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MANAGEMENT INCENTIVE PLANS IN FRANCE: AN UPDATED OVERVIEW

Tax Law | 04/02/26 | Xavier Rohmer



Parliament's final adoption of the French Finance Act for 2026 on 2 February 2026 marks a significant milestone in the tax and social security treatment of gains arising from management incentive plans (MIPs).

After several years of uncertainty driven by case law and successive legislative responses, the regime governing such gains has reached an inflection point. The legislative reforms initiated in 2025 and extended into 2026 now provide a more structured framework for determining how MIP-related gains are taxed and assessed for social security purposes.

1- From the 2021 case law to the introduction of a hybrid regime

Prior to the early-2025 reform, three landmark decisions issued by the *Conseil d'État* sitting in plenary session on 13 July 2021 significantly altered the treatment of gains realized under management incentive plans.

These decisions established that such gains could be recharacterized as employment income where they were granted in consideration for the performance of duties as an employee or corporate officer.

In response to this case law, **Article 93 of Finance Act No. 2025-127 of 14 February 2025** introduced, with effect from 15 February 2025, a hybrid tax and social security regime applicable to net gains realized by executives and employees upon the disposal of instruments qualifying as MIPs.

The new provision, now set out in **Article 163 bis H of the French Tax Code**, applies to the net gain arising from the disposal, conversion or leasing of such instruments where the gain is "earned in consideration for the functions performed as an employee or corporate officer of the issuing company".

Under this framework, the gain is, as a matter of principle, treated as employment income.

However, it may fall within the capital gains regime where:

- the relevant instruments have been held for at least two years (this holding period condition not applying to instruments issued under regulated statutory schemes such as stock options, free share awards (AGA) or BSPCE); and
- the beneficiary is exposed to a genuine risk of capital loss.

Access to capital gains treatment is nevertheless subject to a cap. Only the portion of the gain corresponding to three times the increase in the company's real value between acquisition and disposal of the instruments may benefit from this regime.

Within this limit, the gain is subject to the 30% flat tax, in addition to the exceptional contribution on high incomes (CEHR) at a rate of 3% or 4%.

Any excess gain above this threshold remains characterized as employment income for tax purposes and is subject to a specific 10% employee social contribution, which was initially due to apply only until 31 December 2027.

No employer social security contributions or CSG-CRDS applied to the portion of the gain characterized as being earned in consideration for the performance of duties (French Social Security Code, Articles L. 242-1, II, 8° and L. 136-1-1, III, 3°, a bis).

One of the key features of this new regime lies in the absence of employer social security contributions borne by the issuing company in respect of MIPs granted to employees or corporate officers.

2- Administrative guidance: key clarifications and remaining uncertainties

The French tax authorities subsequently issued administrative guidance on 23 July 2025, which remained open for public comment until 22 October 2025.

Subsequent administrative guidance from the French tax authorities provides important clarification, in particular as regards:

- confirming a “blended” calculation approach where several categories of instruments are disposed of simultaneously, provided that the instruments were subscribed for or granted on the same date and issued by the same company;
- confirming that existing tax deferral and rollover regimes remain applicable to the portion of the gain qualifying as a capital gain, while the portion classified as employment income remains taxable as such;
- reiterating a number of structuring markers already identified by the *Conseil d'État* in its 2021 case law, including the presence of lock-up, loyalty or non-competition clauses, as well as “good leaver / bad leaver” arrangements.

However, certain areas remain unresolved, in particular:

- whether gains realized under MIPs may be neutralized through a gift-and-sale arrangement;
- the interaction between this hybrid regime and the French exit tax mechanism;
- the treatment of instruments held within a PEA prior to 15 February 2025, given that instruments falling within the scope of the new MIP regime may no longer be held in a PEA from that date onwards.

3- Social Security Financing Act for 2026: permanent application of the social regime and alignment with tax rules

Article 17 of the Social Security Financing Act for 2026 (LFSS 2026) further strengthened the framework by amending several aspects of the social security treatment applicable to gains arising from MIPs.

This provision permanently enshrines the regime, which is no longer limited to 31 December 2027. The LFSS now provides that the social security regime applies, without time limitation, to grants, disposals, conversions or leasing of instruments carried out from 15 February 2025 onwards.

In addition, the LFSS expressly aligns the social security treatment with the tax regime by designating Article 163 bis H of the French Tax Code as the single point of reference. Accordingly, to benefit from exemption from social security contributions and from CSG on employment income, gains must:

- expose the beneficiary to a **genuine risk of capital loss**; and
- as a general rule, satisfy a **minimum two-year holding period** (except for regulated employee share ownership schemes).

Gains that do not meet these conditions are treated as employment income and are therefore subject to standard social security contributions (both employee and employer contributions).

The LFSS 2026 also clarifies the application of the specific 10% employee contribution introduced by the 2025 reform. This contribution is maintained but narrowed in scope and applies solely to the portion of the gain that:

- **qualifies under Article 163 bis H**; and
- **exceeds the capital gains taxation cap.**

Consequently, the 10% employee contribution does not apply to the entire gain.


To clarify the scope of this contribution, LFSS 2026 amends Article L. 137-42 of the French Social Security Code, thereby defining the relevant assessment base.

In addition, Article 17(III) of LFSS 2026 specifies that these rules apply to grants, disposals, conversions and leasing transactions carried out from 15 February 2025 onwards.

With respect to the exemption from social security contributions and from CSG on employment income, such exemption is confirmed for the portion of the gain treated as a capital gain under a management incentive plan. That portion nonetheless remains subject to the “patrimonial” CSG at the increased aggregate rate of 10.6% (comprising 9.2% CSG and a 1.4% solidarity levy).

4- Finance Act for 2026: further refinement of the regime

The Finance Act for 2026, adopted on 2 February, introduces additional adjustments.



Article 24 of the Finance Act for 2026 (originating from Article 8 ter of the Finance Bill) provides, subject to certain conditions, in particular, for the possibility of deferring taxation of the portion of the gain classified as employment income where the manager reinvests all or part of the proceeds into a new structure (rollover relief).

In addition, this provision permits the withdrawal of MIP instruments from a PEA (or PEA-PME) without triggering closure of the plan or immediate taxation, provided the withdrawal occurs prior to any taxable event.

Further administrative guidance is expected to clarify the practical implementation of these new provisions.

It should be noted that the Finance Act for 2026 will only come into force following review by the Constitutional Council and its promulgation.

The management incentive plan regime continues to evolve and will require ongoing monitoring, as certain areas have yet to be fully clarified.
