

Overview of the Bons de Souscription de Parts de Créateur d'Entreprise

The 2018 Finance Act introduces changes to the tax treatment of *Bons de Souscription de Parts de Créateur d'Entreprise* (company founder share warrants, i.e. security giving access to share capital reserved for employees or executives of new companies, commonly referred to as “BSPCEs”).

This provides the opportunity to review the legal and tax regimes applicable to BSPCEs.

I. Issuers

Pursuant to Article 163 bis G of the French General Tax Code, BSPCEs can be issued by joint stock companies that satisfy the following requirements:

1. (i) **companies whose securities are not admitted to trading on a French or foreign regulated market** operated by a market undertaking or an investment services provider or any other similar foreign bodies, **or** (ii) **whose securities are admitted to trading** on such a market of a country member of the European Economic Area but whose **market capitalization** is below **150 million euros**, or has not exceeded this threshold since more than **three years**;
2. companies that have been incorporated with the Registry of Trade and Companies since **less than fifteen years**;
3. companies that are liable to **corporate income tax** in France;
4. companies whose at least **25% of the capital** has been **directly and uninterruptedly** held by natural persons or legal entities having at last **75%** of their own capital held by natural persons;
5. (i) companies that have not been set up within the framework of **a merger, a restructuring, an extension or resumption** of pre-existing business activities, unless if they meet the requirements set forth in Article 39 quinquies H I of the French Tax Code, or (ii) companies that have been set up within the framework of **a merger, a restructuring, an extension or resumption** of pre-existing business activities, insofar as the requirements set forth in Article 163 bis G of the French Tax Code are met.

II. Beneficiaries

Pursuant to Article 163 bis G of the French Tax Code, the following person can be granted BSPCEs:

1. the **salaried employees** of the issuers;
2. their **corporate officers who are subject to the employee tax regime**;
3. salaried employees and corporate officers subject to the employee tax regime working in companies in which the issuer holds at least **75%** of the capital or voting rights, insofar as the requirements set forth in 1.a, 1.b, 1.c and 1.e above are met.

III. Procedure

Pursuant to Article 163 bis G of the French Tax Code and Articles L.228-91 and L.228-92 of the French Commercial Code, the **extraordinary general meeting of shareholders**, on the basis of a report from the board of directors or, as the case may be, the executive board, and the **statutory auditors'** special report, resolves to issue, or authorizes the board of directors or executive board to issue, BSPCEs. In the event the board of directors or executive board is granted a delegation of authority to issue BSPCEs, the extraordinary general meeting of shareholders must determine, in particular:

1. the **period** during which this authority can be **exercised** by the board of directors or the executive board, it being specified that this period may not exceed twenty six months;
2. the **overall ceiling** of this increase.

The extraordinary general meeting of shareholders may delegate to the board of directors or, as the case may be, the executive board, the task of determining the list of beneficiaries of the BSPCEs. In that case, the board of directors or, as the case may be, the executive board must specify the name of the allottees and the number of BSPCEs allotted to each of them.

The acquisition **price** of the securities subscribed to as a result of the exercise of the BSPCEs is set on the date on which the extraordinary general meeting of shareholders resolves to issue such BSPCEs, or, in the event the board of directors or executive board is granted a delegation of authority to issue BSPCEs, the date on which such body resolves to issue such BSPCEs. If the issuer has, in the six months preceding the allocation of the BSPCEs, carried out a share capital increase through the issuance of securities conferring rights similar to those resulting from the exercise of the BSPCEs, the acquisition price must be at least equal to the issue price that had been fixed for such securities.

NB: Specific provisions apply to companies **whose shares are admitted to trading on a regulated market**.



IV. Tax treatment of BCPEs whose issuance has been authorized by an extraordinary general meeting of shareholders held after December 31, 2017: Main changes

The net gain realized upon the sale of the securities subscribed to as a result of the exercise of the BSPCEs is subject to the 30% flat tax (12.8% + 17.2% social levies) or optionally at the progressive income tax rates plus social levies.

This rate is increased to 47.2% (30% + 17.2% social levies) if, at the time of the sale, the beneficiary has worked within the company for less than three years.

An abatement of 500,000 euros is also available for retiring corporate officers, insofar as the conditions set forth in Article 150-0 D ter of the French Tax Code are met.

NB: Specific provisions apply to **non-resident** beneficiaries.

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