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GMS Flash Alert

Global Compensation Edition

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France - Modifications to Tax and Social Charges of Free Shares

The 2017 French Finance Act amends the income tax and social security regime applicable to free share grants authorized by a shareholders' meeting that occurs after the publication of the law (i.e., after December 30, 2016).[1]

The Act modifies the regime previously adopted on August 7, 2015 (the "Macron law").[2]

WHY THIS MATTERS

The new rules usher in slightly higher taxation:

- for employers, on the market value of the shares (at the vesting date); and
- for employees with gains at vesting in excess of €300,000, the gain at acquisition that exceeds €300,000 taxable as employment income without any reduction for the holding period and subject to the specific contribution of 10 percent.

Employers should take note of these tax changes and take this opportunity to review their share plans to establish what their compliance obligations are and determine if there may be some planning opportunities. New grants of qualified free shares need to be examined carefully, as depending on the date of the authorization by the shareholders' meeting the previous regimes (i.e., Macron or prior regimes) may remain applicable to grants made after the publication of the 2017 Finance Act.

Consequences for Employer

Previous Regime ("Macron Law")

An employer's contribution of 20 percent of the market value of the shares is due at vesting date. An exemption can be granted for small- and medium-sized enterprises (SME) up to a threshold per beneficiary (€39,228 for 2017), provided that no dividend distribution has been made.

New Regime

The employer's contribution rate is **increased to 30 percent**. The exemption for SME is still applicable.

Consequences for Beneficiary

Previous Regime ("Macron Law")

Income tax and social surtaxes on the acquisition gain are due at the date of sale of the shares.

Income Tax

The acquisition gain is taxable at progressive income tax rates up to 45 percent. The gain can be reduced depending on the length of the holding period. The reduction is 50 percent if the shares have been held at least two years since the vesting date and a reduction of 65 percent occurs if they have been held more than eight years.

Social Surtaxes

The acquisition gain is subject to social surtaxes at a rate of 15.5 percent.

Social Security Contributions

No social security contribution is due on the acquisition gain.

New Regime

Income tax and social surtaxes on the acquisition gain are due at the date of sale of the shares.

Part of Gain Not Exceeding €300,000

There is no change regarding social security contributions and income tax applicable to the part of the gain that does not exceed €300,000. Taxation occurs at progressive income tax rates up to 45 percent (plus a 3- or 4-percent exceptional contribution on high income depending on the beneficiary level of income). The gain can be reduced depending on the length of the holding period. The gain is reduced by 50 percent if the shares have been held for at least two years and by 65 percent above eight years. Reductions are not applicable for the exceptional contribution on high income.

Part of Gain Exceeding €300,000

The part of the vesting gain exceeding €300,000 is now **taxable as employment income without any reduction.**

Social Surtaxes

The part of the acquisition gain equal to or below €300,000 is subject to social surtaxes at the rate of 15.5 percent.

The part of the acquisition gain in excess of €300,000 is subject to social surtaxes at the rate of 8 percent.

Social Security Contributions

The part of the acquisition gain **in excess of €300,000 is subject to the employee-specific contribution of 10 percent.**

Taxation of Gain from Sale

The rules regarding the taxation of gains arising from a sale have not been modified.

FOOTNOTES:

1 See the Finance Act, 2017 (in French) published online in the *Journal Officiel* of 30 December 2016 at: https://www.legifrance.gouv.fr/eli/loi/2016/12/29/ECFX1623958L/jo/texte .

2 For prior coverage, see GMS *Flash Alert* 2015-013 (January 29, 2015).

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with Fidal in France:

Alain Loehr
Partner
Tel. +33 (0)1 55 68 15 66
Alain.Loehr@fidal.com

Ann Atchadé
Partner
Tel. +33 (0)1 55 68 16 96
Ann.Atchade@fidal.com

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