



# Global Mobility

## French updates for 2020

### January 2020

French Finance Act for 2020 has been published on December 29th, 2019. This Law contains updates impacting Global Mobility management. You will find hereunder the main measures along with reminders of major changes occurred in 2019.

#### « Pay-as-you-earn » tax system for French tax residents – Evolution for foreign employers

Foreign employers of French resident taxpayers who work in France are responsible to withhold income tax each month for their employees.

To comply with their obligations, they have to :

- Register with the French tax authority and obtain a company number (“SIRET”);
- Proceed with monthly reporting obligations;
- In some cases, appoint a tax representative in France to act on their behalf for the above-mentioned process except they are in the EU.

Article 173 of the Finance Act for 2020 introduces an exemption for the designation of a tax representative, as from January 2020, for companies located in a country that has a specific agreement with France regarding mutual assistance.

This covers companies based in: South Africa, Aruba, Australia, Azerbaijan, Curacao, Georgia, Ghana, Greenland, Faeroe Islands, India, Iceland, Japan, Mauritius, Mexico, Moldavia, Norway, New Zealand, French Polynesia, South Korea, Saint-Barthelemy, Saint Martin, Sint Maarten, Tunisia and Ukraine.

#### A new criterion for the determination of tax residency for executive managers

An individual is a French resident for tax purposes because he/she has either his abode/family, his place of main stay, professional activity or the centre of his economic interests in France.

Article 13 of the Finance Act for 2020 adds a new criterion for the determination of the French tax residency for executive managers (president of the board, general manager, chairman of the supervisory board, etc.).

Executive managers whose company headquarters are in France and generate in France turnover higher than € 250 millions, are now considered as exercising their main professional activity in France and thus are considered as French residents for tax purposes. They become taxable in France on their worldwide income.

Still, they can always demonstrate that they do not perform their main activity in France. Moreover, if they can show that they are tax resident in another state having concluded a tax treaty with France, the residency criteria provided by the tax treaty will still prevail. If this new provision should not be applicable for executive manager working in a State having a tax treaty with France, this provision may create difficulties for wealth tax and gift tax as, most of the time, those taxes are not covered by double tax treaties.

This measure applies for income earned as from 2019, and for wealth tax (IFI) and donation and inheritance taxes as from 2020.

#### Withholding for non-resident employees

The changes on the withholding tax on wages paid for non-French tax residents announced back in December 2018 are finally cancelled for year 2020. The applicable rates should remain unchanged (0% ,12% and 20%) until end of 2022.

As from 2021, the portion of income withheld at 0% and 12% should no longer be tax exempt when filing annual income tax return.

As from 2023, employees who are non-residents will become subject to the same “Pay-as-you-earn” tax system applicable to French tax residents.

#### Withholding tax on services rendered by self-employees.

A decision has been rendered regarding withholding for non-domiciled independent workers by the French “Conseil d’Etat” in November 2019 (CE 22-11-2019 n°423698), stating that the application of tax withholding on a gross basis is against the EU rules of freedom to provide services.

Therefore, expenses directly linked to income derived from service provision in France by as self-employee located in the EU could now be deducted for the determination of taxable basis subject to the withholding.



### French retirement/pension contributions : possible exemption

Employees assigned to France are usually affiliated to the French social security regime.

Optionally, they can now decide to not be affiliated to French compulsory pension schemes and then request a payment exemption for related contributions. This exemption applies to employee assigned to France as from July 11, 2018.

In order to benefit from the exemption, they must comply with some conditions (described hereunder) and claim the benefit with French social security authority (« URSSAF »). The conditions to meet are :

- They must be able to justify that they have contributed to a pension scheme either in France or abroad for a minimum annual contribution of €20 000 (for every year exempted);
- They have not been affiliated to a French mandatory pension scheme at any time during the previous 5 calendar years;
- They have been assigned to France after July 11, 2018.

In order to request this exemption, the process will be as follows :

- A special form (available since June 2019) to be filled and signed by both the employee and employer and sent to URSSAF,
- The request must be made 2 months prior to affiliation to French social security regime,
- The request should be documented with relevant information;
- If the request is complete and documented and above-mentioned conditions are met, then Urssaf should provide agreement within 30 days.

The exemption is granted for a 3-year period and is renewable once only.

This exemption decreases significantly the global rate of the French social security contributions known to be very high. This exemption added to the favorable income tax regime for new resident of France ("Inpatriate regime") makes France a competitive destination.

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