Global Employer Services | August 2017

Global Rewards Update - France

I. Withholding tax reform postponed to January 1, 2019
II. Refund of employer social contribution paid at grant of qualified awards
III. Estate & investment income tax reform as from 2018

I. Withholding tax reform postponed to January 1, 2019

The French government have been planning to introduce an income tax withholding regime for French resident employees. This was originally scheduled to be introduced on January 1st 2018. The Prime Minister however officially announced recently the postponement of the withholding regime to January 1st, 2019.

This one-year postponement aims to ensure that the new withholding system is sufficiently robust before implementation, and also to help employers anticipate and budget for the costs involved. Prior to announcing the postponement, three decrees were also published. These provide more details and information with regard to the effective set up of the Reform. The French Government have confirmed that they intend to keep these provisions, including the measures for the year of transition that will simply be pushed forward one year (i.e. from 2017 to 2018).

We predict this postponement will be a welcome announcement for employers as it provides reassurance that they have one more year to prepare and budget for any costs. The withholding regime will be a significant change for employers with non-qualified plans in France but should have no impact on those with qualified plans.

II. Refund of employer social contribution paid at grant of qualified awards

As previously announced in our February 2017 Global Reward Update, a question was raised to the French Constitutional Council asking whether the employer social security contribution, paid at grant of qualifying free share awards (RSUs) granted before the Macron law took effect (i.e. before August 8, 2015), was constitutional even in those cases where the free share award was forfeited prior to the plan participant receiving the underlying shares. (e.g., in the case of termination of an employee prior to vesting or in the case of unsatisfied performance conditions). The Council's decision has now been delivered.

The question presented to the Constitutional Council was how the social security contribution payment date (i.e. the payment of a social security charge at grant) could be compatible with the French constitutional principle of equality before the law and fair taxation, since the income from free share awards remains hypothetical prior to vesting in those cases where award vesting is subject to performance and /or continued employment tests.

The argument presented to the Constitutional Council also highlighted the fact that there was no restitution with respect to the employer social security contribution paid at grant in those cases where the award was subsequently forfeited prior to vesting.

The Constitutional Council ruled that the application of the employer social contribution at grant of qualified awards was constitutional, so long as a refund can be claimed for those contributions when the awards are forfeited and the employee never acquires the underlying shares.

III. Investment income tax and Wealth tax reforms as from 2018

On July 12, 2017, the French Prime Minister, confirmed the entry into force, from 2018, of the tax reforms announced during the campaign of the new French President, Emmanuel Macron, elected in May 2017.

Investment income subject to a flat tax of 30%
From 2018, taxable investment flows higher than EUR 150,000 should be subject to a flat tax rate of 30% (including all social surtaxes).
This is welcome news for investors since certain investment incomes are currently taxable at up to 60% (progressive rates up to 45% plus 15.5% social surtaxes).

The French wealth tax replaced by a real estate tax
From 2018, the French wealth tax (i.e. *Impôt de Solidarité sur la Fortune - ISF*) should be replaced by a real estate tax and only what qualifies as "real estate" assets will be taxed.

The brackets and rates applicable for the new real estate tax will be the same as the one provided for the current French wealth tax. This is welcome news for shareholders whose shares are currently included in the wealth tax basis but will not be subject to the new real estate tax.

Deloitte's view

Companies should evaluate their French qualifying free share and stock option award plans to determine whether they have any awards that may be eligible for a refund and proceed to file a refund claim.

More details about the withholding tax and the estate and investment tax reforms should be available in the next few months.

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