



*Our Series : An Employee's Purchasing Power*

## #3/ The value-sharing or purchasing power premium: a good idea, or just an illusion?

**8 November 2022**

As of 1 July 2022, the Purchasing Power Law introduced a new purchasing power premium, the "PPV" similar to the previous "PEPA" (or "Macron Bonus") and which like its predecessor is exempt from social security contributions. Far from being adopted on a large scale, it seems that companies have in fact waited for further information from the October issue of BOSS (the French Social Security Information Bulletin) before implementing the measure, and many questions have been raised.

As a new purchasing power premium, the PPV retains the main characteristics of its predecessor, the exceptional PEPA, differing however in its long-term nature and in the maximum amount that is exempt from tax and social security contributions (increasing from €3,000 to €6,000).

The employer is under no obligation to pay the PPV, however in order to be eligible for the tax and social security exemptions provided for, certain legal conditions must be respected.

Although the PPV helps to improve the purchasing power of employees, it is not strictly speaking included in a company's wage policy.

### Prohibition to compensate the PPV for salary

In no instance whatsoever can the PPV be compensated for:

- as a part of remuneration paid by the employer or which is statutory in the application of legal, contractual or standard rules;
- as an increase in remuneration or as a bonus provided for in a wage agreement, an employment contract or an application in force within the company.

Neither can the PPV be paid to an employee in the form of a profit-sharing or participation supplement.

The payment of the PPV cannot be paid monthly but can be paid in instalments on a maximum basis of once per quarter in the calendar year.

### Questions on the amount of the PPV premium

To benefit fully from the preferential social and tax regime, the amount of the PPV must not exceed, irrespective of the employee's salary level:

- €3,000 per beneficiary and per calendar year, or;
- €6,000 per year where a profit-sharing agreement is in place for companies eligible for participation, or where a voluntary participation scheme or a profit-sharing agreement is in place for companies with less than 50 employees which do not have the obligation to set up a participation plan.



It should be noted however, that the amount of the bonus is freely determined by the employer who can pay a higher or a lower premium amount. The employer can pay the PPV to some employees only and can exclude employees whose remuneration exceeds a certain limit. The same employer can pay different amounts of the premium to **different establishments** within the company, **or even allocate it to certain employees in one or more establishments of their choice**.

The employer may **vary the amount of the PPV between beneficiaries** according to their pay (it should be noted that nothing prevents the employer giving the premium to higher-level salary employees), their grade, their seniority in the company, their actual working time in the previous year or the length of time provided in the employment contract. While these particular criteria can be combined to determine the amount of the premium, **no other criteria can be taken into account**.

With the exception of the criterion of seniority, all of the conditions above are assessed over the **12 months preceding the payment** of the premium.

While the amount of the ceiling of remuneration considered in order to benefit from the exemption from income tax and CSG-CRDS is defined by law, this is not the case for the basis of remuneration used for the different criteria when varying the amount of the premium. This begs the question to know if the legal act that provides for the premium (company agreement or unilateral decision by the employer) can in fact be freely defined?

#### **What should be done when the act gives no precise definitions?**

What should be decided for instance in the case where an employee has not received any remuneration in the 12 months preceding the payment of the premium, (e.g. in the case of long-term sick leave)? Is no premium amount to be paid, or should a minimum premium amount be fixed nevertheless?

Certain questions remain unclear. Can the PPV actually equate a premium amount of zero for some employees? Should the employer set a minimum amount for the premium regardless of the criteria used in its determination? And why should all these criteria be assessed over the 12 months preceding the payment of the bonus when the law in fact only provides for the criterion of the actual amount of time present by the employee?

We strongly recommend that employers clarify these elements as well as the payment date and terms of the premium under the establishing act:

- **either through an agreement at company or group level**, that is established under the same terms as a profit-sharing agreement;
- **or through a unilateral decision of the employer**, with the prior consultation of the Economic and Social Committee.

We would like to point out that there is no obligation of negotiation before the taking of a unilateral decision by the employer in this matter as there is no defined hierarchy between the two approaches in the setting up of the PPV premium within a company.

#### **Consequences of the non-respect of conditions: a certain margin of error allowed**

The benefit of an exemption from social security contributions is conditional on the employer's compliance with all of the conditions in the granting of the premium (see above).

Should a subsequent audit reveal a non-compliance with one or more of the said conditions, the employer will be asked to regularize the situation to avoid the total exemption being called into question.

If the employer fails to do so, the tax adjustment may be limited relative to the errors made, i.e. only to the amount of the social security contributions due on the incorrect amounts or on the amounts exceeding the conditions and limits provided for by law.

Furthermore, where the employer has been erroneously exempted from social security contributions on premiums exceeding the ceiling of €3,000 or €6,000 per employee, only the part exceeding this limit will be subject to the contributions and this at the standard rate.

On the other hand, no favourable regime seems to be provided for in the case of a substitution of salary by the employer. The risk of litigation by the URSSAF in this area is significant.

In conclusion, can we really consider this new measure as contributing to the sharing of a company's value as its name suggests?

It is true that the ceiling giving exemptions to social security contributions has been doubled, though only where a profit-sharing and/or participation agreement exists.

It is however, far from a measure that is related to the performance and contribution of an employee or to a collective company project. As a premium, it lacks all reason and coherence when compared with other measures of employee savings schemes that have been established for more than 30 years now (participation, profit-sharing).

Moreover, this bonus seems to answer more to short-term, opportunistic objectives than to any long-term project. Should we not be questioning whether there is a risk of slowing down the growth of employee savings plans which truly contribute to the sharing of a company's value? Is this not particularly the case insofar as profit-sharing agreements which were concluded in 2022 can possibly neutralize the amount of the PPV premium in their calculation?

Last, but far from least, we can only deplore the absence of any obligation on the employer to negotiations before taking a unilateral decision to implement the PPV premium in those companies where there are social partners. It is indeed regrettable that in this current climate where social unrest is growing and social anger is being expressed, that the French public authorities have not seized this opportunity to strengthen rather than weaken social dialogue.

**Our team at *Grant Thornton Société d'Avocats* remains at your disposal to assist you in the implementation of these new measures in the framework of your company's HR policy.**

Find the previous issues in our series "An Employee's Purchasing Power" :

[#1/ The monetization of « RTT » days off and the reimbursement of transport costs](#)

[#2/ Simplifications for the implementation of profit-sharing and the release of employee savings plans](#)

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