Changes to French qualifying plans

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On 7 August 2015, the Loi Macron introduced changes to French qualified restricted stock units ("RSUs"). It introduced a more favorable regime; however, in order to benefit from it companies will have to obtain shareholder approval.

> "RSUs granted after 7 August 2015 will not automatically benefit from the new regime. Overseas parent companies that grant French qualified RSUs will now face a hurdle in that they must get shareholder approval before they can grant RSUs."

Favorable provisions of the new regime

Vesting and holding periods— Under the old regime, there was a minimum cumulative vesting and holding period of four years, which has now been reduced to just two years.

The minimum vesting period has decreased from two years to one year from the date of grant. There is now more freedom in how companies can structure their vesting and holding periods – you can now include:

- a minimum one year vesting period followed by a minimum one-year holding period; or
- a minimum vesting period of two years with no holding period

Tax treatment

Employer social contribution has been reduced from 30% under the old regime to 20% and is now only payable at vesting. European SMEs can benefit from a rate of 0% if certain conditions are met, provided they have never distributed dividends since their inception.

Employees will still be taxed and subject to social contributions upon sale of the shares. However, the new regime introduces more favorable provisions in this area.

The new regime provides that the tax levied on the gain at vesting (i.e. value of the shares granted at vesting) can be reduced by 50% where shares are held for 2 to 8 years or by 65% if the shares are held for more than 8 years. Further, the employee social tax at 10% no longer applies to RSUs. The social contributions payable on salary at an 8% rate have been replaced by the contributions applicable to income on wealth at a rate of 15.5% under the new regime, with 5.1% of this rate being deductible.

The gain at sale (i.e. incremental gain) is still subject to income tax, with the 50% and 65% reduction in rates, as above, and the social contributions with a rate of 15.5% also apply.

We have created a table illustrating the differences between the old and new qualifying regimes and the current non-qualifying regime. Please contact us if you would like to see a copy.

Shareholder approval

RSUs granted after 7 August 2015 will not automatically benefit from the new regime. The Loi Macron provides that grants of RSUs must be authorized by shareholder approval after the effective date of the law, 7 August 2015.

It is unclear what the position is under the new regime regarding foreign issuers that grant RSUs under a sub-plan to a shareholder- approved plan. Under the old regime, it was possible for French-qualified RSUs to be granted under a sub-plan adopted by the Board or Compensation Committee. The French tax authorities have not issued any official guidance on this point yet but they may require a new shareholder approval.

French qualified options

French qualified options will not be affected by the changes introduced by the Loi Macron.

Measures to take

If companies want to benefit from the new regime, they will need to obtain shareholder approval.

Alternatively, companies might consider granting RSUs under the old regime. (The old regime has 2-year vesting period and an additional 2-year holding period, as well as employer social tax due at a rate of 30% at grant).

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