Thinking beyond borders: Management of extended business travelers - France

January 2024

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Key message

The extent of individuals' liability to French income tax is determined by their residence status, the type of income they receive, the source of that income and the terms of double taxation treaties.

Tax residents of France are taxable on their worldwide income, subject to the provisions of the relevant tax treaty.

Non-residents are subject to income tax in France on their French-source income only, subject to the provisions of the relevant tax treaty.

1 Key message

Most extended business travelers will be considered non-residents for French tax purposes and subject to tax on their French-sourced income. The employment income earned in relation to workdays spent physically in France will generally be considered French-sourced and therefore subject to French income tax, subject to the provisions of the relevant tax treaty.

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Income tax

2 Income Tax

2.1 Liability for income tax

The extent of individuals' liability to French income tax is determined by their residence status, the type of income they receive, the source of that income and the terms of double taxation treaties.

Tax residents of France are taxable on their worldwide income, subject to the provisions of the relevant tax treaty.

Non-residents are subject to income tax in France on their French-source income only, subject to the provisions of the relevant tax treaty.

Individuals will be considered resident in France in any one of the following circumstances, subject to tax treaty provisions:

- They have their permanent home in France. A home is defined as being where taxpayers and their family ordinarily reside. Taxpayers may be considered to have their home in France, even if they are not physically present in France for most or all of the year.
- They have their main place of abode in France, for instance, if they spend more time in France than in another country/jurisdiction, regardless of whether they reside in a permanent home, hotel, or other dwelling. If they spend more than 183 days in a year in France, residence is resumed.
- They perform their main professional activities in France (whether salaried or not) unless their activity in France is of an auxiliary or secondary nature. The main activity is that on which individuals spend most of their time or which generates the largest part of their income. Holders of a corporate office in a company headquartered in France and whose turnover in France exceeds EUR250Million are considered to perform their main professional activity in France, unless proven otherwise.
- They have their center of economic interests in France. This occurs when most of their assets are situated in France, are effectively managed in France, or the majority of their investment income arises from France.

Most extended business travelers will be considered non-residents for French tax purposes and subject to tax on their French-sourced income only, if they remain residents in their home country/jurisdiction. The remuneration earned in relation to workdays spent physically in France will generally be considered French-sourced and therefore be subject to French income tax, subject to the provisions of the relevant tax treaty.

Some business travelers may become French tax residents if their family moves to France with them, and they do not maintain a home outside France. Such employees will be subject to French tax on their worldwide income. Employees who arrive in France and become French tax residents for the first time (or have been non-resident for at least 5 years) may have access to tax concessions designed to decrease the tax burden on temporary resident workers.

2.2 Tax trigger points for employment income

Technically, there is no threshold/minimum number of days that exempts the employee from the requirements to file tax returns and pay tax in France.

To the extent that the individual qualifies for relief in terms of the dependent personal services article of an applicable double tax treaty, there should be no French tax liability.

The French tax administration has stated that it relies on a "legal" employer approach rather than an economic employer approach when determining if there is an employer in France for the purposes of interpreting the dependent personal services article of the OECD model treaty.

However, the term "legal employer" is not defined in French tax legislation. From a labor law perspective, the employer is the "real" employer even in the absence of a contract. The employer is the one that has rights on the work produced, bears the responsibility in return for the payment of a salary.

A recharge of the employment costs to the French host entity may lead the French tax administration to conclude that there is an employer in France.

2.3 Types of taxable income

As non-residents, extended business travelers will generally be subject to French tax on employment income and benefits-in-kind earned in relation to their French workdays, as well as income from any French-sourced investments or capital gains subject to Tax Treaty provisions.

2.4 Tax rates

Resident

For 2023 income, the following progressive tax brackets are applicable:

Taxable income bracket	Percent
Up to 11,294	0
Above 11,294 up to 28,797	11
Above 28,797 up to 82,341	30
Above 82,341 up to 177,106	41
Above 177,106	45

Non-resident

Employment income and pensions paid to non-residents are subject to withholding at 0, 12 and 20 percent. If compensation reaches the 20 percent bracket, income tax is recalculated using the same progressive tax rates as for residents. The portion of income within the 0 percent and 12 percent non-resident withholding brackets is excluded from the tax recalculation and the withholding taxes on this portion are final.

The final tax due cannot be less than 20 percent on income up to EUR 28,797 and 30 percent beyond that limit.

Other tax rates / taxes can be applicable on specific types of income (e.g., investment income) or in specific situations (e.g. income on high income earners).

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Social Security

3 Social Security

3.1 Liability for social security

Employers and employees are subject to various mandatory French social security and pension contributions. The rates of contributions may differ for each employer and industry type. Some contributions are capped while others are not. The employee's share is withheld from employment income via payroll and amounts to approximately 18 percent to 23 percent of gross taxable compensation. The rate of employer contributions amounts to approximately 40 – 45 percent of gross compensation.

Extended business travelers employed by an entity located in a European Economic Area (EEA) member state or Switzerland can, in most cases, be exempt from French social security contributions and remain subject to their home countries/jurisdictions' social security system. An A1 form must be requested to show that the legislation that applies is that of the home country/jurisdiction.

Business travelers arriving from a country/jurisdiction outside the EEA or Switzerland that does not have an agreement with France on social security will generally be subject to French social security contributions.

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Compliance obligations

4 Compliance obligations

4.1 Employees' compliance obligations

Annual income tax return

The annual income tax return is generally a family return with spouse and dependent children reporting their income jointly. Married couples are required to file jointly - exceptions are allowed in very limited circumstances. Adult children may be claimed as dependents if they are under 21 years of age or if they are students under the age of 25.

Taxpayers are generally required to file a joint return even if their tax status is different (for instance, one member of the household is a resident taxpayer and the other a non-resident). No payment of tax is due with the tax return. The payment of taxes due or the refund of tax overpaid occurs upon the issuance of an assessment.

Non-residents

Non-residents must submit a non-resident tax return if:

- the 20 percent non-resident withholding tax bracket is reached on their employment or pension income
- If certain other types of French source income are received

4.2 Employers reporting and withholding requirements

The employer will be required to withhold non-resident or resident withholding taxes. The exact obligations depend on the situation. Different requirements exist depending on the tax residency status of the employee and the applicable social security legislation (French or non-French).

Where no exemption is applicable, employers are required to withhold employee social security contributions on a monthly basis and remit them, along with employer contributions, to the relevant authority for each scheme.

Foreign employers who do not have a fixed place of business in France are required to register with the authorities and will be subject to the same rules and regulations as French-based employers.

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Immigration

5 Immigration

5.1 Work permit/visa requirements

Most foreign nationals who intend to engage in active, productive employment in France will need a Residence and Work Permit. Depending on the purpose of travel to France and the nationality of the traveler, there are different types of visas that will apply to the occasion, and which vary in their processes and processing times. For all work authorization types, foreign nationals must coordinate with their employer to collect and legalize corporate and personal documentation.

EU citizens have the right to Freedom of movement, which means they have unrestricted access to the French labor market. A work and residence permit or visa won't be required to either enter or work in France. The same rules apply to citizens of Iceland, Liechtenstein, Norway and Switzerland.

Unless evidence can be provided that one is an EU/EFTA national, a permit will be required to work and reside in France.

France distinguishes further between Non-Visa Nationals and Visa Nationals. Non-Visa Nationals can enter France for business visitor purposes without the need to apply for an entry visa.

France also has specific agreements with several countries/jurisdictions, which provides nationals of those countries/jurisdictions with privileges, when it comes to immigration to France. However, a Non-Visa national may not start working until the appropriate work and residence permit has been issued. Applicants from privileged nations will not need to obtain an entry visa and can submit the application for the Residence and Work Permit directly to the local immigration authorities after entering France. The Immigration Authorities will review the application and issue the permit, on most occasion the involvement of the French Labor department will be required.

Except for nationals of privileged states, a residence permit must be obtained by means of a visa before entering France. The French embassy/consulate abroad are responsible for visa applications. Before granting a visa, the embassies and consulates must seek consent from the local authorities (labor/immigration). Visa Nationals are citizens of countries/jurisdictions who are neither part of the EU/EFTA nor from Visa exempt countries/jurisdictions. Nationals from these countries/jurisdictions are required to apply for a national visa (D) in conjunction with the application for the Residence and Work Permit to enter France. The entry visa is typically valid for a short period of time and must generally be converted to a work and residence permit upon arrival in France.

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Other issues

6 Other issues

6.1 Double taxation treaties

France has entered into a large number of double taxation treaties with other countries/jurisdictions to prevent double taxation and allow cooperation between France and overseas tax authorities in enforcing their respective tax laws. As a general principle, the provisions of double tax treaties will override domestic rules.

6.2 Permanent establishment implications

There is the potential that a permanent establishment (PE) could be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee has.

6.3 Indirect taxes

France has value-added tax (VAT).

6.4 Transfer pricing

France has a transfer pricing regime. A transfer pricing implication could arise to the extent that the employee is being paid by an entity in one jurisdiction but performing services for the benefit of the entity in another jurisdiction, in other words, a cross-border benefit is being provided. This would also be dependent on the nature and complexity of the services performed.

6.5 Local data privacy requirements

Local data privacy requirements exist.

6.6 Exchange control

France does not restrict the flow of currency into and out of France. There is, however, a requirement for French tax residents to report their foreign financial accounts and life insurance policies. Trustees of trusts with a French connection (in particular French tax resident beneficiaries or settlors) must report these.

There is a requirement to declare movements of cash (even within the EU) over EUR10,000 and the export of gold, precious metal and other valuables.

6.7 Non-deductible costs for assignees

Non-deductible costs for assignees include contributions to non-mandatory social security regimes and to foreign pension plans.

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