Free shares and stock options

To retain or motivate its employees or managers, and give them additional remuneration, a company, whether listed or not, can grant them its own shares, free of charge or under advantageous conditions compared to their stock price.

I. Free shares allocations

● By decision of its extraordinary general meeting, a company, listed or not, may decide to allocate its shares free of charge to all or part of its employees, under the following conditions:

- The employee concerned becomes the owner at the end of an acquisition period of at least one year and can sell them at the end of a retention period: the cumulative duration of the two acquisition and retention periods must be at least two years;
- The amount can represent up to 10% of the company's capital, this share being calculated without taking into account shares whose ownership has not been transferred, nor those which are no longer subject to a retention obligation;
- If these conditions are met, the shares allocated free of charge by a foreign company to employees of its French entity are eligible for the regime described below.

● The allocation of free shares is excluded from the basis of Social Security, CSG, CRDS and other contributions (social package, mobility payment, unemployment insurance). On the other hand, the employer must pay a contribution of 20% of the value of the shares on their grant date, with some exceptions[1]. Furthermore, corporate officers can also receive free shares provided, in particular, that all of the company's employees and 90% of the employees of its subsidiaries are also concerned.

● The applicable tax regime[2] to the beneficiaries of these free shares depends in particular on the date of their acquisition and their holding period. It is broken down into taxation of the capital gain on acquisition and capital gain on sale (when the sale value exceeds the acquisition value), the two taxes being due only to the sale of the shares. For shares allocated on the basis of a general meeting decision taken since January 1, 2018, the taxation is as follows:

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[1] See in French: https://www.urssaf.fr/portail/home/employeur/calculer-les-cotisations/les-taux-de-cotisations/les-stock-options-et-lattributio/les-attributions-gratuites-dacti.html

[2] See in French: https://www.impots.gouv.fr/particulier/questions/mon-entreprise-ma-attribue-des-actions-gratuites-comment-sera-impose-le-gain

Tax regime applicable to the acquisition value (1)

Income tax	Share of the acquisition value <u>below</u> 300k€	Share of the acquisition value <u>above</u> 300k€
	Income tax rate <u>with</u> tax deduction of 50% for holding period (i.e. a maximum rate of 22.5%)	Income tax rate <u>without</u> tax deduction of 50% for holding period (i.e. a maximum rate of 22.5%)
Social contributions	17.2%	9.7%
Employee contribution	-	10%

Tax regime applicable to the sale of the capital gain (1)

Tax income (2)	12.8%
Social contributions	17.2%
Total	30%

(1) excl. Exceptional contribution for high revenue (CEHR)

(2) or option for the tax income scheme and possible tax deduction for holding period if the shares have been bought before 1st January 2018.

II. Stock options

● Stock options correspond, for the employee or the manager, to options to purchase or subscribe to shares. In the first situation (call option), the company has previously purchased the shares in the market. In the second scenario, the employee, the manager or the corporate officer acquires the right, but not the obligation, to purchase new shares which will increase the capital.

●The option is granted by decision of an extraordinary general meeting, which entrusts the board of directors or the management body with detailing the terms and conditions (or even postponing its application if the economic situation requires it), i.e. generally:

- an exercise price allowing, by comparison with the share price, to grant a discount (up to 20%) to the beneficiary (the discount exceeding 5% will be taxed as a salary);
- an exercise period (often between two and five years): beyond that, the option can no longer be exercised;
- a carrying period, i.e. a mandatory retention period for the shares;
- attribution rules: except under exceptional circumstances, no beneficiary can hold more than 10% of the company's share capital.

● If the beneficiary exercises the option, he becomes a shareholder and will be able, according to the terms defined by the meeting, to immediately resell his shares, wait (during a possible lock-up period) or keep them (anticipating an increase in the price). The beneficiary can benefit both when purchasing the shares (option exercise gain) and when reselling them (capital gain on sale). Furthermore, the shares acquired by exercising the option can be placed in a company savings plan (Plan d'Epargne Entreprise, PEE) if the latter was used to make the purchase: in this case, any capital gains on sale are exempt from income tax after 5 years. On the other hand, the gain from exercising the option is taxed on income tax like a salary, with social security contributions of 19.7%.

● For the employer, stock subscription or purchase options are excluded from the basis of Social Security contributions, CSG, CRDS and other contributions (social package, transport payment, unemployment insurance), but taxed at 30%, on the "fair value" of the options or on 25% of the value of the shares on the grant date.

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For more information (in French):

Free shares: https://www.service-public.fr/particuliers/vosdroits/F2911

Stock options: https://www.impots.gouv.fr/particulier/questions/jai-des-stock-options-comment-est-impose-le-gain-levee-doptions

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