

September 2, 2015

## Publication of the Macron Law: French tax and legal improvements for qualified share plans, BSPCE and employee savings plans

*The Macron Act improves the tax and legal regime for granting free and performance share plans. This new law also increases the scope and flexibility for companies' eligibility to BSPCE.*

*This is an update of our last Tax Alert of June 26, 2015. The Macron Law has been published in the "Journal officiel" (Official Journal) on August 7 and entered into force on August 8.*

### I. Qualified Free and Performance Share Plans

#### **More flexible acquisition and holding periods**

The new version of the Commerce Code article L. 225-197-1 provides that acquisition period is one year instead of two years at present.

The holding period is no longer mandatory; however the minimum cumulative acquisition and holding period should be at least two years. Therefore, if shares are transferred to employees after two years, there is no longer a share sale restriction period.

#### **Increase of maximum grant for all the employees**

In case of a grant for all the employees, the maximum amount of free shares granted can now represent 30 % of the share capital. The gap between the number of shares allocated to each employee cannot exceed a 1:5 ratio when the grant is above the 10% or 15% share capital threshold (depending on size of company)..

#### **Employer contribution**

Tax rate: decreased from 30% to 20%.

Timing: the taxable event would no longer be the grant date but would be the release date (date shares are transferred to employees).

Moreover, the employer contribution tax base is applicable to the shares value at their vesting date.

#### **Improved regime for Midcap Corporation: incentive for small and medium sized companies**

An exemption from the employer contribution exists for awards under a certain threshold granted by small and medium sized businesses which have never distributed a dividend.

#### **Employee social contributions and social surtaxes (CSG)**

Qualified free shares would be exempt from the employee social contribution, now 10% due at date of share sale. The acquisition gain would be subject to CSG social surtaxes at the rate applicable to investment income, now 15.5%.

**Income tax**

The acquisition gain (value of shares when transferred to employees) remains taxable at date of share sale, at progressive tax rates, but would hereafter benefit from taper relief (now 50% or 65%), depending on the holding period. Additionally, if the taper relief conditions are met for Midcap corporation managers, the acquisition gain could benefit from a tax relief of 500 000 euros, and a higher taper relief (50%, 65%, and 85%).

The new legal dispositions would apply to the Qualified Equity Plan authorized by shareholders as from August 8, 2015.

**II. BSPCE****More flexible grant conditions**

The scope for awarding BSPCE has been increased, in particular, group employees may now benefit from such plans. As a reminder, the entire gain is taxed at a 19% flat rate (plus social surtaxes of 15.5%) if the professional activity has been performed for at least three years in the company granting the BSPCE.

**III. Stock-Options**

The French stock-options regime remains unchanged.

**IV. Employee Savings Plans****Modifications / Default assignments to company savings plans / Improvement of employee information**

New rules in force modify the functioning of company savings plans ("PEE" or "PEG").

Also, as a reminder, the taxation of gains in a PEE amounts to 15.5%. In some case, share plans can be lodged in such vehicles;

**IV. Actions**

- Companies operating qualified free share plans should not proceed with disqualification, nor replace qualified plans with non-qualified plans without factoring these new dispositions. Use of non-qualified plans should be reconsidered.
- Plan rules should be adapted in order to benefit from the new legislation.
- Small and medium sized businesses should contemplate granting free shares in order to benefit from these new incentives. They may also want to check whether possible to benefit from the BSPCE regime.
- Company savings plans can be used more effectively, but should also be reviewed for compliance purposes.

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