

# ARTICLE

## OVERVIEW ON THE NEW SOCIAL AND TAX REGIME INTRODUCED BY THE FINANCE ACT FOR 2025

Tax Law | 10/02/25 | Xavier Rohmer

### I. Reminders

- Article 93 of the Finance Bill for 2025 was adopted on Thursday, February 6.
- This article provides for the introduction of a social and tax regime for gains realized upon the exit of management packages, as set out in the newly introduced Section 163 bis H of the French Tax Code ("FTC").

### II. Key points of the new regime

#### • Relevant Earnings

- The new regime applies to "the net gain realized on securities **subscribed or acquired by employees or directors, or allocated to them** (...) when it is acquired in consideration of the position of employee or manager in the company issuing these securities, in any company in which the issuing company directly or indirectly holds a share of the capital, or in any company which directly or indirectly holds a share of the capital of the issuing company".
- The legislator has adopted the principles set out in the French Supreme Administrative Court rulings of July 13, 2021 (no. 428506, no. 435452 and no. 437498).

#### • Nature of Relevant Securities

- All securities are likely to be covered (shares, bonds, warrants, etc.), including securities issued under a qualifying plan (free shares, warrants "BSPCE" or stock options).
- The securities must present a risk of capital loss.
- The securities must have been held for at least two years (except when acquired under a qualifying plan, e.g., free shares, warrants "BSPCE", stock-options).

#### ■ What is the Tax Treatment?

- The general principle is that the net gain realized on the securities earned by employees and managers in **consideration of their position** is taxed as wages and salaries.
- **As an exception**, a portion of the gains may be considered as a capital gain up to a limit corresponding to a multiple of three times the company's financial performance applied to the subscription / acquisition price of the securities ("**Cap**"), i.e., according to the following formula:

$$\left( \text{Acquisition Price} \times 3 \times \frac{\text{Fair Market Value of the Company at the Sale Date}}{\text{Fair Market Value of the Company at the Acquisition Date}} \right) - \text{Acquisition Price}$$

- The fair market value of the company at the sale date must be increased by debts granted by shareholders and related companies within the meaning of Section 39, 12 of the FTC.
- If the securities are acquired on different dates, the net gain must be determined separately for securities acquired at different dates.

- *In the case of a ManCo, the fair market value of the company would be the fair market value of the target company, and not the securities of the ManCo itself.*
- This taxation would also apply to so-called interim transactions covered by Sections 150-0 B and 150-0 B *ter* of the FTC (tax deferral regime). As a result, these tax deferral regime would not apply to the net gain which would exceed the Cap.
- In the case of a gift, the net gain realized by the donor (i.e., the employee or the director) would remain taxable upon the disposal by the recipient; in other words, it would not be possible to clear the donor's taxable capital gain.

## • What Tax Treatment Applies?

- Managers would now see their capital gain from management packages, if considered as “*earned in consideration of their position*,” taxed as follows (and potentially subject to the new income tax for high earners introducing a minimum effective tax rate of 20%):
- *As a capital gain, up to the Cap: (i) 12.8% income tax (or progressive tax rates upon election), (ii) 17.2% social security contributions, and (iii) 3% to 4% of CEHR.*
- *As a salary above the Cap: (i) subject to the progressive income tax scale, and (ii) a new specific employee contribution of 10%.*

## • When Does It Take Effect?

This new social and tax regime applies to disposals (sales and other taxable events) occurring from **February 16th, 2025**, even if the securities were acquired beforehand.

## • Conclusion

The key point of this reform is in the legal certainty provided to employers (i.e., indirectly, the investment funds). These gains will no longer be subject to employer social contributions, it being mentioned that the new specific employee contribution (10%) is declared and paid by the employee.

Future guidance from the French tax authorities is still awaited. At first glance, this text appears to restrict the possibility of managers to realize capital gains taxed as such beyond the Cap.

## III. SIMPLIFIED EXAMPLE

### WORKING ASSUMPTIONS

- ✓ On February 7, 2025, a manager subscribes preferred shares of the same category in connection with his position for a total price of **€50,000** (outside of any specific social or tax regime), based on a fair market value of the issuing company's equity of **€25,000,000** (with no debt granted by a shareholder or a related entity).
- ✓ On June 15, 2027, the manager sells his preferred shares for a total price of **€530,000**, based on a fair market value of the issuing company's equity of **€47,000,000**.
- ✓ The net gain realized is considered to have been earned in **consideration of the manager's position** and will therefore be subject to the new regime introduced by the 2025 Finance Act.
- ✓ Provided that the securities carry a **risk of capital loss** for the manager and have been held for **more than two years**, a portion of this gain will be taxable as a capital gain (this fraction may qualify for tax deferral or rollover relief, where applicable).

### TAXATION OF NET GAIN

- ▶ The net taxable gain under the new regime is **€480,000** (€530,000 minus €50,000), and will be taxed as follows:
  1. **The portion of the gain taxed as a capital gain** amounts to **€232,000** (calculated according to the formula below) and is subject to a maximum tax rate of **34%** (**without taking into account the new tax on high income**), representing an amount of €78,880:
    - Flat tax at a rate of 12.8%: €29,696
    - Social security contributions at a rate of 17.2%: €39,904
    - CEHR at a rate of 4%: €9,280
  2. **The portion of the gain taxed as salary** is **€248,000** (the portion exceeding the Cap) and is subject to a maximum tax rate of **59%**, representing an amount of €146,320 €:
    - Progressive tax scale (marginal rate of 45%): €111,600
    - Specific employee contribution of 10%: €24,800
    - CEHR at a rate of 4%: €9,920

**DETERMINATION OF THE CAP FOR THE DETERMINATION OF THE NET GAIN TAXED AS A CAPITAL GAIN**

$$\left( \text{€50,000} \times 3 \times \frac{\text{€47,000,000}}{\text{Fair Market Value at the Acquisition Date}} \right) - \text{€50,000} = \text{€25,000,000}$$

*i.e., a Financial Performance of the Company amounting to 1.88*

