
European Tax Newsalert

A Washington National Tax Services (WNTS)
Publication

FRANCE
July 18, 2011

New compulsory bonus due to employees upon dividend distributions

On July 13, 2011, the French Social Security Act FY11 was passed by the French National Assembly. The Act introduced a new 'bonus for value added sharing' measure (*prime de partage de la valeur ajoutée*), requiring French companies to pay a bonus to all employees when dividends paid to shareholders have increased compared to the average dividend paid over the previous two fiscal years.

The measure applies to dividend distributions effective January 1, 2011. Companies falling within the scope of the measure that declared a dividend between January 1, 2011 and the enactment of the new law must negotiate the bonus with unions and employees representatives before October 31, 2011.

The amount of the bonus to be paid is not prescribed by legislation but rather must be negotiated with unions and employees representatives.

Companies falling within the scope of the measure

French companies are required to pay the bonus when they:

- have a workforce of at least 50 employees; and
- declare dividends to shareholders where the dividend has increased when compared to the average dividend payment made during the previous two fiscal years.



In addition, companies that belong to a French group fall within the scope of this measure when dividends distributed by the 'dominant company' of the group have increased compared to the average dividend payment made during the previous two fiscal years.

Companies that have granted another form of non-compulsory financial benefit to their employees (through a company agreement) during the current fiscal year are not required to negotiate the payment of such a bonus.

For companies with less than 50 employees, the negotiation and payment of such a bonus are at the employer's discretion.

Negotiation of the agreement with unions and the employees representatives

Agreement on the bonus amount to be paid must be finalized within three months of the shareholders' meeting where approval for payment of a dividend is granted. This agreement must be concluded with the unions' and employees' representatives in the same manner as the employees' profit sharing, i.e.:

- by an agreement between the employer and the company's unions; or
- by an agreement concluded with the Work Council (or equivalent), if any; or
- following the ratification of a draft agreement (proposed by the employer) by two-thirds of the employees.

Each employee will be provided with a notification outlining how the bonus was computed, the amount and the payment date.

Where no agreement can be reached, the bonus details will be determined unilaterally by the employer, after advice from the Work Council. The agreement or the unilateral decision of the employer must be filed with the competent Administrative Authorities.

Penalties

An employer that refuses to negotiate the bonus will be subject to a prison sentence (of up to one-year), and a EUR 3,750 fine. A company that fails to negotiate the bonus will also lose its social contributions exemption.

Prohibited substitution

The bonus cannot be a substitute for a salary increase or a bonus provided by the collective bargaining agreement, the work contract, or for any remuneration paid by the employer by virtue of law.

Social security regime of the bonus

The bonus will be exempt from any social contribution up to EUR 1,200 per employee per year (to the exception of "CSG", "CRDS" and the "forfait social").

The individual tax implications of the bonus payments have not been determined at this stage.

Enforcement

The measure is applicable effective January 1, 2011. For dividends declared between January 1, 2011 and the enactment of the Act, companies must negotiate the bonus with unions and employee representative before October 31, 2011.

US and international groups with French subsidiaries should carefully analyze the potential impact of the new measure, and review their dividend distribution policy for 2011 and beyond.

For more information, please do not hesitate to contact:

Your international contacts in France

Guillaume Glon +1 (646) 471 8240 g.glon@us.pwc.com

Guillaume Barbier +1 (646) 471 52 78 g.barbier@us.pwc.com

Eve Castex +1 (646) 471 3060 eve.x.castex@us.pwc.com

Gilles de Vignemont +1 (646) 471 1301 gilles.j.de.vignemont@us.pwc.com

Your international contacts in France

Renaud Jouffroy +33 1 56 57 4229 renaud.jouffroy@fr.landwellglobal.com

This document is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

SOLICITATION

© 2011 PricewaterhouseCoopers LLP. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers LLP, a Delaware limited liability partnership, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.