

NEWSLETTER



INTERNATIONAL MOBILITY

HEADLINE

In the context of the current crisis, we know that businesses are facing major challenges which they need to address quickly and effectively.

This first newsletter is the fruit of the joint work and combined expertise of the various contributors who make up the wealth and competence of Fidal's International Mobility department.

Whether your international connections are already established (sending employees abroad, having a permanent establishment outside of France, etc.), not yet identified, or in the planning stage, we will be delighted to connect with you three times a year through this new mode of communication, which we have conceived as a practical supplement to our field expertise.

Now more than ever, Fidal's International Mobility team is at your side to anticipate, communicate and act in this direction.

COVID-19. – IMPACT ON TAX RESIDENCY AND THE RIGHT TO TAX REMUNERATION

When analyzing the tax situation of internationally mobile employees, the threshold issue of their tax residency must be addressed before being able to draw out the applicable consequences on the right to tax and the tax treatment of their remuneration.

In France, French tax residents are subject to an "unlimited" tax obligation: with regards to their remuneration, this means that they must report, in France, the remuneration they receive for any occupational activity, whether performed in France (French-source remuneration) or abroad (foreign-source remuneration). However, their foreign-source income can, broadly speaking, be either fully taxable abroad or fully taxable in France depending on the application of the famous "*temporary assignment clause*" contained in international tax treaties.

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BACKPEDALING (AGAIN) ON THE REFORM OF THE TAX SYSTEM APPLICABLE TO NON-RESIDENTS

In brief: On 6 October 2020, during the first reading of the draft Finance Bill for 2021, the French National Assembly adopted amendment N°I-CF1044 proposing to adjust and postpone the reform on the taxation of non-residents' income introduced by the Finance Acts for 2019 and 2020.

French-source salaries, pensions and annuities paid to non-French residents have, to date, been subject to a withholding tax at the rates of 0%, 12% and 20%, applied on the net amount of sums paid after the standard 10% deduction for business expenses (Art. 182 A of the French Tax Code (FTC)). The portion of this withholding tax assessed at the 0% and 12% rates constitutes a final tax. Only the “excess” portion of income, taxed at the 20% rate (14.4% in the French overseas departments), is subject to a subsequent tax recalculation based on the same progressive income tax schedule as that applicable to French tax residents, with application of a minimum rate equal to 20% or 30% depending on the amount of income.

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HOW TO PROPERLY APPLY THE AGREEMENTS CONCLUDED IN THE CONTEXT OF THE COVID 19 CRISIS BETWEEN FRANCE AND CERTAIN OF ITS PARTNER COUNTRIES

France has concluded mutual agreements with certain of its neighboring States, i.e. Belgium, Germany, Italy, Luxembourg and Switzerland.

The agreements, signed at different dates during the first lockdown, are well known both to French-resident frontier employees who work in the other State and to employees who reside in one of those States and work in France.

The agreements confirm the continued application of the specific frontier worker tax regime provided for by the tax treaties between France and those States. Aside from the particular case of Luxembourg, the agreements lay down the principle that frontier workers remain taxable in their State of residence even though, due to the spread of teleworking, they have been unable to comply with the rule of a daily commute between their State of residence and the State in which they usually perform their occupational activity.

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TRANSNATIONAL POSTING OF EMPLOYEES: WHAT HAS CHANGED SINCE 30 JULY 2020?

The French law (no. 2018-771) of 5 September 2018 for the freedom to choose one’s professional future modified the rules applicable to the posting of employees and provided that the French Government was authorized to issue an order to transpose **Directive (EU) 2018/957 of 28 June 2018** amending Directive 96/71/EC into French law, which was subsequently done by **Order no. 2019-116 of 20 February 2019** and **Decree no. 2020-916 of 28 July 2020**, whose provisions entered into force on **30 July 2020**.

Duration of the posting and rules to comply with during the posting:

New provisions

- Introduction of a new threshold to guarantee compliance with the temporary nature of the posting
- Modifications of “hard core” rules

Where a posting exceeds 12 months, the posted worker will benefit, as from the 13th month of secondment, from virtually all of the provisions of the French Labor Code.

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IN FOCUS

Brexit – Social security consequences

Since 1 January 2021, as the transition period has come to an end, Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and Council, which allow notably for the designation of the applicable social security law in cross-border situations, are no longer intended to govern relations between the United Kingdom and the countries of the European Union.

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Brexit – Personal tax consequences

Due to the tax treaty in place between France and the United Kingdom, there will be no “revolution” with respect to personal taxation: the situations encountered will continue to be governed after taking into account the domestic French and UK laws in combination with the rules contained in the applicable tax treaty. However, the UK’s withdrawal is not entirely tax-neutral, as it may entail notably: the possible loss of the benefit of the expatriation premiums regime (Article 81 A of the FTC); the need to review the portfolio of shares eligible to be held via “PEA” equity savings accounts; and the application of the overall 17.2% rate of social charges (versus 7.5% for taxpayers covered by a social security system of one of the EEA States).

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IN BRIEF

Case law: CE decision of 10 March 2020 on Article 123 bis of the French Tax Code

Anti-abuse mechanism: the 10% threshold must be contextualized

CE decision of 10 March 2020 on Article 123 bis of the French Tax Code

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Case law: CE, 9 June 2020, no. 434972, M. A.

China

Resident status does not depend solely on the scope of a taxpayer’s tax obligations

CE, 9 June 2020, no. 434972, M. A

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Case law: CE, 16 July 2020, no. 436570

Brazil

Clarifications on the habitual abode test

CE, 16 July 2020, no. 43657

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Case law: CE, 8th and 3rd Ch., 21 Oct. 2020, no. 442799

Inpatriate tax regime

Exemption of 50% of passive income even in the absence of any earned income benefitting from the tax exemption provided for by Article 155B of the French Tax Code

[CE, 8th and 3rd Ch., 21 Oct. 2020, no. 442799](#)

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Case law: CAA Bordeaux, 10 July 2002, no. 18BX01348

Withholding tax on the salary of a non-resident president of a French company

[CAA Bordeaux, 10 July 2002, no. 18BX01348](#)

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Case law: CE, 9th and 10th Chambers combined, 7 October 2020, no. 426124

Real estate assets held in France and tax residency

[CE, 9th and 10th Chambers combined, 7 October 2020, no. 426124](#)

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