



NICOLAS BRAHIN

Cabinet BRAHIN Avocats

Nice · Montpellier · Madrid

March 30, 2018, Nice

Nicolas BRAHIN

Avocat

DESS Droit Bancaire et Financier

Bureaux secondaires:

14, rue Ernest Michel
34000 MONTPELLIER

Pensiamento, 27 - 3°
Izda. 28020 MADRID

Correspondants organiques:

LEGIPASS

8, rue Auber - 75009 PARIS
www.legipass.com

FINN LARSEN ADVOKATFIRMA

Algade 43, 1 - 4000 ROSKILDE
DENMARK
<http://www.advodan.com>

ADVOKATFIRMAN CONCILIUM HB

Hamngatan 6, Box 2253,
40314 GÖTEBORG, Sweden
<http://www.concilium.se>

HORIZONS CHINA CORPORATE ADVISORY

1801 Lippo Plaza, 222, Huaihai
Middle Road Huangpu, SHANGAI
CHINA
www.horizons-advisory.com

TOR J. SIBBERN

Advokatfirma Sibbern MNA
Cort Adelers gate 8, 1515 Moss, Norvège
www.sibbernlaw.com

French Corporate Tax to the test of European Tax Competition (Impôt française sur les sociétés à l'épreuve de la concurrence fiscale européenne)

Since the European Union has become a ground of an intense Tax Competition between State Members to draw the entities and their benefits, the French government seems to have decided to adapt a Corporate Tax to its competitional environment.

The convergence of nominal tax rates in the European average provided by the project of the Financial Law for the 2018, significative in this regard.

The study examines the reasons and goals of such a reform.

The government deposed a project of the Financial Law for the 2018 year to the National Assembly on September 27, 2017.

Among the proposed measures in article 41 there is a progressive reduction of the tax rate of Corporate Tax that should be decreased to 25 % since now till the 2022.

It falls in line with recommendations made by Council about obligatory levy in the last January, this political choice transformed taking into account of reality became today inescapable, the one of Tax Competition to which turn the states to draw and to hold on their territory the entities and their benefits.

BRAHIN AVOCATS

Société d'Exercice Libérale à Responsabilité Limitée inscrite au Barreau de NICE

Bureau Principal

1, rue Louis Gassin 06300 NICE

Tel. +33 493.83.08.76 - Fax 04.93.18.14.37 - Email : contact@brahin-avocats.com

For several years we assist in a continued decrease of a corporate tax, principal vector of an international tax competition.

If this phenomenon embraces a world scope, it appears much more significantly in European Union than anywhere else.

In view of certain particularities, the Community offers actually a favorable environment for fulfillment of the “opportunistic and non-cooperative strategies of the State members”.

On the first place, the establishment of the European single market on the 1st January 1993 with the further liberalization as a consequence has facilitated a mobility of the capitals and consequently the base of taxation.

Besides, the rapprochement of a legislation on the fiscal matters itself rests yet very limited on the European level.

There is a necessity of the specific provisions in the constitutive treaties the community competence cannot be carried out except for in the indirect manner conforming to the article 115 of the Treaty on the Functioning of the European Union that requires unanimous vote of the Council in conformity with a special legislative procedure.

In addition, with the monetary unification which made impossible the competitive devaluations the taxation became a last tool in the disposition of the national governments to improve their attractiveness.

Thus, between 1997 and 2017 despite of economic and financial crisis that stroke European Union during this period the average tax rate on the entity’s incomes did not stop to fall, passing from 35 % to 21,9 %.

And, if we believe some of the last governmental forecasts, this trend to decrease can be still widen in the coming years.

While Great Britain already offers the most competitive tax rates in Europe, a complementary reduction for minimum 17 % is expected for 2020 to resist a tax aggression of its Irish neighbor.

It is the same for Luxembourg where the Chamber of Deputies (“Chambre des députés”) has voted for a diminution of the corporate tax (“imposition des sociétés”) from 29,22 % to 27,08 % for 2017 and afterwards to 26,01 % for 2018.

The Hungary has also expressed its intention to follow this trend.

As the last empiric studies show made on this subject such tax dumping has a real impact on the investment and financing decisions.

The tax bases composed of the entities' income are much more sensible to the difference of the tax rates that we could imagine.

Thus, the increase of the tax rate of the Corporate Tax would on the one hand reduce the direct foreign investments for 4-5 %.

Certainly, the taxation is not the single criteria that influences the choice of entity localization.

The other factors as the size of the market, the effects of agglomeration, the transportation charges, the quality of infrastructure, the education of the employees have significant impact to the decision making.

However, if these different elements can lower a sensibility of the investor to the rate of the corporate law, their attenuation effect have a trend to decline as the economic integration increase as it is only the case within European Union.

Especially, Tax Competition have become today the credo of the majority of the European States, including those that dispose important tax advantages.

We think about Germany, on the first place, and about its tax reform of the 2007.

Without being involved to the race of the lowering of the tax rates not financially sustainable and to the less certain economic benefit, it has however adopted a decrease of the tax rate of the Corporate Tax to get closer to the average European rate.

On the principle, the role that has a Corporate Law (“impôt sur les sociétés”) as determinant of the decisions of localization, has become more important.

In this context, a country does not have such an interest to distinguish itself too much from its competitor by deterrent taxation.

Nicolas BRAHIN,
Avocat au Barreau de NICE
nicolas.Brahin@brahin-avocats.com

BRAHIN AVOCATS
Société d'Exercice Libérale à Responsabilité Limitée inscrite au Barreau de NICE
Bureau Principal
1, rue Louis Gassin 06300 NICE
Tel. +33 493.83.08.76 – Fax 04.93.18.14.37 – Email : contact@brahin-avocats.com