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Global Employer Services (GES)

Global Rewards Update:
France – Final 2014 Finance laws and impact on share plans

January 2014

Background

Following the Constitutional Court decision, the French government has now adopted into law a package of tax measures. This Global Rewards Update (GRU) is a follow up from our **November 2013 GRU**. It provides an overview of the key measures relating to equity plans.

75% company tax

The so-called 75% company tax was confirmed in this package of tax measures. Broadly the proposition was not changed from the proposals previously set out.

In summary, the new tax applies on the portion of all compensation exceeding €1 million in a calendar year and it is calculated on a per person basis.

The actual new rate is 50%, which, when added to the estimated uncapped employer social security charges of 25%, brings the overall company taxes to 75%.

The new 50% company tax on compensation exceeding €1million is limited to 5% of the company's turnover in the relevant year. The tax (i.e. the 50% new rate) will be deductible from the corporate tax basis.

This tax is temporary and is due for 2013 and 2014. It will be reportable and payable prior to 30 April 2014 and 2015 respectively. The tax is applicable to all forms of compensation, including share based incentives. It does not apply to self-employment income or investment income.

French qualified share awards fall within the scope of the tax for the year of grant, based on either (i) face value of shares (i.e. for free share awards this is 100% of the value of the shares, for stock options it is 25% of that value) or (ii) the IFRS2 value of the awards.

The tax point for the other forms of compensation depends on when this compensation is considered an expense for the company. Although it would be expected that non-qualified share awards be treated as ordinary compensation (in absence of any specific provision as for qualified awards), it remains unclear whether the tax authorities may treat non-qualified awards as qualified awards for the purposes of this tax. If treated as qualified awards, the tax would be due for any grants made in 2013 and 2014.

Actions

- Given that the due date for paying and reporting the additional tax for the 2013 calendar year is 30 April 2014, companies should ascertain quickly the exact basis on which the tax applies for that

year, taking into account their own specific circumstances.

- Deferred compensation (including non-qualified share awards) and split contract arrangements should be considered with special care. More generally, when reviewing their taxable basis, companies should take into account wider corporate tax implications, in particular the impact of accruals and intercompany recharges.

- Companies operating French qualified awards may also want to consider valuing the awards based on the IFRS2 rules in order to reduce both the 30% tax at grant (i.e. employer social tax which was already applicable) as well as the new 50% tax.

Capital gains

Apart from the temporary tax mentioned above, the package of tax measures confirms the availability of a greater taper relief for capital gains realised from 1 January 2013, therefore bringing the overall taxation down.

As announced, a 50% taper relief applies if shares were held for two years or more (the previous rate was 20%). This percentage increases to 65% after eight years. The blended top rate, including social surtaxes of 15.5% (to which no taper relief applies), ranges from 31.25% to 38%.

The same tax rates could be applicable to certain qualified carried interests, depending on when the investment fund was set up. The start-up stock option plans and Bons de Souscription de Parts de Créateurs d'Entreprise (BSPCE) still benefit from a full social security exemption and a special flat capital gains tax rate.

Actions

- These new measures are welcome news and should help in making employee share plans (notably French qualified plans where pretax deferral encourages holding shares) as well as carried interest, management equity and co-investment plans more attractive.

- Any investment vehicles offered by employers to their employees should however be reviewed to consider whether they benefit from the maximum taper relief.

Changes to Plan d'Epargne en Actions (PEA)

The tax umbrella PEA accounts which, when all requirements are fulfilled, allow income to be exempt from ordinary income tax rates and subject only to 15.5% social surtaxes upon withdrawal, will have to exclude securities such as BSA (Bons de Souscription d'Actions) (known as warrants) as well as preferred shares starting from 2014.

The original draft Finance Bill proposed to limit the exemption available to capital gains for PEA. This was not adopted as part of the final law.

Action

- Companies using PEA or intending to do so as part of incentive arrangements should note that its scope is further limited by the new law and should consider adaptation of outstanding co-investment schemes.

Exit tax

For individuals departing from France from 1 January 2014, the scope of the exit tax (at progressive income tax rates) on unrealised capital gains has been extended to include a wider range of investments. Also, the threshold under which the tax does not apply has been reduced to €800,000 (down from €1.3 million).

If the value of the shareholding is lower than this, the tax would now only apply if the individual has a 50% holding in a company (up from 1%). In addition, to be completely exempted from progressive income tax (via a refund of the exit tax), individuals now need to hold their shares for 15 years following departure from France instead of 8 years. Different rules apply depending on whether the transfer of the tax residence is within the EU or outside.

Action

- Exit tax is applicable to share plans once the shares are owned by the beneficiary. The individual is solely responsible for reporting and paying this tax. Employers have no obligation in that respect but may want to flag the changes to their employees leaving France.

Other recent developments

Salary tax

It has been clarified that employee share plans are not included within the scope of the 20% salary tax (“taxe sur les salaires”). As a reminder, this tax is generally due by entities which are exempted from VAT, such as financial institutions or holding companies.

Management Equity Plans

Taj (our Deloitte French Member Firm) has recently won a case at the administration court level in which the social security administration was arguing that a management incentive plan should be treated as employment income. Similar favourable decisions have been rendered for income tax purposes. However, the French administration continues to actively audit such arrangements in an attempt to reclassify as employment income.

Companies should ensure that these arrangements are carefully structured and any audits are properly managed to avoid further litigation (for both social security and income tax purposes).

People to contact

For assistance with this matter, or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services adviser or email us at **globalequity@deloitte.com**, and a global rewards consultant will contact you.

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