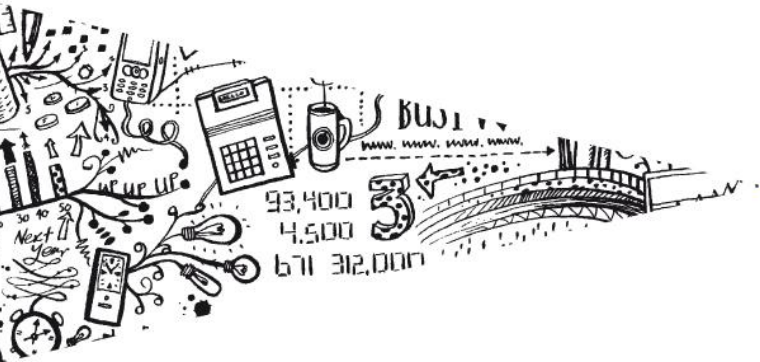


21, July 2011

EY Tax Alert

Bonus to be paid to employees in case of dividend distributions by their Employer: impact as from 2011 ordinary general shareholder's meeting



Executive summary

French Parliament adopted on July 13th, 2011, the bill setting up the payment of bonuses to employees in case their employer decides a dividend distribution. While it is subject to promulgation, the bill contains the following provisions:

The new rules apply to commercial companies (i) with 50 employees or more, (ii) those the share capital of which is owned at least at 50% by the State or its French public establishments and, (iii) those under 50 employees on a voluntary basis.

The bonus has to be paid to all the employees when the dividend per share distributed to the shareholders is higher than the average of the dividends per share distributed in the two previous fiscal years.

Nevertheless, when a company belongs to a group (the definition of which is the one used for the setting up of a group committee under Article L.2331-1 of the French Employment Code), the amount of dividends which triggers the bonus payment will be the one distributed by the controlling company. In such a case, the companies of the group (and apparently only companies with 50 employees or more) will be required to pay the bonus.

Background

According to the bill, the new rules apply to distributions made under Article L 232-12 of the French Commercial Code (FCC), i.e., distributions decided by the ordinary general meeting of shareholders (including interim dividends). Literally distributions of reserves decided by another shareholders' meeting should not trigger the bonus. The bonus might be adjusted but only according to the rules of allocation provided for by profit-sharing agreements.

As far as the amount of the bonus to be paid is concerned, an agreement will have to be signed within three months starting from decision to distribute the dividends made by the ordinary general meeting of the shareholders (or before October 31th, 2011 when companies have allocated dividends before the law enters into force). The agreement is subject to the modalities applicable to the signing of a profit-sharing agreement.

In case of failure of the agreement negotiations, an official report of disagreement detailing the last proposal of the parties and the amount of the bonus that the employer will grant on its own (after the opinion of employee's representatives has been obtained) has to be recorded. The agreement or the decision of the employer, as the case may be, has to be filed with the administrative authorities. Each employee entitled to the bonus shall receive detailed information

The bonus might be adjusted but only according to the rules of allocation provided for by profit-sharing agreements.

An anti-abuse rule would apply: the bonus cannot replace remuneration increases or bonuses agreed within the branch wage agreement, a previous salaries agreement or the employment contract. The bonus can neither replace items of remuneration paid either on a voluntary basis or mandatory basis as defined under Article L.242-1 of the French Employment Code (i.e., "*all sums paid for or in connection with a work such as wages or earnings, paid holidays compensation, the amount of deductions for employee premiums, allowances, bonuses, gratuities and all other cash benefits, kind in benefits*"..)

The draft bill provides for exemptions when companies, during the past year, have allocated, pursuant to a company agreement, a non-mandatory financial benefit a part of which shall be paid in consideration of the increase of the dividend distribution.

Failure to start the negotiations would expose to penalties of one year imprisonment and a fine of EUR 3,750.

Up to EUR 1,200 per employee and per year, the bonus is exempted from social security contributions (except the general supplementary social contribution (CSG), the French contribution to the reimbursement of the social security debt (CRDS) and the flat social contribution "forfait social").

Finally, the new rules shall apply until the vote, on December 31, 2013 at the latest, of a bill, upon the results of an inter-professional national negotiation on the sharing of added value, the purpose of which shall be, in particular, to modify the compulsory and optional profit-sharing scope.

Considering that the new rules should apply to dividend distributions authorized as from January, 1st 2011 in the financial year ended, the companies should assess their impact.

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