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Global Rewards Update: France – Draft Finance Bill 2014 and other recent developments impacting share plans

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Draft Finance Bill 2014

Background

The French government announced a package of measures on 25 September 2013. The measures are part of the draft Finance Bill for 2014 and include an exceptional tax on high remuneration paid by companies. This Finance Bill has already undergone several modifications and will not be final until end of December 2013. The Constitutional Court will have a final review in December 2013 and the provisions might be invalidated then.

If the proposal is enacted without modification, affected companies would have to pay tax of up to 75% of the remuneration exceeding EUR 1 million (taking into account the exceptional tax and relevant social contributions). This tax is intended to replace the tax that would have required wealthy individuals in France to pay a 75% effective income tax rate on professional income exceeding EUR 1 million (but that was invalidated by the Constitutional Court in 2012). The new tax actually amounts to 50% (which, when added to the uncapped company social charges of about 25%, brings the overall taxation to at least 75%).

As presently drafted, if enacted, the proposal for exceptional tax would be effective from the current calendar year.

Exceptional tax on high salaries paid by companies

The temporary tax would be levied on the portion of gross remuneration paid to employees and executives that exceeds EUR 1 million per year per individual. This new tax would apply to remuneration paid or attributed in 2013 and 2014, and would be capped each year at 5% of the company's turnover in the relevant year. At the moment, there is no clarification on how the cap will work.

The types of remuneration and benefits falling within the scope of the new tax are broad and this would include all types of compensation including share plans.

The tax point for compensation refers to the date on which it becomes an expense for the company (i.e. the tax would apply if the company incurs an expense in 2013 or 2014). This leaves open a certain number of questions including how accruals and intergroup recharges will impact the tax liability.

French qualified share plans are specifically included in the scope of the temporary tax, for the year of grant. The tax will apply on the fair market value of the underlying shares or the IFRS2 value (i.e. the same basis as for the employer social charge due at grant).

It is unclear whether nonqualified French plans will follow the rules applicable to general compensation (i.e. be included for the year the company incurs an expense) or will be treated the same as qualified plans (i.e. be included for the year of grant).

Capital gains

Apart from the temporary tax mentioned above, the Draft Finance Bill also introduces greater taper relief for capital gains therefore bringing the overall taxation down. A 50% taper relief would be available for shares held for two years or more (previous rate was of 20%). This percentage increases to 65% after eight years. These new rates should apply to 2013 income. Entrepreneurs, retirees and other specific categories of taxpayers would benefit from a more favorable treatment than that described above.

Actions

- Companies should take note of the proposal to levy a temporary tax on the local employer in France on the portion of remuneration paid to employees and directors that exceeds EUR 1 million and consider whether they might be impacted.

- They should identify the number of employees and executives that may be affected by the proposed changes and consider the potential costs. In doing so, it is important to consider compensation widely to include all benefits (e.g. pension, director fees, expatriate benefits as well as share awards) in excess of EUR 1 million.

Trusts

Legislation introduced in 2011 brought significant changes in the taxation of trusts and created strict reporting obligations for them if the settlor or at least one of the beneficiaries is a French resident or if any of the trust assets is located in France (see our **Global Equity News** and our **GRU of January 2013** for more details). A new proposal now provides for increased penalties for non-compliance with the reporting obligations introduced back in 2011 from €10,000 to €20,000 (as a minimum) and from 5% to 12.5% of underlying assets (as a maximum). It also intends to create a registrar for trusts and include within the scope of reporting any trust whose trustee is a French resident, even though none of the beneficiaries, settlors or assets are located in France. Finally, some new decrees now require that all filings are made on the official forms provided by the French tax administration.

Action

While regulations published following the 2011 legislation mentions that certain company-established trusts arrangements should be excluded from the requirements, with the increased penalties applicable, it is important that companies review their existing arrangements to ensure they do not fall outside of the narrow scope of the exemption. As a reminder, the rules surrounding trusts also apply to any other type of arrangement which can be assimilated to a trust even if they are not called “trust”.

Foreign Bank Accounts

French taxpayers have to report any foreign bank accounts they hold, on an annual basis. This reporting requirement has existed for many years but there is now an increased focus on this requirement. Every year, and 2013 is no exception to this, new legislation has been introduced to increase the penalties and scope of consequences for non-reporting.

Action

Many French employees and executives participating in share incentive plans from non-French companies will effectively hold non-French bank accounts and they should ensure they correctly report these. There is an official voluntary disclosure procedure in place for those who have not reported foreign bank accounts in the past.

Other recent developments

Sourcing of stock option plans

Since 2012, French tax authorities apply OECD sourcing principles to employee share plans. A recent Supreme Court decision held that even pre-20 June 2007 qualified share option gains realized by a non-resident in a cross border situation is compensation in nature and should be taxed in France with respect to the French source gains.

Although gains from stock options granted before 20 June 2007 are not subject to any withholding obligations, French employers are still required to report them (and they are taxable in the hands of employees for the portion sourced in France). Employers should therefore consider the decision from the Supreme Court when reporting pre-20 June 2007 qualified awards.

Non-cooperating jurisdictions

France has recently added several countries to the list of non-cooperating jurisdictions including Jersey, Bermuda, and the British Virgin Islands. This triggers the application of increased tax rates and the potential non application of certain deductions. Companies should therefore identify any structure involving these countries, for example EBTs, and consider how their existing practice would be impacted by non-cooperative status.

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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