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The French law on value sharing

This French law (1) is the transposition of the French interprofessional agreement (ANI) on value sharing signed on 10 February 2023 following wide-ranging negotiations between the social partners. This ANI provided for a certain number of measures to improve the sharing of wealth within companies, particularly in SMEs. These measures have been taken up as faithfully as possible. Thus, this French law, applicable from 1 December 2023, provides for new mechanisms for sharing value as well as adjustments to existing ones.

New mandatory value-sharing scheme for companies with between 11 and 49 employees

The law introduces, on a 5-year trial basis, an obligation for companies with 11 to 49 employees to set up a value-sharing scheme if they achieve a certain level of profit for 3 consecutive financial years. This provision will apply to financial years starting after 31 December 2024, i.e. from 1 January 2025, on the basis of the financial years 2022, 2023 and 2024.

Companies with at least 11 employees who are not obliged to set up a profit-sharing scheme participation (less than 50 employees) are concerned by these measures. They do not apply to: individual companies and limited liability companies with workforce shareholding (SAPO) under certain conditions.

These companies must have made a net profit at least 1% of the turnover for three consecutive financial years (definition of profit is the same that used to calculate employee profit-sharing) and not be covered, for the financial year following these three years, by one of the following value-sharing schemes: profit-sharing, employee savings plan or value-sharing bonus.

Therefore, if the company satisfies the profit conditions in 2022, 2023 and 2024, it will be required to have put in place a value-sharing scheme by 2025 which will be, at the company's choice:

- Profit-sharing according to the legal system or according to the exceptional system with the possibility, from now on, to provide for a less favourable calculation formula than the legal formula or by applying a profit-sharing scheme agreed at branch level.

- Profit-sharing, with the conclusion of a profit-sharing agreement (or via an unilateral decision under certain conditions) or the application of a profit-sharing scheme agreed at branch level.

- A contribution to a French employee savings plan: PEE, PEI, PERCO, PERCO-I, PERE-CO, PERE-CO-I.

- A value-sharing bonus.

It should be noted that specific provisions are previewed for companies in the social economy with 11 to 49 employees (foundations or associations governed by the French law of 1 July 1901, cooperatives, mutual societies, or unions governed by the French mutual code or mutual insurance companies governed by the French insurance code). According to a similar mechanism, where permitted by an extended branch agreement, these companies will have to set up a value-sharing scheme (profit-sharing, PPV or employers' contributions), in the event of surplus earnings equal to at least 1% of their revenues for 3 consecutive financial years (first application to financial years starting after 31 December 2024).

Footnote (1) French law no. 2023-1107 of 29 November 2023 transposing the national interprofessional agreement on value-sharing within the company.

Mandatory negotiations on value sharing associated with an exceptional profit

This new obligation, which came into force on 1 December 2023, applies to companies with 50 or more employees with at least one trade union delegate. However, it does not apply to companies that have set up a profit-sharing or incentive agreement that already includes a specific clause taking account of exceptional profits and those that have set up a profit-sharing scheme on a calculation basis leading to a more favourable result than the than the legal formula.

When concerned companies open negotiations to implement a profit-sharing or incentive scheme, negotiations must also cover:

- The definition of an exceptional increase in their profits,

- The terms and conditions for value-sharing for employees.

It should be noted that companies that already apply a profit-sharing or incentive agreement on 29 November 2023, must enter into negotiations on the definition of exceptional profit and the and the sharing of the resulting value before 30 June 2024.

The law specifies that the definition of exceptional profit take into account criteria such as: the size of the company, the sector of activity, profits achieved in previous years, exceptional events external to the company that occurred before the profit, the occurrence of one or more of the company's shares followed by their cancellation provided that these transactions were not preceded by the allocation of free shares to employees.

Negotiations must also cover the terms and conditions for value sharing resulting from an exceptional increase in profit:

- Either through the payment of an additional profit-sharing or incentive for the financial year.

- Or by the opening of new negotiations with a view to: setting up a profit-sharing scheme, the payment of an additional profit-sharing or incentive profit-sharing scheme, the payment of an additional to an employee savings plan, the payment of a value-sharing bonus.

New optional scheme: the company value sharing plan

The purpose of this new scheme is to give employees a financial interest, within a social and tax incentive framework, in a "bonus for sharing in the company's growth". For each employee, the bonus is equal to the reference amount allocated under the agreement multiplied by the percentage change in the company's value over 3 years where this percentage is positive (no payment in the case of a zero or negative percentage). The reference amount may be adjusted for individual employees.

This measure applies to all companies that fall within the scope of the profit-sharing scheme and to all employees with at least one year's seniority in the company at the start of the plan (the plan may set a lower seniority requirement). Employees who leave the company permanently during the 3-year plan period are not eligible.

The plan is set up by agreement, drawn up on the basis of a special report by the auditor. To benefit from social security and tax exemptions, employers must file the agreement with the authorities. Companies may set up only one plan in any 3-year period.

The maximum amount of the bonus awarded to any one employee in any one financial year is 75% of the annual social security ceiling. Bonuses paid are exempt from employer and employee social security contributions, but CSG and CRDS remain payable. The employer will be liable for a specific employer contribution of 20%. Bonuses paid are exempt from income tax, if allocated to a savings plan, up to a limit of 3.75% of the annual social security ceiling, per year and per beneficiary.

Sums allocated to employees under a company value-sharing scheme may not be used as a substitute for a component of remuneration or other benefits.

An implementing decree is necessary to make this system fully operational.

Evolution of the value-sharing bonus (PPV)

The law on value sharing improves the PPV system on several points. It provides for as follows:

- The possibility for the employer to pay two bonusses by calendar year (necessity to elaborate two unilateral decisions or two separate unilateral decisions or agreements).

It should be noted that the overall exemption limits remain unchanged (€3,000 or €6,000 by calendar year and beneficiary).

- Continuation of the enhanced exemption scheme, from 2024 to 2026, for companies with fewer than 50 employees, with social security and tax exemptions for employees earning less than three times the French minimum wage.

- The option for employees to invest their PPV in an employee savings plan or company pension savings plan and thereby exempting it from income tax (if this is not already the case) within the limits of social security contributions.

An employer contribution is also possible. This measure is subject to the publication of a decree.

Adjustments to existing employee savings schemes

Profit-sharing

If the threshold of 50 employees is crossed, companies have 5 years to set up a profit-sharing scheme.

The additional period of 3 years that existed if the company had a profit-sharing scheme has been abolished. However, companies that already benefited from this already benefiting from this 3-year deferral will continue to do so until it expires.

Allocation of free shares

In order to develop employee share ownership, the French law raises various ceilings.

The overall ceiling for the allocation of free shares increases from 10% to 15% of the share capital in general and from 15% to 20% for SMEs.

In the case of grants to all employees, the ceiling increases from 30% to 40% of the share capital.

A new exceptional ceiling, set at 30% of the share capital, is provided for in the event of allotment to at least half of the company's employees, representing at least a quarter of total gross salaries.

The French law relaxes the individual ceiling which prohibits an employee or corporate officer from holding more than more than 10% of the share capital through the allocation of free shares. It is now stipulated that this limit only applies to shares held for less than less than 7 years.

Lastly, the French law now allows free shares to be granted to directors of affiliated companies in unlisted groups