cutting through complexity™

February 6, 2014
2014-017

flash International Executive Alert

A Publication for Global Mobility and Tax Professionals by KPMG's International Executive Services Practice

France – New Tax Laws Enacted Raising Tax Burden for Many

by Ann Atchadé and Didier Hoff, FIDAL Direction Internationale, Paris (FIDAL Direction Internationale is an independent legal entity that is separate from KPMG International and KPMG International member firms)

For prior coverage of the budget, see *Flash International Executive Alert* 2013-135, 3 October 2013.

In This Issue:

* *Temporary Solidarity Contribution on Very High Remuneration*
* *Employer Contributions – Complementary Health Plans*
* *Limitation of Deductibility of Compulsory and Supplementary Optional Provident Plans and Supplementary Pension Plans*
* *Increased Allowances on Capital Gains for Long-Term Holding of Shares*
* *Exit Tax*

New tax laws came into force at the end of December 2013 that, among other things, impose a new tax on employers with highly remunerated workers and extend the scope of the exit tax that could result in higher tax costs for individual taxpayers when they transfer their tax residence outside of France.

France's Finance Act for 2014[1] and Corrective Finance Act for 2013[2] were voted into law on 19 December 2013. Following a review by France's Constitutional Council of key parts of the legislation on 29 December 2013,[3] the laws were enacted on 30 December 2013.

Why This Matters

Several measures in both laws could impact international assignees to France and assignees from France who are subject to French taxation. The government is stealthily bringing formerly "tax excluded" items of compensation (e.g., certain benefits-in-kind) into the tax net. At the same time, the exit tax "net" is broadened. More individuals will be impacted by the rules on the taxation of unrealized capital gains upon leaving France.

Employers paying remuneration over EUR 1 million will be subject to a new temporary tax.

These measures could raise the tax-related costs for employers with international assignment programs and their assignees to and from France subject to French taxation.

Temporary Solidarity Contribution on Very High Remuneration

The Finance Act for 2014 introduced a temporary tax that will be due by employers at a rate of 50 percent on the portion of remuneration that exceeds EUR 1 million per year per individual in 2013 and 2014. The tax is capped at 5 percent of the company's turnover in the relevant year. The intention of this measure is to constrain run-away and excessive compensation, an area which has come under increased scrutiny since the 2008-2009 financial crisis.

The types of remuneration and benefits falling within the scope of the tax are broad and include, for example, bonuses, directors' fees, profit sharing, and equity compensation.

The tax applies for the year in which remuneration is expensed in the company's accounts.

French qualified share awards are taken into account in the year of grant, based on either the face value of the shares (for free share awards, this is 100 percent of the value of the shares; for stock options, it is 25 percent of the value) or the value as stated for IFRS2 purposes.

This tax is intended to replace the tax that would have required wealthy individuals in France to pay a 75-percent effective income tax rate on professional income exceeding EUR 1 million – that 75-percent rate measure, proposed in the 2013 budget, was invalidated by the Constitutional Court at the end of 2012.[4]

The tax will be payable on or before 30 April 2014 and 2015, for remuneration granted for 2013 and 2014, respectively.

FIDAL Note

Employers based in France (including permanent establishments of foreign entities) will need to seek advice as to how this should be implemented as the basis for the tax will rarely coincide with taxable wages or wages subject to social security contributions. Further details are awaited from the French tax administration.

Employer Contributions – Complementary Health Care Plans

Employer contributions to complementary health care plans which supplement benefits paid or reimbursed by the general (social security) scheme and for reimbursement are now considered as a benefit-in-kind and must be added to the taxable remuneration of the employee.

FIDAL Note

The measure is retroactive to 1 January 2013. This will therefore have an impact on the 2013 taxable wages reported to the French tax administration and thus on the French income tax due for 2013. Exceptionally, companies have **an extended deadline until 12 February 2014**, to meet their yearly reporting requirements.

Limitation of Deductibility of Compulsory and Supplementary Optional Provident Plans and Supplementary Pensions Plans

Contributions paid to compulsory and supplementary optional group insurance plans (providing cover for illness, accidents, and death) and supplementary pension plans by both employers and employees are tax deductible within certain limits.

If the contributions are over the limit, the part of the excess attributable to the employee's contributions is not deductible from taxable employment income, while the part attributable to the employer contribution constitutes a taxable fringe benefit for the employee.

The 2014 Finance Act modifies the legal limits of deductibility as follows.

- 5 percent (previously 7 percent) of the annual amount of the social security ceiling (PLSS);
- 2 percent (previously 3 percent) of the gross annual pay, the total amount may not exceed 2 percent of eight times the social security ceiling.

Increased Allowances on Capital Gains for Long-Term Holding of Shares

(Applicable as regards (1) the gains realized from 1 January 2013, and (2) the gains realized from 1 January 2014, regarding the repeal of the tax deferral mechanism.)

The Finance Act for 2014 provides for a tax allowance of up to 65 percent depending on the length of time the shares were held, which is increased to 85 percent for capital gains deriving from the sale of shares by managers of small- and medium-sized enterprises.

The allowance amounts to 50 percent when the shares were held between two and eight years and to 65 percent when the shares were held more than eight years.

The previous tax deferral mechanism applicable if the sales proceeds were reinvested has been repealed. The allowance is not applicable for the determination of social surtaxes.

Fidal Note

The above rules will also apply to shares arising from equity-based incentive compensation offered to employees.

Exit Tax

The Corrective Finance Act for 2013 amends the exit tax regime, such that the scope of the exit tax on unrealized capital gains for individuals departing from France from 1 January 2014, has been expanded to include a wider range of investments. Also, the threshold has been reduced to €800,000 (from €1.3 million) and takes into account the entire portfolio of securities and rights held directly and indirectly by an individual and not limited to only equity stakes in companies.

The rules apply to taxpayers who have been tax residents in France for at least six of the 10 years prior to transferring their tax residences outside of France (see *Flash International Executive Alert* 2012-090, 30 April 2012 for details on the exit tax).

FIDAL Note

The exit tax is applicable to shares arising from employee share plans once the shares have been transferred to and are owned by the beneficiary upon departure.

Footnotes:

1 Finance Act for 2014 no. 2013-1278, 29 December 2013 (Loi n° 2013-1278 du 29 décembre 2013 de finances pour 2014, published in the *Journal Officiel* n°0303 du 30 décembre 2013 page 21829).

2 Corrective Finance Act for 2013 no. 2013-1279, 29 December 2013 (Loi n° 2013-1279 du 29 décembre 2013 de finances rectificative pour 2013, published in the *Journal Officiel* n°0303 du 30 décembre 2013 page 21910).

3 Decision no. 2013-685 of the Constitutional Court, December 29, 2013. See: http://www.conseil-constitutionnel.fr/decision/2013/2013-685-dc/decision-n-2013-685-dc-du-29-decembre-2013.139024.html .

4 For prior coverage, see *Flash International Executive Alert* 2013-058, 3 April 2013.

* * * *

For further information or assistance, please contact your local KPMG International member firm IES professional or the following IES professionals with FIDAL Direction Internationale at tel. +33 (0) 1 55 68 43 07:

Didier Hoff, Partner	*Alain Loehr, Partner*
Ann Atchadé, Partner	*Florence Esmoingt, Partner*
Marie Lynn Simmons, Partner	*Estelle Cupillard, Director*
Gérôme Gbaya, Director	*Cyril Klajer, Senior Manager*

The information contained in this newsletter was submitted by FIDAL Direction Internationale in France. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Flash International Executive Alert is an IES publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click **here**. To learn more about our IES practice, please visit us on the Internet: click **here** or go to http://www.kpmg.com .