Management Packages

Discover the **Desfilis Avocats** tax team's analysis of the novelties introduced by article 25 bis of the Finance Law for 2025 on the taxation of Management Packages.

NEW TAX REGIME FOR "MANAGEMENT PACKAGES"
Article 25 bis of the Finance Act

REMINDER

The capital gains realized by an individual upon the sale of shares for consideration are taxable under the capital gains regime applicable to private individuals' transfers of securities and are subject to the flat tax ("PFU") at a rate of 30%, in addition to, where applicable, the high-income contribution ("CSHR") at a rate of 3% or 4%. However, a different approach applied when the gain was considered to be derived, not from the seller's capacity as an investor, but as compensation for their role as an employee or executive.

Let us recall that the Conseil d'État, in a plenary session, ruled in three landmark decisions dated July 13, 2021, primarily in favor of treating such gains as employment income whenever the shares were linked to the holder's status as an employee, regardless of the capital risk assumed in many cases.

In the years following these rulings, there was considerable uncertainty: (i) capital risk and subscription at fair market value were no longer deemed relevant criteria to avoid the reclassification of such gains as salaries, and (ii) exit clauses tied to departures raised concerns over such requalification. Legal certainty was urgently needed.

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From now on, as a general principle, all gains realized by an employee or executive on shares of the company in which they work (or an affiliated company) will be taxed as employment income. However, part of the gain may still benefit from the more favorable capital gains tax regime, but only within a certain limit.

It is important to note that the specific tax regime applicable to acquisition gains (i.e., the difference between the grant value and the acquisition value) from free shares (AGA) or stock options—already taxed as employment income—remains unchanged.

The capital gain upon disposal will now be split into two components:

- A first portion, corresponding to the return on capital investment, which will follow the tax regime applicable to capital gains on securities (flat tax of 30% + CSHR of 3%/4%). However, this amount is capped at “three times the multiple” of the issuing company’s valuation over the holding period of the shares.This performance multiple is equal to three times the ratio between (i) the fair market value of the issuing company at the time of sale and (ii) its fair market value at the time of subscription or acquisition (e.g., for AGAs (free share awards)).

- A second portion, corresponding to the excess gain beyond this cap, which will be taxed as salary under the progressive income tax scale (marginal rate of 45% + CSHR of 3%/4%).

For example, if the share price at disposal is 300 while it was 50 at subscription, the economic gain amounts to 250 per share.
The company's valuation increase is 250 per share (300-50), yielding a ratio of 5 (250/50), which exceeds the legal multiple of 3, thereby capping the preferentially taxed gain at 150 per share.
Consequently, the taxpayer will be taxed at 30% on 150 of the gain and under the progressive income tax scale on the excess 100 per share, in addition to a special employee contribution of 10 per share.

While this mechanism provides some welcome clarity, the broad principle adopted by lawmakers raises several concerns.

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Will it be practically possible to demonstrate that the acquisition was not made in "consideration for the employee or executive functions"? What about the founder of a startup who subscribed to the company’s capital, which is later acquired by an investment fund achieving a performance multiple exceeding the ratio of 3? Or the entrepreneur who has held onto their originally created company for over 20 years?

These questions suggest that further discussions with the tax and social security authorities are inevitable...

From a social security perspective, net gains qualifying as capital gains on securities will be exempt from employer social security contributions. However, the portion taxed as salary (i.e., the excess beyond the cap) will be subject to a new flat-rate social contribution of 10%, payable by the employee.

Additionally, this new regime will apply to disposals occurring from the day after the promulgation of the Finance Law—including ongoing AGA (Free Share Awards) or BSPCE (Founder Stock Warrants) plans.

Employee share ownership plans remain an attractive tool for retention, motivation, and value-sharing. However, the fact that this measure applies retroactively is somewhat disappointing.

Finally, as is already the case for AGAs, shares covered by this new regime cannot be held within a PEA (equity savings plan). However, no specific provision appears to have been made regarding Management Companies...

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