



Biotech business: mind the steps: tax aspects

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Investment step

- **Register the stocks in a PEA**

- Tax interest: exemption of capital gain on sale of stocks, limited exemption of dividends of non-listed companies. CSG and CRDS (10%) remain payable
- Holding limitation to 25% in the same company (including spouse and direct parents and children) over the previous 5 years
 - ⇒ Steps of incorporation may be important
- Possibility to withdraw cash from the PEA before the five year exemption period with no loss of the tax regime (but it is no longer possible to invest cash in the PEA), provided that the cash is reinvested within three months to finance the creation or the taking out of a company which the PEA holder or spouse, parents, children, personally carries out or manages
- Possibility in 2005 and after to offset capital losses realised in a more than 5 year old PE that is being closed, against future capital gain of same nature (and 10 year carry forward)
- PEA is not always compatible with 100% wealth tax exemption
- PEA is not compatible with most of the other investment regimes



Investment step

■ Other tax regimes

- **Income tax reduction for investment in a “PME”:**
Income Tax reduction equals to 25% of the cash invested into one or more PME held for more than 50% by individuals, provided the shares are kept 5 years (tax credit up to 10,000 € for a married couple for share subscription made from 1st January 2003)
- **Deduction of capital losses:**
Deduction from the global income of the capital losses incurred by individuals who contribute in cash to creation of a new company which falls into insolvency within 8 years of its creation (limited to 60,000 € per year for a married couple, instead of 30,500€ for contributions made before 2003)
- **Income tax reduction on interest on loan made to buy out a “PME”:**
Income tax reduction amounting to 25% of the interests paid from loan made to buy out a PME (after August 5, 2003), provided the individual has a management position in the company, holds more than 50% of the voting rights and commits to keep the shares until the fifth years of the buy out (tax credit up to 5000 € for a married couple)
- **Income tax reduction on interest on loan made to invest in a new company:** Subject to certain conditions, salaried people (or assimilated; i.e. gérant) get income reduction for interest paid on loan made to invest in a new company (during the first two years), provided the shares are kept five years (limited to 50% of the gross salary or 15,250 € per year)



Investment step

■ Wealth tax concerns

- **Weight:** 0.55% to 1.8% of the net assets over 720 000 euros
- **Basic conditions for exemption of shares as professional assets:**
 - Shareholder was legally appointed at a management function (restricted definition).
 - This function is actually exercised and is normally remunerated by an amount which represents more than 50% of the professional income accrued to the shareholder
 - Shareholder holds at least 25% of the company (directly or not, with spouse, parents, children, brothers and sisters), OR, the value of the shares owned represents >50% of the value of the shareholder taxable assets (75% before 2004)
- **New 50% exemption regime**
 - ½ of the share value can be tax exempt, provided that the shareholders register a six year collective commitment to keep 20% (listed) or 34% (not listed) of the company's shares, and that, continuously, one of them is manager of the company (for 2004: commitment to register before 31 March)
- **New exemption regime**
 - Exemption of the shares received from the contribution of cash or assets to PME undertaking commercial or industrial activity under specific conditions



Contribution of assets

■ Patents and software contributions

- Deferral of Long term capital gains tax:

Deferral for 5 years, of the long term capital gain on contribution of a patent, patentable invention or ancillary industrial process by an individual with an independent activity to a company which uses it, (end of the deferral before 5 years if sale of the company's shares).

■ Shares contributions

- Capital gains tax on intermediary operations:

Deferral of taxation of capital gains on contribution of shares to a company subject to corporate income tax

- Capital gains tax deferral:

Subject to certain conditions relating to the company the shares of which are sold (min holding of 5%, employee or manager function), and are purchased (new PME liable to CIT, 75% held by individuals, contributor will hold less than 25% directly or indirectly and did not hold this % over the previous five years), the taxpayer can ask for the taxation deferral of the capital gains re-invested before the end of the year following the sale of shares



Company tax regime

- **Specific company tax regime**

- **Classical regimes**

- CIT exemption and tax reduction regimes depending upon the company localisation, and activity

- **Young innovating Company (JEI)**

- From January 2004, PME created less than 8 years ago, which carries out a new activity and which incurs R&D expenses representing more than 15% of its overall expenses and which capital is constantly held by more than 50% by individuals (directly or not) can benefit from a special tax regime:
 - CIT exemption for 3 profitable years and 50% CIT rebate for 2 profitable years
 - Cumulation with the R&D tax credit regimeThe overall tax exemption awarded is limited to 100 000 € / 36 months (R&D tax credit excluded)
 - This regime also provides for social charges exemption and capital gains exemption of the shareholder



Company tax regime

■ R&D tax credit

- R&D tax credit is an incentive for the companies which incurred R&D expenses
- Until 2003, this tax credit amounted to 50% of the differences between R&D expenses incurred during the year, compared to the average of such expenses incurred during the last two years. It was limited to 6,100,000 €/year
- From 2004, the scope of the eligible expenses is widened, the system is no more temporary and a new computation method takes into account the amount of the expenses to determine the tax credit (the rate of 45% replace the one of 50% and the remaining 5% applies to the expenses incurred during the year). The limit is raised to 8 million €. The option for that regime may be exercised any year.

■ Other company's taxes exemption

- All CIT regime evoked above apply to exemption of IFA (Minimum Lump sum payment of CIT) and some for exemption of local taxes such as taxe foncière (local tax on immovable properties) and business tax



Business angels side

■ A new tax regime

- Finance Act 2004 introduced a new tax investment structure for individual: the SUIR (Risk investment sole proprietorship company)
 - SASU where the unique partner is an individual
 - Exclusive object of the company: contribution in cash to other companies
 - Holding percentage in the invested company: from 5% to 20%
 - Invested company has to carry out a new activity, be European, subject to CIT, non-listed, not created more than 5 years ago, held by a majority of individuals or by legal persons held by a majority of individuals
 - Partner cannot hold directly more than 25% in the invested companies (directly or with spouse, parents, children) and cannot have a managing function in those companies
- Net capital gains and revenues related to the shares held of the SUIR are CIT and IFA exempt for 10 years from the creation of the SUIR
- SUIR partner is income tax exempt on the distributed income exempt from CIT at the SUIR's level (but social levies apply) provided that the shares were received at the creation of the SUIR and that the state of the EU invested companies that are held, have concluded a tax treaty with France



Key learnings

- Tax incentive regimes are multiple, technical, time-limited and subject to strict conditions
- Taxation is not the only aspect to look at in order to set up a company or to invest in a company



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