Profit sharing plan
In France

Definition

A profit-sharing plan is an incentive mechanism that enables employees to benefit from the company's profitability.

In France, profit-sharing plans are mandatory in companies which have employed at least 50 employees for 6 months during the fiscal year.

Below this size requirement, the profit-sharing plan is optional. Companies who decide voluntarily to set up a profit sharing plan can benefit from the tax exemption concerning the sums distributed to the employees.

Formula

The profit-sharing is determined each year after the close of the fiscal year. It is normally calculated as per the following legal formula:

PSR = 1/2 x (TP - 5%E) x (W/VA)
PSR stands for profit sharing reserve.
TP stands for taxable profit.
E stands for company's equity.
W stands for company's wages.
VA stands for company's value added.
The company must establish a special reserve, based on the above formula.

Then this reserve is allocated among the employees, according to the employees' data during the said fiscal year. But the reserve is not immediately distributed (paid) to the employees.

The funds of this reserve can be managed by a dedicated organization and invested into:

- the company's own shares (for plans set up before 2007)
- unit trusts (for plans set up before 2007)
- a SAYE (Save As You Earn) plan like PEE, PEI or PERCO
- or simply blocked in an account representing the company's debt towards the employees. Moreover the funds of this reserve allocated to the employees bear interests, and those interests are capitalized each year. The interest rate is the average yielding rate of private companies' bonds (as published every 6 months by the French administration)

The allocation method may vary (see below), however profit sharing rights paid to a same employee cannot exceed 75% of the annual Social Security ceiling per beneficiary under a given fiscal year (i.e. €26,514 in 2011).

Agreement

The profit-sharing plan must be set up by an agreement which specifies the rules concerning the profit sharing reserve, and especially how it is allocated between the employees.

The reserve can be distributed among the employees of the company according to negotiated criteria:

- either a uniform distribution between each employee,
- either in proportion to the employees' wages,
- either in proportion to the time spent by the employees in the company during the fiscal year,
- or by combining these three criteria.

The agreement may stipulate that only employees who have been employed at least 3 months by the company during the fiscal year can benefit from the profit sharing of said fiscal year (seniority condition).

The duration of the agreement shall be determined by the parties. There is no statutory maximum and the agreement can be modified by an addendum.

In the absence of agreement

When a company subject to the mandatory profit-sharing plan has not signed an agreement, a predetermined regime is imposed.

In this case, the profit sharing-plan is less favourable to the company and to the employees as well:

- Beneficiaries of the profit-sharing plan are all employees of the company and no condition of seniority can be required,
- The distribution of the special reserve is in proportion to salaries,
- The rights of employees are unavailable for 8 years,
- The interest rate is still the average yielding rate of private companies' bonds (as published every 6 months by the French administration) but increased by 1,33.

Payment to the employees

Immediate payment

The money from the special reserve may be paid immediately at the request of the employee. His request has to be made within 15 days from the date on which he was informed of the amount allocated. But if the employee doesn't want to release his acquired rights, they are capitalized in the special reserve.

This information is only a rough summary. It does not cover all the situations nor resume the whole French Employment Code - which is very intricate. Please contact us for accurate information adapted to your situation. We cannot be held responsible for any misinterpretation of this document. Edition Dec-11

In case of immediate release, payment of the acquired rights has to be made before the first day of the 5th month following the end of the fiscal year for which the profit-sharing is allocated. For instance, when the company's fiscal year ends on December 31st, the payment has to be made before April 30th.

Note: The company may also pay the employee immediately, even if the employee does not request it, when the rights acquired by the employee do not exceed the sum of €80.

Unavailable sums

If the employee has not requested the immediate payment of all or part of the sums that are allocated, these sums are blocked for five years if there is an agreement, or for eight years if there is no agreement.

The period of unavailability starts from the first day of the 5th month following the period for which rights were born. For example, when the company's fiscal year ends on December 31st, the unavailability starts from May 1st of the following year.

Conditions of early release

Even if the amounts invested in the profit-sharing plan are blocked, it is still possible to benefit from an early release of funds before the expiration of the period of unavailability, in the following cases:

- wedding
- birth or adoption of a third child and then for each subsequent child,
- divorce if the employee was given the custody of one under age child at least,
- disability corresponding to a second or third ranking categories (for the employee or spouse)
- death (the employee or spouse)
- breach of the employment contract,
- creation or taking over a company by the employee or spouse,
- acquisition or expansion of a principal residence,
- project to become a professional people,
- excessive debt.

Taxation

If the profit-sharing plan is compliant with French tax rules, the sums blocked in the profit sharing-plan are exempt from social contributions and from employees' income tax during the unavailability.

CSG and CRDS taxes

However, all the sums paid to the employees, in case of an early release or at the end of the unavailability, are subject to CSG and CRDS taxes.

Employees' income tax

If the employee decides to release his acquired rights before the end of the period of unavailability, the sums will be taxed with employees' income tax.

However, if the employee decides to release his acquired rights in one of the cases of early release authorized by the law (see above "conditions of early release"), the sums are exempt from employees' income tax.

Furthermore, when the period of unavailability ends (after 5 years or 8 years if there is no agreement), the sums are exempt from employees' income tax.

Information to the employees

Employees must have information about the profit sharing-plan set up in the company

- A general information about it must be advertised permanently in the company,
- A report must be sent each year to the works council or to the staff representative if any,
- A separate information provided each year must be sent to the employee.

Regarding the separate information sheet provided each year to the employee, it shall include:

- the total amount of the profit sharing plan allocated for the fiscal year,
- the amount of employee's acquired rights,
- the withholding of CSG and CRDS taxes,
- the contact details of the organization that manages the funds in the special reserve, if any,
- the date from which these rights are transferable or payable,
- the circumstances in which these rights can be exceptionally released or transferred before the expiry date of that period.

This information sheet can be provided electronically, with the consent of the employee if that ensures data integrity.

Your Chartered Accountant is your best consultant.
Don't hesitate to contact us!

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