

GMS Flash Alert



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France - 2020 Finance Law Adopted, Some Changes to Budget Measures

France's 2020 finance bill was published in the official journal on 29 December 2019, after its validation by the Constitutional Council.¹ (For prior coverage of the draft legislation, see GMS [Flash Alert 2019-158](#) (18 October 2019).

This newsletter summarizes two key provisions of the new law as finally adopted, namely the changes to the way nonresidents will be taxed and the rule deeming certain French companies' executives tax residents of France.

WHY THIS MATTERS

Employers need to be aware of the changes to the taxation of nonresident employees and how withholding will operate in the future. The changes may provide a welcome relief for employers as it is likely that they will introduce a unique set of rules for withholding tax for all employees working in France, whatever their residency status. However, employers need to plan for the changes as, in many cases, they will mean increased costs.

Employers also need to be mindful of how the new French domestic tax residency rules will impact their senior executives. It is recommended that impacted executives review their circumstances carefully and seek advice.

Nonresident Withholding Tax

Last Year: Finance Law for 2019

The Finance Law for 2019 introduced changes to the way nonresidents receiving wages, pensions, and life annuities are taxed.

The Law increased the minimum tax rate applicable to the French-source income of nonresidents from 20 to 30 percent.

It abolished the specific nonresident withholding tax schedule with its three bands of 0 percent, 12 percent, and 20 percent. It also removed the partially final nature of the withholding tax levied on the lower bands (0 percent and 12 percent) of income from 2020.

This Year: Finance Law for 2020

The Finance Law for 2020 postponed the removal of the partially final nature of the withholding tax which will now apply to income received from 1 January 2021.

Further, the specific nonresident withholding tax system with its three rates (0 percent, 12 percent, and 20 percent) is maintained until 1 January 2023. Wages, pensions, and life annuities received from 2023 will fall under the withholding tax system (*Prélèvement à la Source* or "PAS") introduced in 2019 and applicable to resident taxpayers.

Taxation of Corporate Executives

According to French domestic law, individuals are considered resident in France if:

- their household or principal place of residence is in France;
- they carry out their primary professional activity in France;
- their core economic interests are in France.

Under new rules, executives of large French corporations whose annual turnover exceeds EUR 250 million (down from EUR 1 billion in the draft legislation) will be deemed to perform their principal professional activities in France and, consequently, considered as tax residents of France.

If the corporation is a member of a group of controlled companies, the EUR 250 million annual turnover threshold is determined at the level of the group within the meaning of article L 233-16 of the French Commercial Code.

With the exercise of managerial functions within large companies becoming increasingly internationalized and modern working tools reducing the importance of where duties physically take place, this provision establishes, in line with administrative case law, a link in French domestic law between the functions of executives of large French companies and French tax residency.

The rule covers:

- the chairman of the board of directors when he or she assumes the general management of the company;
- the managing director;
- deputy managing directors;
- the chairman and the members of the executive board;
- managers and other officers with similar functions.

This new rule has a broader scope than just personal income as it also applies to determine residence for real estate wealth tax (*Impôt sur la Fortune Immobilière* or "IFI"), as well as inheritance and gift taxes.

It applies as from 1 January 2019 for individual income tax, from 1 January 2020 for IFI, and from the date of publication of the law, for inheritance and gift taxes.

KPMG NOTE

Tax treaties override domestic legislation. The French tax treaty network is extensive enough to cover individual income tax and IFI in some cases. However, there are far fewer tax treaties addressing inheritance and gift taxes and domestic law criteria are more likely applicable for these purposes.

FOOTNOTE:

1 The 2020 Finance Law (*Loi no 2019-1479 du 28 décembre 2019 de finances pour 2020*) published in the *Journal Officiel*, *Dimanche 29 décembre 2019 / N° 302* .

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