

French Large Companies' Undertaking When Benefiting From A French-State Guaranteed Loan Or A Deferral of Tax and Social Security Obligations Payment in 2021

The French Government renewed and completed in January 2021 the guidelines issued in 2020 relating to the undertakings of French large companies in respect of distribution of dividends and shares buy back when benefiting from French State-aids aiming at supporting their cash flow.

Any large company (i.e. an autonomous company or a group of affiliated companies with a workforce of at least 5,000 employees or a consolidated turnover greater than 1,5 billion euros in France as at the last closed financial year) applying in 2021 for a deferral of tax and social security obligations payment or a French-state guaranteed loan will prior commit not to*:

- proceed to any sort of distribution of dividends (whether in cash or in kind), including interim dividends or an exceptional distribution of reserves, to its shareholders (whether located in France or abroad) in 2021, save if legally required to distribute a part thereof and within the limit of such requirement or if the undertaking has been taken prior to 1 January 2021,
- proceed to any shares buyback in 2021, and
- have its tax head office (i.e. the registered office or if different, its real head office), or the tax head office of any of its subsidiaries with no economic substance, located in a non-cooperative State or territory on tax matters as long as it benefits from a State-aid to support its cash flow**.

Alike during 2020, intragroup distributions aiming ultimately at supporting financially a French company (including for the latter to comply with its contractual undertakings towards its creditors) remain allowed. Furthermore, distributions of dividends by foreign subsidiaries of a group to its French subsidiaries will not affect the eligibility to the State aids of the said French entities.

Certain shares buy-back transactions remain also allowed, e.g. allocation of shares to employees, or legal undertaking subscribed prior to 1 January 2021, or if required within the context of a build-up transaction agreed to prior to 1 January 2021.

In the event of a breach of any of the undertakings, then all deferred payments or the State-guaranteed loan will become immediately repayable and late payment penalties will apply (5% plus 0,2% per month). Loans guaranteed by the French state will include a specific repayment clause for non-compliance with the abovementioned rule.

For more details, please refer to the Government guidelines FAQ available at:

https://www.economie.gouv.fr/files/files/directions_services/covid19-soutien-entreprises/FAQ-Engagement-de-responsabilite-2021.pdf

*: In the case of a group of affiliated companies, the commitments apply to each of the French law governed affiliated entities even if only part of them benefit from State supporting financial measures.

** : being, as at today's date, Anguilla, Bahamas, Fiji, Guam, American Virgin Islands, British Virgin Islands, Oman, American Samoa, Samoa, Seychelles, Trinity and Tobago, and Vanuatu.