

ARTICLE

FRENCH TAX AUTHORITIES RELEASE DRAFT GUIDANCE ON MANAGEMENT PACKAGES

Tax Law | 29/08/25 | Xavier Rohmer

On July 23, 2025, the French tax authorities (DGFiP) published a draft administrative guidance (BOI-RSA-ES-20-60-20250723), now open for public consultation until October 22, 2025. The draft provides clarifications on the application of the new tax regime for management packages introduced by Article 163 bis H of the French General Tax Code (CGI). The regime applies to securities that have been disposed of, sold, converted, or leased as of February 15, 2025.

Below is a summary of the main clarifications provided:

Scope of application

- The new regime applies only to equity securities or securities giving access to equity, thereby excluding debt instruments (e.g., plain vanilla bonds).

Eligible beneficiaries

- The regime is intended exclusively for employees and executives carrying out functions either:
 - within the issuing company,
 - within any direct or indirect subsidiary, or
 - within the parent company of the issuer.

Conditions relating to the securities

- Securities must entail a risk of loss, i.e., a price effectively paid for their acquisition or subscription.
- For free shares (AGA), stock options (SOP), and BSPCE warrants, this risk is limited to the acquisition or subscription value.
- The two-year minimum holding requirement is calculated on a date-to-date basis, per security, using the FIFO method for fungible securities. This condition does not apply to AGA, SOP, or BSPCE.


Gains covered

- The regime applies to net gains realized as consideration for the functions performed by an employee or executive upon the disposal, sale, conversion, or leasing of securities.
- The administration identifies a set of “markers” suggesting such a link, including:
 - Gains linked to “ratchet clauses” under ADP structures,
 - “Sweet equity” arrangements allowing managers to hold a disproportionately high shareholding,
 - Obligations under shareholder agreements (e.g., lock-up clauses, non-compete clauses, “good/bad leaver” provisions).
- Some markers, however, are also common in standard shareholder agreements (e.g., drag/tag along clauses). The draft would have benefited from distinguishing those specific to management incentives from those typical in private equity deals.
- Gains derived from statutory employee incentive mechanisms (AGA acquisition gains, SOP exercise gains, BSPCE exercise gains) are excluded.

Taxation methodology

- The net gain treated as a capital gain is calculated as follows:
$$(3 \times \text{price paid for acquisition/subscription} \times \text{financial performance of the reference company during the reference period}) - \text{price paid for acquisition/subscription}.$$
- The reference period extends until the disposal date but also includes exchanges falling under Articles 150-0 B and 150-0 B ter CGI (i.e., tax deferral/suspension transactions).
- For calculation purposes, the purchase price of all securities disposed of by a given employee/executive in the same company is aggregated (“one basket”), regardless of differing rights. Gains on securities acquired at different dates are computed separately, unless they were acquired under the same framework agreement within a short timeframe.

Terms of calculation

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- The price paid is the actual purchase/subscription price (excluding acquisition costs), or the acquisition value for AGA/AGADP.
 - Financial performance is measured by the ratio between:
 - the fair market value of the reference company at the disposal or exchange date, and
 - its fair market value at the acquisition/subscription or allocation date.
 - The reference company is either the issuer or, where applicable, the management company (“ManCo”).
 - Fair market value is increased by debts owed by the issuer to any shareholder or related company (Article 39-12 CGI). Later-incurred debts are deemed to exist as from the acquisition date.
 - Corporate actions affecting equity (capital reductions, amortizations, reserve capitalizations, free share allocations, etc.) are neutralized under Article 163 bis H, II CGI.

Allocation of gain (capital gain vs. employment income)

- The portion of the gain up to three times the performance threshold is taxed under the capital gains regime for securities, benefiting from applicable deferral, rollover, or retirement relief provisions.
- The portion exceeding this threshold is taxed as employment income in the year of disposal, conversion, or leasing.
- This employment income is subject to a specific 10% employee contribution until December 31, 2027, with no employer contributions.
- Notably, where the transaction involves a deferral or contribution (without liquidity), the employment income portion is still immediately taxable. Legislative changes may be expected in upcoming Finance Bills.

Earn-outs and price supplements

- Fixed price supplements known at the time of disposal are included upfront in the gain calculation, not at payment.
- Contingent earn-outs are included upon payment. If the capital gains threshold has already been reached, such earn-outs are taxed as employment income; otherwise, they are taxed under the capital gains regime.

Management packages and PEA/PEA-PME plans

- Securities subscribed or acquired as of February 15, 2025 falling under Article 163 bis H CGI cannot be included in a PEA or PEA-PME plan.
- Net gains realized after that date can no longer benefit from the exemption attached to such plans.
- The draft does not clarify whether this triggers closure of existing plans.

Remaining uncertainties

- For transfer duties (DMTG), it is unclear whether gifts extinguish the portion of the gain taxed as employment income.
- In terms of international tax, the draft is silent on:
 - qualification issues (capital gain vs. salary) under tax treaties, and
 - the interaction between the management package regime and exit tax rules.

The final position will depend on the outcome of the public consultation and the publication of the final guidance.
