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Insight ...

Sharing value in companies with 11 to fewer than 50 employees

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The law of November 29, 2023, transposing the national interprofessional agreement on value sharing within the company, has created an obligation for companies with 11 to fewer than 50 employees, on an experimental basis over 5 years (until 29/11/2028), to set up a value-sharing scheme if they achieve a certain level of profit for 3 consecutive financial years. This provision will apply to financial years starting after December 31, 2024.

The principle of this new obligation

These measures apply to companies with 11 or more employees that are not obliged to set up a profit-sharing scheme (i.e. those with fewer than 50 employees). Excluded are sole traders and, under certain conditions, "sociétés anonymes à participation ouvrière" (SAPOs).

The 11-employee headcount is calculated in accordance with social security rules. The reference headcount corresponds to the average number of people employed during each month of the previous calendar year. However, the 5-year moratorium provided for when the headcount threshold is exceeded does not apply to this system. Thus, a company with at least 11 employees in 2025 (based on the headcount calculated in 2024) will be concerned. It should also be noted that a company with more than 50 employees benefiting from the 5-year moratorium before being required to set up a profit-sharing scheme, are now included in the scheme.

To be covered by this new obligation, companies must have made a net profit for tax purposes equal to at least 1% of sales for 3 consecutive years (definition of profit identical to that used to calculate profit-sharing) and not be covered, for the financial year following these 3 years, by one of the following value-sharing schemes: profit-sharing, profit-sharing, employee savings plan matching or value-sharing bonus.

Thus, if the company satisfies the profit conditions in 2022, 2023 and 2024, it will be obliged to have set up a value-sharing scheme by 2025, which will be, at the company's discretion, either:

- Profit-sharing, according to the legal system or the derogatory system.
- Profit-sharing, with the conclusion of a profit-sharing agreement (or via a unilateral decision under certain conditions) or application of a profit-sharing scheme agreed at branch level.
- A contribution to an employee savings plan: PEE, PEI, PERCO, PERCO-I, PERE-CO, PERE-CO-I.
- A value-sharing bonus.

Special case of employers in the social economy sector

Specific provisions apply to certain structures in the social economy that employ at least 11 people and do not declare a net profit for tax purposes: foundations or associations governed by the law of July 1st, 1901 (or by the local civil code of Alsace-Moselle), cooperatives, mutual societies or unions governed by the French Mutual Code, or mutual insurance companies governed by the French Insurance Code.

Where permitted by an extended branch agreement, these entities will be required to set up a value-sharing scheme (profit-sharing, PPV or matching contribution) in the event of surplus earnings equal to at least 1% of their revenues for 3 consecutive financial years (first application to financial years opened after December 31, 2024). Employers who are not covered by an extended branch agreement allowing the experiment to be applied are not concerned.

This does not apply to entities in which one of these schemes has already been implemented and applied for the year in question, or to those which apply a profit-sharing scheme for the year in question (e.g. SCOPs).

Available value-sharing schemes

Participation

Profit-sharing enables employees to share in the company's profits. The law imposes a formula for calculating profit-sharing, but in companies with fewer than 50 employees, a derogatory formula may be provided by the company. Within the framework of an experiment, which began on November 30, 2023, in companies with fewer than 50 employees, the derogatory formula can have a less favorable result as well as a more favorable result than that of the legal formula. Profit-sharing, even under the derogation, is entirely results-based, and cannot be based on company performance targets, as is the case with incentive schemes.

The profit-sharing scheme must be open to all employees of the company. 3 months may be required. In companies with fewer than 50 employees, managers are eligible for profit-sharing (subject to certain ceilings).

Voluntary profit-sharing requires a profit-sharing agreement to be signed, in the same way as for companies with 50 or more employees. It is also possible to apply a scheme negotiated at branch level. Under certain conditions, companies with fewer than 50 employees can set up a profit-sharing scheme by unilateral decision, unless the derogatory formula is less favorable than the legal formula. The agreement or unilateral decision must be filed with the French tax authorities for social and tax benefits to apply.

The profit-sharing agreement may be concluded for an unlimited period or for a fixed period of at least one year. It must be concluded before the end of the one-year period following the end of the financial year for which profit-sharing is due.

Allocations to employees are made on a uniform basis, in proportion to salaries or length of service, or based on a combination of these criteria. The rights allocated to an employee may not exceed 75% of the annual social security ceiling in any one year.

In principle, profit-sharing is unavailable for 5 years, or even until retirement if the sums are paid into a retirement savings plan, but the employee can request that the rights be paid out immediately on each distribution. There are also cases of early release.

Amounts paid under the profit-sharing scheme are exempt from social security contributions (employer and employee), except for CSG/CRDS. No social security contributions are due on profit-sharing in companies with fewer than 50 employees. Amounts distributed as profit-sharing are definitively exempt from income tax at the end of the 5-year unavailability period or in the event of authorized early release. In the event of immediate payment, the sums are subject to income tax.

Profit-sharing

The profit-sharing scheme gives employees a financial stake in the company's performance. It consists in paying employees additional remuneration based on the achievement of objectives defined according to precise criteria. The formula for calculating profit-sharing is freely determined by the parties in the company agreement and must be random in nature.

If the company decides to set up a profit-sharing scheme, all employees must benefit. However, a maximum of 3 months' seniority may be required. As a matter of principle, corporate officers do not benefit from profit -sharing, unless they hold an employment contract in addition to their office. Exceptionally, in companies employing between 1 employee (excluding corporate officers) and less than 250 employees, if the agreement so provides, corporate officers may be eligible for profit-sharing without holding an employment contract.

The profit-sharing agreement is concluded by company agreement. Companies may also apply a profit -sharing scheme defined by an approved branch agreement. By way of derogation, in companies with fewer than 50 employees not covered by an approved branch profit-sharing agreement, profit-sharing may be set up by unilateral decision of the employer, if the company has no trade union delegate or CSE, or if negotiations with the CSE or trade union delegate have been unsuccessful. The agreement or unilateral decision must be filed with the authorities for the social and tax benefits to apply.

Profit-sharing agreements may be signed for a period of between 1 and 5 years.

The amounts are distributed to employees on a uniform basis, in proportion to salaries or length of service, or based on a combination of these criteria. The total amount of profit-sharing may not exceed 20% of the beneficiaries' total annual remuneration. The amount of bonuses distributed to any one beneficiary in any one year may not exceed 75% of the annual social security ceiling.

To qualify for tax and social security exemptions, profit-sharing schemes must be set up before the first day of the second half of the calculation period following the date on which they take effect. An agreement taking effect on January 1st and providing for full-year calculation must be signed before July 1st.

Profit-sharing amounts are either cashed in immediately or invested in a company savings plan. In the absence of a choice by the employee, the sums are allocated in full to the company savings plan.

Profit-sharing payments are exempt from social security contributions (employer and employee), except for CSG/CRDS. They are subject to income tax if received immediately by the employee. If invested in a company savings plan, profit-sharing is exempt from income tax (up to 75% of the annual social security ceiling). Companies with fewer than 250 employees are exempt from social security contributions.

The value-sharing bonus

The value-sharing bonus can be set up either by a company-wide agreement concluded under the same terms as a profit-sharing agreement, or by a unilateral decision taken by the employer after consultation with the Works Council.

The PPV benefits all employees linked to the company by an employment contract on the date of payment of the bonus or on the date of filing of the agreement or signing of the unilateral decision setting up the bonus (option to be specified in the agreement or unilateral decision). All employees are concerned, although employers may pay the bonus only to employees whose remuneration does not exceed a ceiling determined by the agreement or unilateral decision. Corporate officers do not benefit from the PPV, unless they combine an employment contract with their corporate office.

The amount of the bonus is freely determined by agreement or unilateral decision. It may be adjusted according to a limited list of criteria: remuneration, classification level, seniority in the company, length of actual presence during the past year, length of contractual working hours in the case of part-time work. Two PPVs may be paid per calendar year.

The PPV is exempt from social security contributions up to an overall limit of €3,000 per year per beneficiary. This amount is raised to €6,000 in certain cases. CSG and CRDS remain payable. From 2024 to 2026, in companies with fewer than 50 employees, the PPV is also exempt from income tax (but included in the reference tax income) and from CSG / CRDS for employees earning less than 3 SMIC per year. It should be noted that the Social Security Financing Bill for 2025 stipulates that PPVs paid on or after October 10, 2024, will be taken into account for the calculation of general contribution reductions for 2024.

The employee can invest the PPV in an employee savings plan or company retirement savings plan, and thus benefit from income tax exemption (if this is not already the case) within the limits set for exemption from social security contributions. Employer matching contributions are also possible.

Employer's contribution to a company savings plan or retirement savings plan

The employer's contribution is added to a voluntary payment made by the employee, or to sums paid into an employee savings plan from profit-sharing, incentive schemes or value-sharing bonuses. The matching contribution is collective in nature.

In companies with between 1 and 250 employees, access to a company savings plan or retirement savings plan is open to managers.

The amounts paid annually by the company as matching contributions are limited, for each employee, to 8% of the annual social security ceiling for company savings plans, or 16% of the annual social security ceiling for retirement savings plans, without exceeding three times the beneficiary's contribution.

Company contributions are not subject to social security contributions or income tax, provided the contribution limits are respected. They are subject to CSG and CRDS. In companies with fewer than 50 employees, no social security contributions are due.

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