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Global Reward Update
France

French Finance Act 2025: Tax and Social Security Reform of Management Incentive Packages

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Headline

Article 93 of the 2025 French Finance Act introduces a new tax regime applicable to gains made by employees and directors on securities acquired or subscribed with effect from 15 February 2025, in connection with their function within the company or a group company.

Background

The decisions of the French Supreme Court ("Conseil d'Etat") on July 13, 2021, established the principle that management incentives should be taxed as salary income when they arise primarily from the exercise of director or employee functions, rather than as capital gains. Without claiming to be exhaustive, in its judgment, the French Supreme Court set out guidelines to determine whether or not gains should be treated as salary.

However, these decisions did not eliminate the ongoing uncertainty around the French tax and social security treatment of management incentives, particularly due to the variety of investment schemes offered to managers acquiring shares. There continued to be difficulty in distinguishing between what constitutes a capital gain (currently subject to a flat tax of 30%/34%) and what would constitute income taxable as a benefit in kind (i.e. as salary, up to 45%/49% tax).

The new legislation's stated aim is to "clarify the applicable law regarding investment plans for directors and employees."

Scope of the Law

- All types of securities will be affected (ordinary shares, preference shares, warrants, etc.), whether they are paid, free, or issued within a French qualified plan.
- The securities must have been acquired by employees or directors in connection with their functions within the group.
- Applies irrespective of whether the securities are held directly or indirectly (e.g. via a nominee).

This regime will apply to gains realised from the day after the law is promulgated, including sales occurring from the effective date of the 2025 French Finance Act, provided that such an immediate application would not deprive shareholder managers of the legal guarantees conferred by the current legislation.

What has changed?

The law specifies the conditions under which the "net gain" will be taxable either as capital gain or as remuneration.

The tax treatment of the net gain will depend on whether the net gain exceeds a certain limit, defined as three times the ratio between the "actual value" of the issuing company at the time when securities are sold and its "actual value" as at the date of acquisition.

Below this limit, the gain will be considered a capital gain, and therefore taxed at a maximum rate of 37.2%, provided that:

- The securities sold have been held for at least two years; and
- The securities present a risk of loss of their acquisition value or subscription value.

Beyond this limit, the gain will be taxed as salary at income tax rates of up to 49%. Net gains above the limit will be exempt from employee social security contributions but will instead be subject to a new employee social levy of 10%, resulting in a maximum tax rate of 59%. This exemption will be limited in time to sales made before December 31, 2027.

It should be noted that the PEA[1] exemption does not apply to capital gains under the new regime. From the effective date of the Act, the securities impacted by this new regime cannot be acquired or subscribed through a PEA.

[1] "Plan d'Epargne en Actions" (a regulated tax umbrella providing exemption from income taxes).

Other changes – Employer specific social contributions on Free Shares

In addition, the employer's specific social contribution on the grant of free shares has been increased by the 2025 social security financing bill (the "PLFSS") from 20% to 30% of the fair market value of free shares upon vesting. However, the text of the "PLFSS" must still pass a final review by the Conseil Constitutionnel.

Deloitte's view

The complexity of the new tax and social security legislation applying to management incentive packages in France is likely to result in the French tax authorities reviewing their position in relation to the new regime and its interaction with both other relevant legislation and its compatibility with the principles established by the French Supreme Court decisions of July 13, 2021. Given the remaining grey areas, it will be necessary to assess the impact of this new regime on each investment scheme implemented before the effective date of the 2025 French Finance Act, which is 15 February 2025.

Who to contact

If you would like to discuss this further, or have any questions, please speak to your usual Deloitte contact or any of the contacts listed below:

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