CHANGES TO QUALIFYING FREE SHARE AWARDS IN FRANCE

GLOBAL EQUITY UPDATE – FRANCE

The Loi Macron introduced changes to French qualified restricted stock units (“RSUs”) on 7 August 2015. The new rules are more favourable than the old rules, however companies will need to obtain shareholder approval to benefit from the new rules.

INCOME TAX REGIME RELIEF

Under the old rules the value of qualifying free shares at vest (the “acquisition gain”) was subject to tax as employment income. Under the new rules the acquisition gain is subject to the more favourable capital gains tax regime. This means that taper relief is now available on the acquisition gain, as follows:

- 50% for shares held over 2 years; and
- 65% for shares held over 8 years (or 85% for shares that meet certain conditions).

SOCIAL REGIME RELIEFS

Under the old rules the employer’s social security contribution was 30% of the value of the free shares, and this was payable the month following grant of the shares. Under the new rules the employer’s social security liability has fallen to 20% of the value of the free shares, and this is now due the month following vesting of the shares. Also, under the new rules Small and Medium sized companies may benefit from a nil rate social security band, provided certain conditions are met. The main condition is that the company has not paid out dividends since creation.

Under the old rules the employee social security contribution was due at the time of sale of the shares, and the amount of the social security contribution was 10% of the value of the acquisition gain. An additional social contribution surcharge was also due at a rate of 8%. Under the new rules, qualified free shares are now exempt from the employee social security contribution. However, the social contribution surcharge is now due at an increased rate of 15.5%. Still, there is a reduction in the overall liability for the employee.

REDUCTION IN VESTING AND HOLDING PERIOD

The old rules had a minimum two year vesting and an additional two year holding period requirement. The new rules have a one year vesting and a combined two year vesting and holding period requirement. This means that, for instance, if there is a two year vesting period, there will be no holding period requirement. Alternatively, if there is a one year vesting period, there is a one year holding period requirement.

SHAREHOLDER APPROVAL

The new rules take effect for free share awards made after 7 August 2015. Shareholder approval must be obtained for the grant of free shares to benefit from the new regime.

ACTION POINTS

- ✓ Companies will need to obtain shareholder approval if they want to benefit from the new rules.
- ✓ Otherwise, awards made will be under the rules of the old regime.

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