

Employee incentive plans

Theme	Previous provisions	Amendments made by the Pacte Law
<p>Increase in the cap on the incentive bonus (Arts. L. 3314-8 and L. 3315-2 of the French Labor Code)</p>	<p>The amount of incentive bonuses distributed to the same beneficiary cannot exceed 50% of the annual social security cap (Pass) in any given fiscal year.</p> <p>These bonuses are exempt from the income tax when they are allocated to a company savings plan (CSP).</p>	<p>The maximum limit for payment of the incentive bonus has been increased to 75% of the Pass (i.e., €30,393 in 2019), i.e., the same level as for profit sharing.</p> <p>At the same time, the limit on income tax exemptions for amounts arising out of incentive plan bonuses allocated to a CSP has been increased proportionally</p>
<p>Continuation of the incentive-plan agreement in the event of a change in the company's legal situation (Art. L. 3313-4 of the French Labor Code)</p>	<p>In the event of a change in the legal status of the company (by way of a merger, transfer or split-off), and where such a change made it impossible to apply the incentive plan agreement, it ceased to apply between the new employer and the company's employees.</p>	<p>In the event of a change in the company's legal status:</p> <ul style="list-style-type: none"> - if it is necessary to set up new staff representative bodies SRBs ("<i>Institutions Représentatives du Personnel</i>" – <i>IRP</i>), the incentive-plan agreement may continue or be renewed if the transaction documents provide for it; - if application of the incentive-plan agreement is impossible, it ceases to have effect. <p>Accordingly, setting up SRBs following transfer of a company does not <i>de facto</i> constitute a reason making it impossible to apply the incentive-plan agreement.</p>
<p>Multi-year performance objective (Art. L. 3314-2 of the French Labor Code)</p>	<p>Incentive plans are in principle based on an annual or sub-annual calculation formula (3, 4 or 6 months).</p>	<p>The annual or sub-annual formula can be supplemented by a multi-year objective connected to the company's results or performance.</p> <p>Accordingly, the incentive-plan agreement:</p> <ul style="list-style-type: none"> - must always include an annual or sub-annual formula, - may also include a multi-year formula. This is merely an option.
<p>Option of distributing balances resulting from the incentive-plan (Art. L. 3314-11 of the French Labor Code).</p>	<p>The distribution of incentive bonuses among the beneficiaries can be uniform, proportional to the length of service or proportional to salaries, and must respect individual caps (i.e. €30,393 per year in 2019, see above).</p> <p>The French Supreme Court had ruled out, in the event that an employee's distribution cap was reached, that sums above the</p>	<p>The incentive-plan agreement may provide for the immediate distribution of the remaining incentive plan bonus to employees who have not reached the cap on their individual rights.</p> <p>The cap cannot be exceeded as a result of this additional distribution, which must be carried out in the same way as the original distribution (uniform / proportional to the length of service / proportional to salary).</p>

	individual cap could be redistributed among other employees whose cap had not been reached.	These sums are subject to the same payroll and tax regime as the incentive plan itself.
Extension of the scope of a special purpose incentive plan (Art. L. 3312-6 of the French Labor Code)	Currently, companies or groups that already have a “classic” incentive plan agreement and contribute with other companies to an established and coordinated activity, can set up a specific purpose incentive plan for the benefit of all or some of the employees.	The new wording extends the scope of the plan by authorizing it for internal company purposes, and not necessarily just for purposes common to several companies. In this case, the incentive plan agreement must define a common objective for all or some of the company's employees.
Security for companies with respect to the Administration (Art. L. 3313-3 of the French Labor Code)	<p>Any incentive-plan agreement must be filed with the DIRECCTE (French Consumer, Competition and Labor Agency).</p> <p>If the DIRECCTE had not made any observations within four months, the preferential payroll and tax treatment of rights could not be questioned for previous and current fiscal years.</p> <p>On the other hand, the DIRECCTE could make comments after the four-month deadline and these had to be taken into account for subsequent fiscal years.</p>	<p>Now, tax and social security exemptions are deemed to have been granted in the absence of any observations on the part of the Administration within:</p> <ul style="list-style-type: none"> - four months after filing, for the first fiscal year; - six months after filing with respect to any years after the first fiscal year and the term of the agreement, i.e., three years in principle.
Profit-sharing		
Reduction of the cap on the special profit-sharing reserve (Article L. 3324-5 of the French Labor Code)	Participation could be distributed among employees in a uniform manner, in proportion to their length of service or salary. If the latter, the salary used as a basis for distributing the reserve was capped at 4 x Pass (€ 162,096 in 2019).	The PACTE Law reduces this amount to 3 x passes (€ 121,572 for 2019), in order to promote more equitable distribution proportional to salaries.
Employee savings		
Abolition of the obligation to set up a corporate savings plan (CSP) [“Plan d’Épargne Entreprise” – PEE] to set up a collective savings retirement plan (CSRP) [“Plan d’épargne pour la retraite collectif” – Perco] (Art. L. 3334-5, since repealed, of the French Labor Code).	Until now, the legislation required, for the establishment of a CSRP, to set up a CSP beforehand.	This obligation has been abolished by the PACTE Law in order to simplify the conditions for setting up a CSRP, in particular for small businesses.
Option of payment by the employer in the absence of an	An employer could not contribute to the CSRP in the absence of employee contributions.	An employer has the option of unilaterally contributing to an employee's CSRP, even in the absence of employee contributions, in two situations, to:

employee's contribution (Art. L. 3332-11 of the Labor Code)		<ul style="list-style-type: none"> - allow acquisition of shares issued by the company or a company included in consolidation of the accounts. In this case, the unilateral contribution is identical for all employees; - allocate distribution of capital gains in the event of a transfer of securities.
New options for early release of sums from a company savings plan (Art. L. 3332-25 of the French Labor Code)	The legal and regulatory conditions for early release of sums from a CSP before expiry of the minimum five-year period are provided for in Articles L. 3324-10 and R. 3332-28 to R. 3332-30 of the French Labor Code.	The PACTE Law adds a new option for early release: when releasing amounts acquired within the framework of a CSP is used to purchase shares in the company.
Reinforced investor information (Art. L. 3332-7-1 of the French Labor Code)	-	The person in charge of maintaining a register of administrative accounts is now required to provide any beneficiary of a CSP with an annual statement of accounts, including the choice for allocation of his savings, as well as the amount of his securities estimated on 31 December of the previous year.
Limitation of account maintenance costs for former employees (art. L. 3334-7 of the Labor Code)	Former employees of a company can continue their payments to their CSRP, it being the employee's responsibility to pay the company expenses related to the management of the account.	The account management fees will be capped by a forthcoming Decree.
Employee shareholding plans¹		
Abolition of the cap on allocating free shares (Art. L. 225-197-1 of the French Commercial Code)	The number of shares that may be allocated by a company to its employees and officers is limited to 10% of the share capital, or 30% when the allocation benefits all employees.	The PACTE Law removes two categories of securities from the calculation of this cap: <ul style="list-style-type: none"> - securities that have not been definitively allocated at the end of the vesting period; - securities that are no longer subject to the conservation obligation.
Sharing capital gains on the sale of shares with the company's employees (Arts. L. 23-11-1 to L. 23-11-4 of the French Commercial Code)	-	<p>Any holder of securities in a company may, under certain conditions, undertake to share with all of its employees a portion of the capital gains on the sale or redemption of his shares on the day he sells any portion of them.</p> <p>These securities are put into the CSP for the benefit of employees.</p> <p>The amounts shared are deducted from the amount of capital gains recorded by the seller and are deducted from the calculation of his capital gains on the sale.</p> <p>If the holder is subject to income tax, these amounts are removed from the base for calculating his income tax.</p>
Increase in the "haircuts" granted to employees as part	Companies could carry out capital increases reserved for members of a company savings plan under more advantageous	The "haircuts" mentioned are increased to

<p>of a capital increase reserved for members of the company savings plan (Art. L. 3332-19 of the French Labor Code)</p>	<p>conditions for them, allowing them to benefit from a maximum discount of 20% compared to the admission prices, if this is an initial introduction on the regulated market, or the average of the prices quoted during the twenty trading days preceding the day of the decision setting the opening date of the subscription, if the shares were already listed.</p> <p>This rate was increased to 30% when the unavailability period provided for in the plan is longer than or equal to 10 years.</p>	<ul style="list-style-type: none"> • 30% when the unavailability period provided for in the plan is shorter than 10 years, • and 40% when the unavailability period provided for in the plan is longer than or equal to 10 years.
<p>Increase in the “haircut” provided for in the context of a capital increase with free allocation of shares (Article L. 3332-21 of the French Labor Code)</p>	<p>The general meeting which decides on the capital increase could provide for the free allocation of shares or other securities giving access to the capital.</p>	<p>The cap on the value of the total benefit resulting from this allocation is raised in the same proportion as for the benefits for members of the CSP subscribing to the capital increases reserved for them, i.e. 30% and 40% in the event of unavailability of 10 years or more provided for in the plan.</p>

Note: The information contained herein is a summary and not intended to be a source of advice with respect to the material presented. The information and/or documents contained in this alert do not constitute legal advice.

¹ **Note:** the law of July 19, 2019 on the simplification, clarification and update of corporate law abolished the obligation for joint stock companies to vote every three years on a draft resolution to carry out a capital increase reserved for employees who have adhered to an employee savings plan.

On the other hand, the obligation to decide, at the time of any capital increase by cash contribution (including receivables), on a draft resolution intended to carry out a capital increase reserved for employees has been maintained [in SA companies: Art. L. 225-129-6 of the French Commercial Code, SCA companies: Art. L. 226-1 (2) of the French Commercial Code, and SAS companies: Art. L. 227-1, para. 3 of the French Commercial Code].