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Objet :	Client Alert - France: 2018 Finance Bill - Summary of Tax Measures on Personal Income Tax, Wealth Tax and Employee Benefits -- ATTORNEY ADVERTISING
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Client Alert

Global Equity Services | October 2017

France: 2018 Finance Bill – Summary of Tax Measures on Personal Income Tax, Wealth Tax and Employee Benefits

The French government released the draft Finance bill for 2018 on September 27, 2017 and the draft Social Security Finance bill for 2018 on September 28, 2017. These bills are currently being discussed at the Parliament and the final vote should occur in December. The key measures impacting employee benefits are outlined below.

Flat Tax on Investment Income

To date, investment income such as dividends (after a 40% rebate against taxable basis for income tax purposes), interest and capital gains (after a 50% or 65% rebate against taxable basis for income tax purposes if the shares are held for at least two years or eight years, respectively) is subject to French income tax at progressive rates up to 45%. For social tax purposes (including CSG/CRDS), the full gross dividend, interest or capital gain is subject to tax at a 15.5% rate, of which 5.1% is tax deductible in the year of payment.

As proposed in the 2018 Finance bill, a flat tax of 30% (comprised of increased social tax (CSG/CRDS) at an increased rate of 17.2% and income tax at a rate of 12.8%), to be withheld at source, would apply to all financial income earned by individuals as from January 1, 2018, unless the individual opts in his/her annual French income tax return (to be filed during Year N+1) for taxation at progressive rates.

For illustrative purposes, please find below a comparison of the tax treatment of investment income for a taxpayer under the current regime and the 2018 Finance bill, assuming gross income of EUR 100 and application of a marginal income tax rate of 45%:

	DIVIDENDS			
	Current regime		2018 Finance bill	
Gross dividend		100 €		100 €
Rebate (40%)		-40 €		____
Taxable Income		60 €		100 €
Income tax	*45%**	27 €	*12.8%*	12.80 €
Social tax on gross income (CGS/CRDS)	*15.5%***	15.50 €	*17.2%****	17.20 €
Net income after tax		57.50 €		70.00 €

** Assumption: marginal income tax rate applicable*
*** Of which 5.1% is tax deductible*
**** No % is tax deductible*
Exceptional tax on very high income not taken into account for the purpose of this calculation.

	INTEREST			
	Current regime		2018 Finance bill	
Gross interest		100 €		100 €

Income tax	*45%**	45 €	*12.8%*	12.80 €
Social tax on gross income (CGS/CRDS)	*15.5%***	15.50 €	*17.2%****	17.20 €
Net income after tax		39.50 €		70.00 €

**Assumption: marginal income tax rate applicable*
*** Of which 5.1% is tax deductible*
**** No % is tax deductible*
Exceptional tax on very high income not taken into account for the purpose of this calculation.

CAPITAL GAINS							
		Current regime				2018 Finance bill	
		Holding period < 2 years	Holding period > 2 years		Holding period > 8 years		
Gross dividend		100 €	100 €		100 €		100 €
Rebate		0 €	-50 €		-65 €		
Taxable Income		100 €	50 €		35 €		100 €
Income tax	*45%**	45 €	22.50 €		15.75 €	*12.8%*	12.80 €
Social tax on gross income (CGS/CRDS)	*15.5%***	15.50 €	15.50 €	*15.5%***	15.50 €	*17.2%****	17.20 €
Net income after tax		39.50	61.50		68.50		70.00

** Assumption: marginal income tax rate applicable*
*** Of which 5.1% is tax deductible*
**** No % is tax deductible*
Exceptional tax on very high income not taken into account for the purpose of this calculation.

Increase of Social Tax CSG Rate Increased by 1.7% Affecting All Income

To date, CSG (which is one of the social taxes included in the combined 8% rate for salary and in the 15.5% rate for other income) is due at a rate of 7.5% on salaried income (including non-qualified awards in France) and at a rate of 8.2% for dividend, interest, capital gain and French-qualified equity awards gains (RSU and options). The draft French Social Security Finance bill proposed a 1.7% increase in the CSG rate, with a correlative increase of the tax deductible portion to 6.8% (instead of 5.1%). However, the 6.8% tax deductible portion will only be available when income is subject to income tax at progressive rates and not when income is subject to flat taxation. This will affect all taxable income as from 2018.

French Wealth Tax Replaced with Real Estate Wealth Tax

To date, French wealth tax ("Impôt de Solidarité sur la Fortune") is assessed on the net market value of the estate of a taxpayer and his/her household when this value exceeds the threshold of EUR 1.3 million as of January 1.

French tax residents are liable for wealth tax on their worldwide estate, while non French tax residents are liable for wealth tax on certain French-based assets (mainly real estate oriented assets), subject to applicable tax treaties.

As proposed in the 2018 Finance bill, French wealth tax would be replaced by a new real estate wealth tax ("Impôt sur la Fortune Immobilière"), applicable from January 1, 2018, that would only be assessed on real estate oriented assets. In practice, securities and stock would no longer fall within the scope of the new real estate wealth tax from this date.

The progressive rates of the new real estate wealth tax and the threshold above which liability arises for such tax would be similar to those that currently apply to the French wealth tax.

Introduction of a New French-qualified RSU Regime

For French-qualified RSUs granted pursuant to shareholder authorization as of the date of publication of the 2018 Finance bill (expected to be in late December 2017), the tax regime for the taxpayer would be the following:

The portion of the vesting gain that is less than or equal to an annual threshold of EUR 300,000 would be subject to:

- Progressive income tax rates and brackets up to 45%, but after an automatic 50% rebate applicable regardless of how long the shares have been held
- Social tax including CSG/CRDS at a rate of 17.2%, of which 6.8% is tax deductible

The portion of the vesting gain that exceeds an annual threshold of EUR 300,000 would be subject to:

- Progressive income tax rates and brackets up to 45%
- Social tax including CSG/CRDS at a rate of 9.7%, of which 6.8% is tax deductible
- Employee specific social tax of 10%

To note that during the discussion which started at the Parliament, a reduction of the 30% employer social contribution due on French-qualified RSUs to 20% has been proposed and will hopefully be voted on. Whether this will only concern new approved grants is still a pending question.

For comparison purposes, the following examples illustrate the tax treatment of the vesting gain under the Macron regime, the modified-Macron regime and the proposed regime under Finance bill 2018.

French-qualified RSUs Granted Under the Macron Regime / Taxation of Vesting Gain

Shareholders authorization received as of August 7, 2015

	Holding period < 2 years	Holding period > 2 years	Holding period > 8 years
Income tax	45.00%	22.50%	15.75%
Social tax CSG/CRDS*	14.14%	14.14%	14.14%
Overall taxation for the taxpayer	59.14%	36.64%	29.89%

**Taking into account the increased rate of CSG and the tax deductible CSG*

French-qualified RSUs Granted Under the Modified-Macron Regime / Taxation of Vesting Gain

Shareholders authorization received as of December 30, 2016

	Fraction vesting gain not exceeding 300 K €			Fraction of the vesting gain exceeding 300K €
	Holding period < 2 years	Holding period > 2 years	Holding period > 8 years	Regardless of holding period
Income tax	45.00%	22.50%	15.75%	45.00%
Social tax CSG/CRDS*	14.14%	14.14%	14.14%	6.64%
Employee-specific tax	-	-	-	10.00%
Overall taxation for the taxpayer	59.14%	36.64%	29.89%	61.64%

**Taking into account the increased rate of CSG and the tax deductible CSG*

French-qualified RSUs Granted Under Finance Bill 2018 Proposed Regime / Taxation of Vesting Gain

Shareholders authorization as of publication of Finance bill 2018

	Fraction of the vesting gain not exceeding 300 K €	Fraction of the vesting gain exceeding 300K €
	Regardless of holding period	Regardless of holding period
Income tax	22.50%	45.00%
Social tax CSG/CRDS*	14.14%	6.64%
Employee-specific tax	-	10.00%
Overall taxation for the taxpayer	36.64%	61.64%

**Taking into account the increased rate of CSG and the tax deductible CSG*

Please contact your Global Equity Services attorney with any questions related to Finance bill 2018.

Baker McKenzie.

Client Alert

Global Equity Services | March 2017

Ukraine Loosens Licensing Restriction on Shares Acquired for No Consideration

KEY TAKEAWAY

On February 23, 2017, the National Bank of Ukraine issued Decree No. 14 which changed the definition of "placement" for purposes of determining whether a placement license is required for the holding of shares outside of Ukraine.

Ukrainian residents (excluding private entrepreneurs) no longer must obtain a placement license to hold shares of a foreign company outside of Ukraine, provided that no payment is made from Ukraine to acquire the shares. Accordingly, for shares that are acquired for free (such as shares at vesting of restricted stock units), a placement license will no longer be required.

Summary

In the past, Ukrainian residents generally were required to obtain at least one license to acquire shares pursuant to an employee share plan:

(i) an investment license to acquire foreign shares in exchange for consideration (e.g., for shares purchased at exercise of a stock option or under an employee stock purchase plan); and
(ii) a placement license to hold shares or cash in a foreign account (e.g., a bank or brokerage account).

The licenses were extremely difficult to obtain, making it practically impossible for foreign companies to grant share-based awards to Ukrainian residents.

On February 23, 2017, the National Bank of Ukraine ("NBU") issued Decree No. 14 which amended two prior NBU decrees from March 1999 and October 2004 by clarifying the definition of "placement" for purposes of determining whether a placement license is required. Decree No. 14 provides that a placement license is required for any transfer of "currency valuables" (e.g., cash or shares) from Ukraine to a foreign account.

We believe this change can be interpreted to mean that Ukrainian residents (excluding private entrepreneurs) no longer must obtain a placement license merely to hold shares of a foreign company outside of Ukraine, provided that no consideration is paid from Ukraine to acquire the shares and that the shares are not otherwise "placed" by way of a transfer of currency valuables from Ukraine. Consequently, any foreign shares that are placed into a foreign account without the remittance of payment from Ukraine are no longer subject to the placement license. This means that companies may now grant restricted stock or restricted stock units to employees in Ukraine and issue the shares or an equivalent cash payment (at grant or at vesting) into a non-Ukrainian bank or brokerage account.

Although a placement license no longer is required for a Ukrainian resident to hold shares or cash in a foreign account absent an outbound transfer of currency valuables, both an investment license and a placement license still are required to acquire shares in exchange for consideration paid from Ukraine. Therefore, it remains problematic to offer an employee stock purchase plan or an option plan to employees in Ukraine, unless companies (or employees) can find ways to avoid the remittance of funds from Ukraine for the payment of the shares. For an option, for example, this can easily be achieved by exercising the option with a cashless method of exercise, which does not require the remittance of the exercise price by the employee.

If you have questions about the impact of Decree No. 14 on your company's equity plans, please contact your Global Equity Services attorney.

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EU Agrees on Final Version of Prospectus Regulation; All EU Issuers Can Expect to Benefit From the Employee Share Plan Exemption Starting in 2019

In early December, the European Parliament, the EU Council and the EU Commission reached agreement on revisions to the EU Prospectus Regulation. The EU Prospectus Regulation will replace national the EU Prospectus Directive, which (as implemented by each EU Member State) governs the offer of securities in Europe.

On December 20, the Permanent Representatives Committee of the EU Council approved the revised EU Prospectus Regulation and it now awaits adoption by the EU Parliament (which should be a mere formality). once adopted, the new EU Prospectus Regulation will become effective 24 months after its publication in the Official Journal, which we expect will occur in early 2017 and which would mean that the new EU Prospectus Regulation would become operative during the first half of 2019.

Under the new EU Prospectus Regulation any issuers who offer share-based incentive programs to their European-based employees will be exempt from the prospectus obligations and no longer will need to file a prospectus with the regulatory authority of the issuer's home Member State. This will be the case regardless of the type of plan offered, the number of employees per Member State to whom participation is offered or the value of the offering. Furthermore, the exemption will now apply even if the issuer is not incorporated or headquartered in the EU or listed on an EU exchange.

Instead, in case the offer is otherwise deemed a public offer (usually if an ESPP is offered to more than 150 employees in any Member State), issuers simply will need to make available a document containing basic information regarding the offering and the issuer, including the number and nature of the securities being offered, the reasons for the offering and certain details regarding the offering. The issuer will not need to have this "offering document" approved by the regulatory authority of any Member State, and from a practical perspective, the document will be substantially shorter (normally less than 10 pages) when compared to a typical EU prospectus (typically over 100 pages) and substantially easier (and less costly) to prepare.

The EU Prospectus Regulation should result in the following consequences for issuers who currently have to file an EU prospectus for share-based offerings to employees in Europe:

- Issuers operating on a calendar year basis should be prepared to continue filing EU prospectuses for 2017, 2018 and possibly 2019 (if the new EU Prospectus Regulation is published during the second quarter of 2017)
- Issuers operating on the basis of fiscal years ending in other months should be prepared to continue filing EU prospectuses for 2017 and 2018.

We will provide additional information about the new EU Prospectus Regulation and what it will mean for non-European companies offering equity compensation awards to employees in Europe as further details become available. However, the new EU Prospectus Regulation represents welcome relief for companies that have needed to prepare EU prospectuses for employee share-based offerings in Europe and a new opportunity for companies that have excluded European employees from share-based plans due to the onerous and costly nature of EU prospectuses.

We would like to thank Manuel Lorenz, Baker McKenzie Frankfurt, for his assistance with drafting this alert.

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Global Equity Services

Clients & Friends Newsletter

October 2016

GES Practice Group Update

Now Available Online! The Global Equity Services Annual Grant Questionnaire

To ease the burden on your stock administration team, Baker & McKenzie has developed a comprehensive e-questionnaire to allow you to organize and submit your annual grant data directly to your Global Equity Services team more efficiently.

Read more

Belgium

Tightening View of Belgian Social Security Administration With Respect to Equity Awards

In a recent case, the Belgian Social Security Administration took the position that the remuneration was “borne” by the local Belgian employer due to the fact that the local Belgian employer made (non-binding) recommendations as to who should receive certain awards and for how many shares.

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Bulgaria

Withholding, Reporting and Social Tax Obligations on Equity Award Income Clarified in Bulgaria

In this Issue

Recent opinion letters issued by the Bulgarian tax authorities have clarified income tax withholding and reporting and social tax obligations for stock option and restricted stock unit income in Bulgaria.

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Costa Rica

Social Insurance Contributions No Longer Due on Equity Award Income in Costa Rica

The Costa Rican Social Security Agency has taken the position that social insurance contributions are not due on equity award income where the local entity is not taking a corporate tax deduction for the cost of the awards.

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European Union

EU Market Abuse Regulation

The EU Market Abuse Regulation came into force on July 3, 2016, replacing the previous Market Abuse Directive with immediate effect.

Read more

EU General Data Protection Regulation

The new EU data protection framework entered into force on May 25, 2016 and organizations have two years from now to comply with the new rules.

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France

Loi Macron Further Clarified in New Tax Guidelines

On June 14, 2016, the French Tax Administration issued guidelines commenting on various changes to the qualified RSU regime under Loi Macron.

Read more

Income Tax Withholding May

Upcoming Events

Please visit our Global Equity Services upcoming events page for a full list of our upcoming events, speaking engagements and webinars.

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- June Anne Burke
- Nicole Calabro
- Valerie Diamond
- Denise Glagau
- Sinead Kelly
- Barbara Klementz
- Aimee Soodan

Become Required Starting With Calendar Year 2018

The draft Finance Act contains provisions creating an obligation for the employer to withhold personal income on employment income, starting with calendar year 2018.

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Sweden

Proposal for Tax-Qualified Option Regime in Sweden

The Swedish government is considering the introduction of a tax-qualified option regime. Under the proposal, qualified stock options would not be subject to income tax at exercise.

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United States

IRS Eliminates Requirement to Include 83(b) Election with Annual Tax Return

The IRS issued final regulations eliminating the requirement for taxpayers making an "83(b) election" to enclose a copy of the election with their annual tax return.

Read more

Shareholders Challenging Section 16 Exemption Availability Where Net Share Tax Withholding is Elective

Several companies have received letters from the plaintiff's bar seeking to recover "short-swing profits" from Section 16 officers.

Read more

NYSE Issues Guidance Confirming that Equity Plan Amendments to Allow Maximum Tax Withholding Do Not Require Shareholder Approval

The NYSE issued guidance clarifying that an amendment to an equity compensation plan to provide that the tax withholding obligations may be calculated based on the participant's maximum tax rate will not require shareholder approval.

- Brian Wydajewski

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Proposed Dodd-Frank Rules Regulating Incentive Compensation at Certain Financial Institutions

In April 2016, six federal agencies regulating the financial sector issued proposed rules under Section 956 of the Dodd-Frank Act, superseding the initially proposed rules issued in April 2011.

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Vietnam

Vietnam Clarifies Process for Obtaining Approval Under New Exchange Control Regime

The State Bank of Vietnam has offered several clarifications regarding the practical considerations of Circular 10 for companies currently offering, or considering offering, equity awards in Vietnam.

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Baker & McKenzie Alert

In a referendum on June 23, 2016, the UK voted to exit from the European Union ("EU"), the so-called Brexit. The UK Government is now likely to commence the formal process of withdrawing from the EU, although the timing is unclear.

For companies offering awards under employee share and other incentive plans in the UK and elsewhere in Europe, Brexit has no immediate effect on such offerings. The vote yesterday was an advisory vote and has no direct effect on any legislation now in force. It could be up to two years, if not more, before any legislation affecting share and other incentive plans is changed.

Notwithstanding, we offer some preliminary thoughts below on areas affecting share and other incentive plans that may be impacted by Brexit in the future:

Securities Law Implications for Option and RSU/Restricted Share Grants

At present, most, if not all, of the local securities authorities appear to take the view that non-transferrable employee options or other equity incentive awards offered for no consideration are not "securities" subject to the EU Prospectus Directive (2003/71/EC) (the "Prospectus Directive"). Therefore, companies offering these kinds of incentives to their employees in the EU, including in the UK, have not been required to file a prospectus in connection with the offer.

Once the UK leaves the EU, we would expect that the UK securities authorities will take a similar view as to non-transferable employee options and other equity incentive awards offered for no consideration and that no UK securities filing would be necessary in connection with the offering of such awards.

Securities Law Implications for Share Purchase Plans

The Prospectus Directive requirements are different for the offering of employee share purchase plans ("ESPPs") in the EU. Rights to purchase shares under an ESPP generally are treated as securities offerings under the Prospectus Directive and require a prospectus filing, unless the company can rely on an exemption or exclusion. Many companies are able to rely on the small-offering exemption which applies if the ESPP is offered to fewer than 150 employees in an EU country. In addition, an employee share plan exemption exists but this exemption currently applies only to companies incorporated in the EU or listed on an EU-regulated stock exchange.

Companies that are required to file a prospectus in the EU (because they cannot rely on any of the available exemptions or exclusions) are able to file one prospectus (in their "home member country") and passport the prospectus into any other EU country in which the ESPP offering qualifies as a public offering (typically because it is made to 150 or more employees).

Once the UK leaves the EU, the Prospectus Directive may no longer apply. In this case, the UK may implement equivalent rules which could provide for the mutual recognition of prospectuses approved in a EU or EEA country. Whether there is a willingness to grant mutual recognition will depend on whether the EU will reciprocate. Problems may arise if the EU is not open to reciprocity in which case the UK may not agree to recognize a prospectus from another jurisdiction and require the company to file another/new prospectus in the UK.

However, it is also possible that the UK securities authorities will not consider ESPP offerings to be public offers of securities (similar to options and awards offered for no consideration) or that they would accept offer materials prepared under the laws of the home country of the issuer to be sufficient disclosures and not require a UK-compliant prospectus. For example, for US issuers, the delivery of a plan prospectus prepared in accordance with Section 10(a) of the U.S. Securities Act of 1933 may be considered to be sufficient.

For companies that have been relying on the employee share plan exemption under the Prospectus Directive because they are either incorporated or listed in the UK, the exemption may no longer be available after the UK withdraws from the EU, unless the company is also listed on another EU-regulated exchange. Or if a company is relying on the exemption because it is incorporated or listed in another EU or EEA country, after the UK's withdrawal from the EU, it is no longer certain if the UK will recognize the employee share plan exemption. However, as noted in the preceding paragraph, it is possible that the UK may then no longer require a prospectus filing for any employee share plan offerings. If that is not the case, another/new prospectus filing in the UK may be required (notwithstanding the continued availability of the employee share plan exemption for the EU offering).

Data Privacy Implications

As you know, data privacy regulations in the EU are in a major state of flux due to the invalidation of Safe Harbor and due to a proposed new EU Data Privacy Regulation which is intended to replace the current EU Data Privacy Directive. The UK's data privacy laws closely adhere to the standards imposed by the EU Data Privacy Directive. Once the UK withdraws from the EU, it will be free to amend its data privacy laws or implement new laws. In addition, the new EU Data Privacy Regulation will have no effect in the UK. As such, companies collecting, processing or transferring data from/to the UK will need to be prepared to comply with another set of rules that may impose new or different requirements from the rules in the EU. It would be surprising, however, if the UK would not consider consent to be a valid ground to collect, process and transfer personal data. Therefore, we encourage companies to continue to seek the employee's consent for any collection, processing and transfer of personal data for purposes of the employee's participation in a share plan.

Discrimination

Various EU directives (such as the EU Framework Directive) implemented into UK law prohibit discrimination against employees based on different grounds. For example, discrimination against part-time or fixed-term employees or discrimination against employees on the basis of age is prohibited. This can impact share plan offerings by companies to EU employees (e.g., by restricting the use of age-based retirement provisions or requiring that awards be offered also to part-time employees). As noted above in the data privacy context, it is possible that the UK may reconsider these laws after withdrawing from the EU, although it is unlikely that we will see any material changes.

Employment Considerations

To learn more about Brexit's impact on your company's employment relationships, click here.

BREXIT Webpage

In addition, Baker & McKenzie has set up a BREXIT webpage containing information relevant for clients as well as contact details for our BREXIT team and recent press coverage. It can be accessed via the following link: http://www.bakermckenzie.com/brexit/

Our thanks to our colleagues in the United Kingdom, Jeremy Edwards, Arun Srivastava and Ross Denton for their help with this alert.