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# Global Reward Update

Final Adoption of New Free Share Taxation Regime by French Parliament

On December 20, 2016, the French Parliament formally adopted article 61 of the Finance Tax Act for 2017 ("article 61). Article 61 modifies the income tax and social security regime applicable to free shares which was previously adopted in article 135 of the Law n. 2015-990 for growth, business and equal economic opportunity (the "Macron Act"). Subsequent to the Finance Tax Act for 2017 adoption by the French Parliament, the measures were subject to review by the French Constitutional Council to ensure the measures are constitutional, though the Constitutional Council made no comment on the measures; as such, these measures are now deemed final.

## Measures adopted

### Taxation of acquisition gain in excess of €300,000 as employment income

Article 80 *quaterdecies*-I of the French Tax Code has been modified as follows: "*The gain corresponding to the value, at the acquisition date, of the free shares granted further to the provisions of the Articles L. 225-197-1 to L. 225-197-3 of the French Commercial Code is taxed in the hands of the beneficiary as employment income pursuant to the paragraph 3 of the article 200 A, within an annual limit of EUR 300,000.*

*The portion of the gain exceeding this limit is taxed as employment income."*

Therefore, the acquisition gain will continue to benefit from the taper relief regime based on the holding period of the shares, though only up to the annual limit of €300,000. Any acquisition gain exceeding this limit will be taxed as employment income.

In addition, the acquisition gain will be subject to the social security surcharges at the rate of 15.5% for the portion of the gain up to and including €300,000, and at the rate of 8% for any acquisition gain exceeding €300,000.

### Employer contribution rate of 30% and restoration of the employee contribution of 10%

The employer fixed social contribution rate is increased to 30% (previously this rate was 20%). Small and medium-sized enterprises (SMEs; defined by European Union legislation) who did not issue dividends on their shares are exempt from this fixed social contribution.  SME's which do issue dividends are, conversely, subject to the fixed employer social contribution.

The employee fixed social contribution rate of 10% is restored for the portion of any acquisition gain exceeding €300,000 and taxed as employment income.

### Entry into force

The new provisions will be applicable to any free share award grants made further to a plan which was adopted by shareholder approval, which approval was given after the publication of the law.

## Notes and Recommendations

- This modification is a new illustration of the instability of French tax law.

- SMEs should use this new favorable free share income tax and social tax regime before further modifications are introduced.

- With respect to those companies that do not satisfy the definition of an SME, those companies will need to clearly identify those grants made (or might be made) pursuant to the current regime (applicable from August 8, 2015).

- The grant of free shares in 2017 under a French qualified plan is still preferable, from a tax perspective, when compared with non-qualified plans and/or classical variable remuneration schemes.  Of note, the above measures do not impact French qualified stock options.

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