

## **PURCHASING POWER EXTRAORDINARY BONUS: NEW RULES FOR 2020 AFTER THE COVID-19 CRISIS**

May 2020

Following the Yellow Vests Movement, employers were granted the option to pay to their employees a bonus exempted from any and all social security contributions and taxes, the so-called “purchasing power extraordinary bonus” (hereafter: “PPEB”), under strict conditions.

Law n°2019-1446 dated 24 December 2019 has then maintained this option while adapting its terms of payment. Lastly, **Order n°2020-385 dated 1st April 2020 has softened the conditions for setting up and granting this bonus, taking into consideration the current health crisis, in order to encourage employers to paying such a bonus to their employees.**

### **WHO ARE THE ELIGIBLE EMPLOYEES?**

Various status: employees, public officials, temporary workers, disabled workers, as long as they are working under an **employment contract in the company at the date of payment**. However, the exemption from social security contributions and taxes is only applicable to bonuses paid to employees who received a gross remuneration of less than three times the legal monthly minimum wage (EUR 4,563.65 gross per month for 2019 and EUR 4,616.35 gross per month for 2020), calculated over the last 12 months, prior to the date of payment of the PPEB. Beyond this threshold of salary, employees can however be granted PPEB, but with no exemptions.

### **WHEN MUST THE PPEB BE PAID?**

Before **31 August 2020**.

### **HOW TO IMPLEMENT THE PPEB?**

**1. Through a unilateral decision of the employer** when the company does not apply an optional profit-sharing agreement (“*accord d'intéressement*”) -> **exemption possible up to EUR 1,000 in this case**. Beyond this threshold, social security contributions and taxes will have to be paid on the part of the BBEP exceeding EUR 1,000.

The employer must inform the **Social and Economic Committee** prior to the payment of the bonus. In companies with less than 11 employees, the employer must **inform the employees** by any means.

**2. Through a company-level collective bargaining**

**agreement** when the company has an optional profit-sharing agreement in force, or decides to implement one -> **exemption possible up to EUR 2,000 in this case**. Beyond this threshold, social security contributions and taxes will have to be paid on the part of the BBEP exceeding EUR 2,000.

There are 3 options:

- signing of an optional profit-sharing agreement,
- signing of an amendment to the existing optional profit-sharing agreement,
- signing of a specific agreement concluded under the legal process for setting up optional profit-sharing agreement.

The agreement must be **signed before 31 August 2020**. The deposit of the agreement can be made after the payment of the bonus. Exceptionally, **the optional profit sharing agreement can be concluded for a duration of less than three years, subject to a minimum duration of one year**.

The agreement or decision must set up all the granting conditions of the bonus, i.e. **amount of the bonus** and **criteria for bonus adjustments (if any)**.

### **WHAT IS THE AMOUNT OF THE PPEB?**

It is freely set up and can be **less or more** than EUR 1,000 or EUR 2,000, which are the social contributions and taxes exemption levels. The PPEB can be paid in several instalments, but **before 31 August 2020**.

If a PPEB was granted prior to 1st April 2020, Order

n°2020-385 of 1st April 2020 provides that the company may pay an additional lump sum to **their initial payment**, by an amendment to the unilateral decision or to the company-level collective bargaining agreement which implemented the PPEB for Y2020.

### HOW CAN THE EMPLOYER ADJUST THE AMOUNT OF THE PPEB BETWEEN EMPLOYEES?

The adjustment criteria must be **objective**. Those criteria can be:

3. the **amount of the salary**,
4. and/or the **classification level**,
5. and/or the **length of service**,
6. and/or the **working conditions of the employees during the Covid-19 crisis**.

Order n°2020-385 as of 1st April 2020 has added this 4th criterion, which basically concerns employees who have **continued their activity during the health crisis**, or who have **faced specific working conditions** potentially exposing them to the virus (contact with

the public, on-site visits etc.). As a consequence, the bonus can be reduced (or excluded) for teleworking employees.

**The adjustment criteria must be assessed over the 12 months prior to the PPEB payment**, unless the bonus is exclusively adjusted according to the working conditions relating to the Covid-19 epidemic.

### CAN THE EMPLOYER EXCLUDE SOME EMPLOYEES?

Exclusions are of twofold: **the level of salary** (employees paid more than three times the monthly minimum wage) and **the working conditions in relation to the COVID-19 crisis**.

### CAN THE PPEB BE PAID IN LIEU OF OVERTIME PAYMENT?

The PPEB cannot substitute any remuneration, whether a salary increase, a bonus, overtime payment, or any other component of the remuneration within the meaning of Article L.242-1 of the French Social Security Code.



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