the controversial provision that would have required wealthy individuals in France to pay a 75% income tax rate on professional income over EUR 1 million. The court also did not challenge the retroactive effect of certain provisions in the law. The decision cleared the way for Finance Law 2013 and the third Revised Finance Law for 2012 (which had received parliamentary approval on 20 and 19 December, respectively) to come into effect; both laws were published in the official gazette on 30 December 2012.

The most significant measures in the two laws are the alignment of taxation of investment income and profits with ordinary income tax brackets.

This article examines the main new provisions.

### Personal income tax

**Alignment of investment income taxation with ordinary income tax brackets** – Many categories of investment income that previously were taxed at special flat rates (21% and 24% on dividends and interest, respectively, and 19% on capital gains in addition to the 15.5% social surcharge) will now, in principle, be taxed according to the standard progressive schedule applicable to ordinary income (i.e., progressive rates ranging from 0% to 45%). The 15.5% social surtax will continue to be levied, but a portion of it is now tax deductible from taxable income of the following year. Investment income and capital gains will also still be included in the tax base for purposes of the contribution on high income (a maximum rate of 4%).

As from fiscal year 2013, dividends and interests will be subject to progressive income tax rates. A withholding tax will be levied at the rate of 21% and 24%, respectively, under certain income level conditions, and will then be deducted from the individual's final income tax liability.

Long-term capital gains derived in 2012 are taxed at a flat rate of 24%, but as from 2013, they no longer benefit from a fixed proportional rate, instead being taxed at the applicable progressive rate. A deduction of a percentage of the taxable gain (from 20% to 40%) will be available, depending on the number of years the shares were held.  A 19% fixed rate continues to apply, under certain conditions, to business creators. Finally, the sale of shares representing more than 25% of the profits of a company made by nonresident taxpayers will be taxed at a flat rate of 45% as from 1 January 2013, unless a tax treaty provides otherwise.

**Taxation of share incentive plans** – Gains realized on the exercise of stock options and the acquisition of free shares will be treated as salaried income for options and shares granted as from 28 September 2012 (the retroactive effect initially provided for in the finance bill was removed). The taxable event continues to be the date on which the shares were sold, thus allowing beneficiaries to continue to benefit from tax deferral. The specific social tax regime applicable to qualified share incentive plans also remains applicable and these incentives remain exempt from ordinary social charges (up to 50% for companies and about 23% for employees), subject to specific formalities. However, they still will be subject to a special social contribution due at grant by the company (recently increased to 30%), and by the beneficiary at the time the shares are sold (a 15.5% social surtax and 10% social contribution). A deduction of 5.1% of the social surtax will be available for

income earned in the year in which the surtax was paid.

Start-up stock options (BSPCE) continue to benefit from a full exemption from social security charges and the imposition of a flat tax at a rate of 19%, plus the 15.5% social surtaxes (34.5%) on the date the shares are sold.

These categories of income remain potentially subject to the contribution on high income (a 4% maximum).

**Tax brackets** – The progressive tax brackets for personal income tax purposes remain unchanged, but an additional bracket has been added for income exceeding EUR 150,000, which will be taxed at a rate of 45%. The contribution on high income (3% or 4%) remains unchanged.

**Wealth tax** – The wealth tax rates are increased from 0.25% and 0.5%, to progressive rates ranging between 0.5% and 1.5%, on net wealth in excess of EUR 800,000, with a limit on wealth tax due of 75% of other tax charges. While net wealth under EUR 1.3 million remains exempt, once the tax is triggered, the progressive rates will apply to net wealth in excess of EUR 800,000.

**75% tax on professional income above EUR 1 million rejected** – As noted above, the Constitutional Court declared null and void the provision under which a 75% tax would have applied on professional income over EUR 1 million earned in 2012.

The Prime Minister has announced he intends to introduce a "new draft law in accordance with the principles laid down by the Constitutional Court." However, great care will need to be taken in redrafting the proposed tax on the wealthy in order to obtain the sign off of the Constitutional Court. Whatever route is adopted, it is expected that the government will not introduce a new draft in the short term, but is likely wait until the Finance Bill 2014 is introduced in September 2013.

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