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Global Employer Services

GES NewsFlash

France – Financing of Retirement Plans and Major Fiscal Reform

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In this issue:

Finance laws at the end of year 2010 (finance law for 2011, 4th rectifying finance law for 2010, and the social security financing law for 2011) have been designed with two major orientations: Provisions intended for the financing of the 2010 Retirement Act have been voted on, and the foundations for a more essential fiscal reform have been laid.

Financing of retirement plans

As announced, an additional contribution has been established on high income, capital income, and the rate of social contributions for capital gains.

Categories	**Individual income tax**	**Additional contributions on capital income**	**Other contributions**	**Global rate for the beneficiary**
Marginal rate of French individual income tax	41%	N/A		41%
Stock options	18% 30% 41%	12.3%	Employer contribution: 14% Beneficiary contribution: 8%	38.3% 50.3% 61.3%
Free shares award	30%	12.3%	Employer contribution: 10% or 14% Beneficiary contribution: 2.5% or 8%	44.8% or 50.3%
- Short-term	19%	12.3%		31.3%

capital gains on securities/real estate gains **- Distribution/ Interest**				
Contribution on defined benefit retirement plans	41%		7% or 14%	48% or 55%

Special employee and employer contributions on stock options and free shares awards

The employee contribution imposed on stock options and free shares awards has been raised from 2.5% to 8%, and the employer contribution increases from 10% to 14%. However, when free shares awards are inferior to the threshold of half the annual social security ceiling (€17,676 for 2011), the employer and employee contributions rates remain at 10% and 2.5%, respectively. In addition, gains that exceed €152, 500 will be taxed at 41% (+12.3% additional contributions) instead of 40% for any sales made on or after January 1, 2011.

Today, the employer can express a choice as to the valuation of the stock options or free shares awards retained as a basis to assess these contributions (International Financial Reporting Standards or share's value). Optimization of this threshold remains available and becomes more and more necessary given the increase in applicable rates.

Increase of taxation on defined benefits retirement plans

Defined benefits retirement plans are subject to a specific contribution at the expense of the employer, based, depending on the chosen option, on paid premiums (at rates of 24% or 12% depending on each case) or on the pension paid out (at rates of 16%). For pensions paid out to beneficiaries as of December 22, 2010, the tax relief applied up until now is canceled and employers who selected this regime will be able to receive the option initially chosen up until **December 31, 2011**. Therefore, you have time until that date to review your option. In addition, starting January 1, 2011, an employee contribution, at the expense of the beneficiary, has been established, which is added to the social contributions and income tax, with the rate of 7% or 14%, depending on the amount of the monthly pension received (amount included is €400 to €600 or > €600 for liquidated retirements starting January 1, 2011).

Major fiscal reform "a large assessment basis with low rates" trend: Large assessment basis to begin with

Capping of the tax deduction on the CSG and CRDS contributions

The basis for CSG (*Contribution Sociale Généralisée*) and CRDS (*Contribution au*

Remboursement de la Dette Sociale) contributions on salary income benefits is from a 3% deduction for business expenses. The amount of compensation eligible for this reduced base is now capped to four times the annual social security ceiling. Hence, for 2011, any remuneration above €141,408 will be fully subject to CSG/CRDS with no deduction.

Capping of exemption for social security contributions applicable to termination allowances

Allowances paid in respect of a termination (or from a forced termination of a corporate officer's functions, executives, and other people mentioned in article 80 ter of the French Tax Code) are exempt from social security contributions up to the amount of six times the annual social security ceiling (€212,112 for 2011). Starting 2012, this amount will be subject to the exemption ceiling equal to three times the annual social security ceiling for the benefits (including those that resulted from an employment protection scheme). Transitory measures are planned for allowances paid in 2011; the exemption ceiling will amount to six times the annual social security ceiling. The same exemption ceiling is applicable for CSG/CRDS contributions. However, the fiscal regime of termination allowances is not modified.

Withholding tax on employee's equity plans gains realized by a nonresident

As of April 1, 2011, French-source gains realized by nonresidents when exercising stock options (qualified or nonqualified) or resulting from free shares awards, restricted shares, restricted stock units, etc., will be subject to withholding tax. This new legislation forces employers to determine beforehand the sourcing that should be made on the gain between France, the country where the beneficiary resides, and potentially a third country.

Given the current absence of administrative comments regarding the methodology to be retained to source employee's equity plan gains in the context of international mobility, and since case laws in France have provided divergent solutions, in order to respect their employer's obligation to withhold at source, companies located in France (whether French corporation or foreign corporations) should proceed to a review of the geographic area pertaining to your company, as well as the practical consequences in France and in the host country, notably, but not only, when these gains are covered under a tax equalization/protection policy. This analysis will involve the setup of adequate procedures to anticipate the potential cash flow consequences.

Increase of the rate for the "forfait social" contribution

The rate of the "forfait social" contribution, an employer's contribution based on elements of compensation, which are ancillary to salaries (such as, in particular, gain and profit sharing, contributions of employers to complementary retirement funds) that already increased from 2% to 4 % on January 1, 2010, at the same time as its base was extended, is now increased to 6%.

French-source or foreign-source retirement benefits paid through capital

The retirement benefits paid through capital starting January 1, 2011, will now be fully taxable for the income tax, with the advantage of a 10% deduction on retirement benefits paid as annuities and the use of a specific quotient (replacing the taxpayer in the situation he/she would have been if he/she had received retirement benefits as annuities). These provisions apply to both French-source and foreign-source capital benefits.

Practically, this provision will allow taxation in France of additional retirement benefits paid in capital by Swiss organizations to French tax residents, benefits of taxation that should have been otherwise in Switzerland by the application of the amendment of the France/Switzerland tax treaty as modified on August 27, 2009.

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Back to Top

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