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Thomas Caveng, Legal Translator / Marketing Director

t.caveng@soulier-avocats.com

Tel.: + 33 (0)4 72 82 20 80

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A new tax credit to restore the competitiveness of French businesses

To restore the competitiveness of French businesses, the Government has adopted a national growth pact, the flagship measure of which is the so-called Competitiveness and Employment Tax Credit (*Crédit d'Impôt pour la Compétitivité et l'Emploi*, hereinafter “CICE”).

The CICE has a dual objective: reducing labor costs and providing an immediate response to companies' working capital needs. This tax credit will benefit a large number of companies and shall be assignable to credit institutions during the current year, i.e. before the CICE amount is definitively established.

1. Who will benefit from the CICE?

Any and all companies **liable to corporate income tax or income tax** based on their actual profits shall be eligible to the CICE. The CICE shall be calculated on the basis of the remunerations paid to the employees. There is no restriction concerning the size of companies or the type of activities conducted.

The concept of “employees” must be interpreted in the broadest sense of the term. Any person remunerated by the companies shall be taken into account, except the *dirigeants* (i.e. corporate officers having the power to bind the company) whatever their legal status.

Save any provisions to the contrary, the CICE can be combined with other tax credits and reductions in social-related charges.

To benefit from the CICE, eligible companies must, as from now, comply with reporting obligations with both social-related contribution collection agencies and the French tax authorities.

2. How will the CICE be calculated?

The CICE is based on all remunerations not exceeding 2.5 times the French minimum wage that eligible companies pay to their employees during the calendar year.

For the purpose of calculating the tax credit base, all remuneration components are to be taken into account. As such, the remuneration to be retained is that defined in Article L. 242-1 of the French Social Security Code (i.e. all sums received by an employee in compensation for or in connection with the work performed, including salaries, indemnities, bonuses, benefits in cash or in kind, etc.).

The rate of the CICE shall be 4 % of the remunerations paid in 2013. This rate shall then be increased to 6% as from January 1, 2014.

3. How to use the CICE?

In principle, companies shall offset the CICE against their corporate income tax or income tax. The surplus, if any, will be considered as a receivable from the State.

Some companies - because of their specific situation/status - will be entitled to request the immediate refund of the CICE surplus. This possibility shall be available only for small- and medium-sized businesses within the meaning of EU legislation, certain specific newly created companies, young innovative companies and distressed companies subject to an amicable settlement procedure, safeguard procedure, judicial receivership proceedings or judicial liquidation proceedings.

Companies that are not entitled to request an immediate refund can either (i) offset the surplus against taxes that will be due for the next three financial years and be refunded the unused part of the surplus, if any, at the end of this three-year period, or (ii) assign the receivable to a credit institution.

4. Possibility to assign the future receivable corresponding to the CICE

The most innovative feature of the CICE is that the corresponding receivable can be assigned to a financial institution even before the definitive assessment of the corporate income tax or income tax against which the CICE is to be offset.

This CICE “pre-financing” scheme will enable eligible entities to assign in 2013 their future receivable corresponding to the estimated CICE for 2013.

For this purpose, it will be necessary to assess the amount of the CICE and to comply with all reporting obligations imposed in this respect.

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