France

Employment

Labor Concerns

Employee entitlement claims are becoming more common. The risk of employee claims for additional benefits under a restricted stock or RSU plan may be reduced by having the employee agree to standard waiver and consent provisions.

Free shares allotted under Article L. 225-197-1 to 3 of the Commercial Code can be placed on a PEE up to €2,962.5 for 2013 subject to specific conditions (inter alia, the shares should be granted homogeneously to all employees according to objective criteria; the shares are blocked for 5 years and the modalities of application of the shares among the employees must be defined in a in-house collective agreement).

It is no longer possible to provide “bad leaver” clauses under which an employee terminated for cause or gross misconduct will lose his acquired rights: all employees must be treated in the same way, whatever the ground of their termination by the company.

Communications

The translation of restricted stock and RSU plan documents for employees is recommended, but not legally required. Government filings must be in French. Electronic execution of award agreements may be acceptable under certain conditions.

Regulatory

Securities Compliance

Neither the award nor the vesting of restricted stock or RSUs is likely to trigger any prospectus requirement, provided that the restricted stock or RSUs are awarded and vest free of charge.

Foreign Exchange

The employee must satisfy certain declaration requirements for the transfer of currency into or out of France. However, if the award is granted to the employee via bank transfers, a declaration will not be required.

Data Protection

Employee consent for the processing and transfer of personal data is a recommended method of compliance with existing data privacy requirements. Employers must inform employees about data processing and data transfer abroad. In addition, any database containing personal data must be reported to France’s data protection authorities prior to transferring data abroad.

Tax

Employee Tax Treatment

Unless the preferred tax treatment for free shares applies, the employee should be subject to income tax at the progressive rate 45% max on the value of the stock when the restricted stock is granted, and/or on the value of the shares when the RSU award vests. The proceeds from the sale of stock may be subject to income tax at progressive rates up to 45% plus additional social taxes at a total rate of 15.5% (of which 5.1% is deductible) and, if applicable, to the exceptional income tax for high earners at a marginal rate of 4%.

Social Insurance Contributions

Social insurance contributions are due on any income from a restricted stock or RSU plan which does not qualify for the tax-favoured program. The rates for most social insurance are not subject to a cap and can be of approximately 45% for employers and 23% for employees.

Details of social security contributions in relation to French tax-favoured plans are set out below.

General Tax Treatment

For grants of restricted stock made on or after September 28, 2012 and that meet certain requirements, including a minimum two-year vesting, the acquisition gain is subject to the progressive rates as ordinary income up to a maximum rate of 45%. If applicable, additionally, the gains are subject to the exceptional income tax for high earners at a rate of 3% or 4%. The flat rate depending on the respect of the additional two-year holding period, as described below, is abolished.

These gains are subject to the social surtaxes on employment income (*CSG* and *CRDS*) at a global rate of 8% (and no longer to the additional social charges at the 15.5% global rate applicable to grants of restricted stock made before September 28, 2012). A 5.1% portion of the *CSG* is deductible from the taxable income the year of its payment. The acquisition gain is exempt from social insurance contributions provided the employer complies with reporting obligations.

During the year in which the sale of Stock occurs, employees are required to pay a specific social security contribution of 10%. The contribution is assessed on the acquisition gain (market value of the shares at vesting).

The total maximum marginal tax rate applicable to acquisition gains resulting from grants of restricted stock made on or after September 28, 2012 amounts to 64.5% (of which 5.1% is deductible).

Within the month following the grant date of the free shares, employers are required to pay a specific social security contribution of 30%. The taxable basis is equal, at the employer's discretion, to either the (i) fair market value of the shares (as defined under IFRS 2) or (ii) value of the shares on the date of grant.

Capital gains realized on or after January 1st, 2013 upon sale of the shares are subject to income tax at progressive rates up to 45% plus additional social taxes at a total rate of 15.5% (of which 5.1% is deductible) and, if applicable, to the exceptional income tax for high earners at rate of 3% or 4%.

A rebate of 20% for shares held between 2 and 4 years, of 30% for shares held between 4 and 6 years and of 40% for shares held more than 6 years is applied on the amount of the capital gains.

The taxation of the capital gains may be deferred provided the following conditions are met:

- the sale relates to at least 10% of the shares of a company which have been held for at least eight years;
- at least 50% of any gain generated by the sale is reinvested by the seller (net of additional social charges) towards the purchase of shares in an operating company subject to corporate income tax. This reinvestment must be made within two years and must account for at least 5% of the concerned company's shares. These shares do not qualify for tax reduction on income or wealth tax; and

The capital gain tax deferral becomes a permanent exemption after five years of shareholding.

Tax-Favored Program

Preferred tax treatment is available for grants of restricted stock made before September 28, 2012 and that meet certain requirements, including a minimum two-year vesting and two-year holding period. Preferred tax treatment will defer taxation of the Stock underlying the award until they are sold by the employee.

The acquisition gain (market value of the shares at vesting) on a disposal of the shares is taxed at a rate of 45.5% (30% + 15.5% of additional social charges) or, upon election, at the progressive income tax rate up to 45% plus 15.5% of additional social charges (of which 5.1% is deductible) and, if applicable, to the exceptional income tax for high earners at a rate of 3% or 4%.

Withholding and Reporting

In general, reporting is required but there are no income tax withholding obligations. Withholding is required for social insurance, if any.

Employer Tax Treatment

The costs relating to the provision for the acquisition of the restricted stock should be deductible (no up-to-date official position).

