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Mandatory and optional profit-sharing schemes: What changes in 2016?

Law n°2015-990 of August 6, 2015, commonly referred to as the “Macron Law” has amended a number of provisions applicable to mandatory profit-sharing schemes (*participation*) and optional profit-sharing schemes (*intéressement*). The amended provisions come into force in 2016.

This article provides an overview of the key changes.

1. Alignment of the deadline for payment of sums under mandatory and optional profit-sharing schemes and establishment of a single late payment interest rate for both types of schemes

Henceforth, the deadline for paying out sums under mandatory and optional profit-sharing schemes is the last day of the fifth month following the end of the financial year, i.e. May 31, 2016 for companies that closed their financial year on December 31, 2015.

The Macron Law has also established a single applicable late interest rate. Interest on late payments under optional profit-sharing schemes shall now be calculated at the same rate as for mandatory profit-sharing schemes, i.e. 1.33 times the average yield rate of corporate bonds (*taux moyen de rendement des obligations des sociétés privées*). Interest shall be paid at the same time as the amount in principal (Articles L. 3314-9 and D. 3313-13 of the French Labor Code).

2. Sums paid out under optional profit-sharing schemes shall by default be invested and held in a savings plan

To the extent a company has implemented a company savings plan (*Plan Epargne Entreprise*, or “PEE”) or an intercompany savings plan (*Plan Epargne Interentreprises*, or “PEI”), **sums allocated** to employees under an optional profit-sharing scheme shall be **paid and kept** in such plan, unless the employee expressly requests otherwise.

The process is thus reversed, compared to what was applicable previously: Until 2015, sums paid out under such schemes were paid directly to the employee in the absence of any express indication to the contrary.

Yet, the Macron Law provides for a transitional period until December 31, 2017: Employees shall benefit from a right of withdrawal within three months following the allocation of the sums to the PEE or PEI.

3. Employee information

Optional profit-sharing agreements must henceforth specify the terms and conditions in which information must be provided to employees. The information to be provided includes the allocated sums, the amount that the employee is entitled to claim, the timeline within which he/she must make a payment request, and a provision indicating that the sums shall be paid into a PEE or PEI if the employee does not request that payment be made directly to him/her (Article R.3313-12 of the French Labor Code).

Warning: Companies are encouraged to promptly amend their optional profit-sharing agreement to incorporate new provisions concerning the date of payment and the information to be provided to the employee, in particular the terms and conditions of the default allocation of the sums into a PEE or PEI.

However, it seems that companies should not be sanctioned if they fail to update their optional profit-sharing agreement this year, even though it ought to be done as soon as possible. A ministerial circular should provide clarification on this point. It must be recalled that failure to provide the required information is likely to cause a loss to the employees who would then be entitled to seek compensation therefor.

4. Modification of the headcount threshold that triggers the obligation to implement a mandatory profit-sharing scheme

Until the Macron Law, companies that employed 50 employees or more for six months, consecutive or not, during the relevant financial year, had the obligation to set up a mandatory profit-sharing scheme.

As of now, the threshold of 50 employees is assessed over a period of 12 months, consecutive or not, during the three last financial years. As such, the obligation to implement such a scheme is postponed for 3 years compared with the previously applicable rules.

5. A reduced flat rate contribution (*forfait social*) for companies with less than 50 employees

Companies with less than 50 employees that either implement a mandatory or optional profit-sharing agreement or have not concluded any such agreement during the five preceding years benefit from a reduced flat rate contribution (*forfait social*)[1] of 8% – as opposed to 20% – for a period of six years.

6. Employee savings book

Any company that has implemented an employee savings scheme has the obligation to deliver to the employee, upon conclusion of the employment contract, an employee savings book that must specify only the schemes put in place within the company. This book must also be delivered to the staff representatives, as the case may be as an item to be included in the so-called Social and Economic Database (which is mandatory in companies with at least 50 employees that have employee representatives).

[1] The *forfait social* is a flat rate contribution paid by the employer that applies to gains and remunerations which are excluded from the social security contribution calculation base but subject to the so-called general social contribution tax (*Contribution Sociale Généralisée*).

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