

**Nicolas BRAHIN**

*Avocat*

*DESS Droit Bancaire et Financier*

April 19, 2018, Nice

**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](http://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](http://www.horizons-advisory.com)

**TOR J. SIBBERN**

Advokatfirma Sibbern MNA  
Cort Adelers gate 8, 1515 Moss, Norvège  
[www.sibbernlaw.com](http://www.sibbernlaw.com)

**A new project of the law relative to the fight against fraud was submitted (“Un nouveau projet de loi relative à la lutte contre la fraude a été déposé”)**

As a counterpoint to the project of the law “Confiance”, having an ambition to protect the citizens acting in a good faith in their relations with the administrations, the government has submitted to the Senate (“Sénat”) March 28, 2018 a new project of the law aiming to strengthen the fight against fraud.

The project subject to the an accelerate parliamentary procedure has a goal to strengthen the efficiency of the fight against tax evasion, customs fraud and social security fraud.

**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](mailto:contact@brahin-avocats.com)

## **The penal sanctions will be strengthened again**

The project provides heavier sanctions for the **tax evasion crimes** (“délit de fraude fiscale”) than provided by the article 1741 of General Tax Code (“CGI”).

Thus, the potential fine currently limited by 500.000 EUROS (or 3.000.000 EUROS in the case of the aggravated tax evasion (“fraude fiscale aggravée”)), can consist the double of the profit from the tax evasion.

Besides, a complementary punishment by publication and dissemination of the decision of condemnation for the tax evasion, currently pronounced as an optional measure, will become mandatory except for specially motivated opposite decision (articles 5 and 8 of the project).

Regarding the procedure, the summons on the preliminary recognition of the guilt (plead guilty (“plaider-coupable”)), existing of today only in the special cases, indicated explicitly by the law, will be extended to the the abovementioned crimes ( Article 9 of the Project).

## **The tax sanctions can be published**

As the penal sanctions, the tax sanctions can become a subject of publication.

The fines and the surcharge applied against the legal entity for the serious omission will be concerned, when there is violation of rights estimated for the sum 50.000 EUROS minimum and actions in order to commit a fraud.

The publication will be made on the internet site of the Tax Authority after notice by the special commission.

However, it cannot be applied before the final condemnation for the fine and of the and the surcharge and will be excluded when the complaint is lodged by the Authorities (Article 6 of the Project).

## **The professional circulating the fraudulent schemas can be sanctioned**

A new type of the infringement will be created, relative to the third persons, providing intentionally in the frame of their professional activity, namely consultant, services allowing directly realization of the fraudulent schemes.

In the hypothesis when the tax payer in the result of realization of such a scheme, is condemned for the surcharging of 80% for the occult activity, violation of rights, fraudulent actions or absence of declaration of the foreign account, the provider of services will receive a fine equal to 10.000 EUROS or, if the sum is superior, of 50% of the profits made because of the services provided to the tax payer.

The tax complexity will be penalized (Article 7 of the article).

## **The obligations of the online platforms of transaction will be redefined**

The operators will be liable, as it is today, to keep the users informed about the tax and social security obligations in the case of each transaction and to send them yearly a document summarizing the gross sum of the realized transactions.

However, the obligation of an annual certification by the independent third person will be abandoned and non-compliance with the obligations will be directly sanctioned.

Thus, in the absence of the information in the moment of transaction the special fine will be applied, which can reach an amount of 50.000 EUROS, whereas non-delivery of a summary will lead to the application of the fine of 5 % of the sums, declaration of which was not made, which is provided by the article 1736 of the General Tax Code (« CGI »).

In the same time, the operators should address the Tax Authorities till the January 31 of each year an document summarizing totality of the information containing in the summarizing documents sent to the users.

In the case of failure to provide such documents, the fine of 5 % is provided by the article 1736 of the General Tax Code (« CGI ») will be applicable.

This obligation corresponds to the obligation of the declaration which should be applied for the first time to the incomes received in 2019 but for which no sanctions were determined.

The unity of the provisions will concern the operators not regarding their place of establishment et will aim the users of the platforms, residing in France or who carries out their sale or services in France.

It will be applied to the incomes received beginning from the 1<sup>st</sup> January 2019 (Article 4 of the Project).

### **The list of the NCCT will be extended**

The project provides to add to the list of the non-cooperative countries and territories (“Etats et territoires non coopératifs” (ETNC)) defined by the article 238-0 A of the General Tax Code (« CGI ») present in the list adopted by the European Union December 5, 2017 and recently updated.

While the article 238-0 A of the General Tax Code defines currently as the non-cooperative countries and territories (NCCT) the politic entities refusing the international standards of the sharing tax information, it will aim to include two categories of the entities :

- The Countries or the territories included to the European list because of facilitation of the creation of offshore structures or schemes designated to attract the revenues which does not reflect the real economic activity. The unity of the restrictive tax measures which are created for the NCCT will be applied to these entities ;
- The courtiers or the territories which are included into the European list for the other reasons (namely non-compliance with the criteria relative to the tax transparency).

Finally, taking into account a discretion of the Constitutional Council (“Conseil Constitutionnel”) that requires the taxpayers to be authorized to prove that the operations connected with the NCCT do not have neither for purpose nor for effect to allow, in the purpose fraud or tax evasion, the localization of the incomes abroad, the project introduces the **protective clauses** (“clauses de sauvegarde”).

The following article of the General Tax Code (“CGI”) are aimed : 39 terdecies, 5 (distributions made by the venture capital companies (“sociétés de capital risque”), 125-0 A, II bis (levy on the products of the capitalization contracts transferred to non-residents (“prélèvement sur les produits de contrats de capitalization versés à des non-résidents”), 182 A ter, V (a withholding tax (“retenue à la source”) on the gains of the option exercise (“lèvement d’option”) carried out by non-residents), 182 B, III (a withholding tax (“retenue à la source”) on the non-labour (“non-salariaux”) incomes transferred to the non-residents), 244 bis (tax (“prélèvement”) on the profit of real estate made by non-residents), 244 bis B (tax on the gain of the cession of the social right (“droit sociaux”) made by non-resident), as well as the article L 62 A of the LPF (exclusion of the procedure of regularization).

The provision related to the NCCT (article 11 of the project) will be applied beginning from the first day of the second month following the date of publication of law.

Nicolas BRAHIN,  
Avocat au Barreau de NICE  
[nicolas.Brahin@brahin-avocats.com](mailto: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](mailto:contact@brahin-avocats.com)