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Allocation of free shares

The 2018 Finance Act introduces changes to the tax treatment of free shares (*Attributions Gratuites d'Actions* or "AGA" under French law.)

This provides the opportunity to review the applicable legal and tax regimes.

1. **Beneficiaries**

a) The **salaried employees** of the company allotting the shares, or certain categories of salaried employees;

b) The salaried employees of companies or economic interest groups, at least 10% of the capital or voting rights of which is directly or indirectly held by the company allotting the shares;

c) If the allocated shares are **securities admitted to trading on a regulated market**, the following persons can also be granted such shares: (i) the salaried employees of companies or economic interest groups that directly or indirectly hold at least 10% of the capital or voting rights of the company allotting the shares, and (ii) the salaried employees of companies or economic interest groups having at least 50% of their capital or voting rights directly or indirectly held by a company which itself directly or indirectly holds at least 50% of the capital of the company allotting the shares;

d) The **chair of the board of directors**, the **general manager**, the **delegated general managers**, the **members of the executive board** or the **chief executive** of a joint-stock company; these persons may also be allotted shares in an affiliated company in the above mentioned conditions, provided that said company's shares are admitted to trading on a regulated market;

It must be specified that shares may not be allotted to **salaried employees** and **corporate legal representatives** who individually hold more than **10%** of the share capital, and that an allocation of free shares must not result in individual salaried employees and corporate legal representatives holding more than **10%** of the share capital.

NB: Specific provisions apply to companies operating in the **banking-insurance industry**, as well to managers of companies, the **securities of which are admitted to trading on a regulated market**.

2. **Procedure**

The **extraordinary general meeting of shareholders**, on the basis of a report from the board of directors or, as the case may be, the executive board, and the **statutory auditors**' special report, authorizes the board of directors or the executive board to proceed with a free allocation of existing or new shares, and determines, in particular:

a) The **maximum percentage** of the share capital which may be allotted, it being specified that:

– The aggregate number of shares freely allocated may not exceed **10%**[1] of the share capital as of the date of the decision of the board of directors or executive board to make such allocation;

– This percentage is increased up to **30%** wherever the allocation of free shares is made to **all salaried employees** of the company;

– When the aggregate number of shares freely allocated exceeds 10% or 15% of the share capital, the difference between the number of shares allocated to each salaried employee may not be higher than a **one to five ratio**;

b) the **period** during which this authorization can be **used** by the board of directors or the executive board, it being specified that this period may not exceed thirty eight months;

c) The duration of the so-called "**vesting**" period during which the rights resulting from the allocation of free shares are **non-transferrable[2]**, it being specified that such period may not be less than **one year**[3];

d) The minimum period during which the beneficiaries **must hold the shares**. This period starts running from the date on which the allotment of shares becomes definitive, it being specified that:

– The cumulated duration of the vesting and holding periods may not be less than **two years**[4];

– In companies, the shares of which are admitted to trading on a regulated market, free shares may not be transferred, even when the holding period is over:

+ during the period of ten stock market trading days that precede and f three stock market trading days that follow the date on which the consolidated financial statements or, if there is no consolidated financial statements, the annual accounts are published;

+ during the period between the date on which the company's corporate bodies become aware of an information which, if it were to be published, could have a significant impact on the trading price of the company's securities, and the date being ten trading days after such information is published.

The board of directors or, where applicable, the executive board subsequently determines:

a) The identity of the **beneficiaries** of the allocation of shares;

b) The **conditions** and, as the case may be, the **allocation criteria** applicable to the shares.

In addition, if shares are allotted to the chair of the board of directors, general manager, delegated general managers, members of the executive board or chief executive of a joint-stock company, the board of directors or, as the case may be, the executive board, must either (i) resolve that such free shares may not be transferred by the allottees before they **cease to hold office**, or (ii) set the quantity of shares that they are required to retain, as registered shares, until they cease to hold office.

3. **Tax treatment applicable to free shares, the allocation of which has been authorized by an extraordinary meeting of shareholders held after December 31, 2017: Main changes**

The employment benefit corresponding to the value, upon acquisition, of the allotted shares is taxed:

a) as "wages and salaries", after application of (i) a 50% rebate or (ii) a 500,000 euros rebate[5] and, for the potential surplus, the 50% rebate, for the portion of the acquisition gain under an annual threshold of EUR 300,000;

b) according to the ordinary rules applicable to wages and salaries for the portion of the acquisition gain exceeding an annual threshold of EUR 300,000.

The **net gain**, corresponding to the difference between the price of the shares upon their resale and the value of the share on the vesting date, is, unless the beneficiary has opted for the taxation as per the rules applicable to wages and salaries, taxed in the same conditions as capital gains on the sale of securities, i.e. 30% flat tax (that comprises levies) or optionally at the progressive income tax rates plus social levies.

NB: Specific provisions apply to **non-resident** beneficiaries.

[1] In companies, the securities of which are not admitted to trading on a regulated market or on a multilateral trading facility and do not exceed, at the close of a financial year, the thresholds used to define small- and medium-sized businesses, as provided for by Article 2 of Annex I to Commission Recommendation 2003/361/EC of 6 May 6, 2003 concerning the definition of micro, small- and medium-sized businesses (i.e.: less than 250 employees and an annual turnover not exceeding 50 million euros, or an annual balance sheet

total not exceeding 43 million euros), by-laws can, in case of allocation of free shares to certain categories of salaried employee only, provide for a higher percentage that may not, however, exceed **15%** of the share capital as of the date on which the decision to allocate shares is made by the board of directors or the executive board.

[2] In case of death of the beneficiary, his/her heirs may request the allocation of the shares within six (6) months from the death. These shares are freely transferable.

[3] The general meeting of shareholders may, however, provide for the definitive allocation of the shares before the end of the vesting period if the beneficiary suffers from a disability falling within the second or third category provided for by Article L.341-4 of the French Social Security Code.

[4] Shares are, however, freely transferable if the beneficiary suffers from a disability falling within one of the above-mentioned categories provided for by Article L.341-4 of the French Social Security Code.

[5] A rebate of 500,000 euros is available for retiring corporate officers, insofar as the conditions set forth in Article 150-0 D ter of the French Tax Code are met.