Covid-19

Special personal tax measures for French commuters with Belgium, Germany and Switzerland

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EY Société d'Avocats

The OECD has encouraged states to minimize the tax impact of COVID-19 restrictions for cross-border employees. In March 2020 France concluded agreements with four neighbor countries to ensure the status quo on taxation of qualifying cross-border commuters. France has now entered into three new agreements with Belgium, Germany and Switzerland making special provision for ordinary 'non-qualifying' cross-border commuters. Under the terms of these new agreements the taxpayers will, to a certain extent, have the option to choose the country of taxation in respect of earnings for home working days caused by Covid-19 restrictions during a specified period. Similar bi-lateral agreements have been concluded between Belgium, Germany and the Netherlands.

Background

With effect from 14 March 2020, France entered into agreements with Belgium, Germany, Luxembourg and Switzerland to neutralize the tax impact for certain employees displaced due to Covid-19. These agreements only applied to qualifying frontier workers and can be summarized as follows:

- **Belgium**

The Belgian authorities have confirmed the crisis is a *force majeure* situation so that home working days during the crisis will not count towards the 30 workdays threshold in the treaty. Please note, the qualifying cross-border status under the France-Belgium tax treaty only applies to employees who already qualified before 1 January 2012.

- **Germany**

The tax treaty already provides that working days performed in the border zone of the State of residence are not included in the count of 45 workdays authorized outside the border zone. As such, home working days in the border zone do not affect the personal tax position of the qualifying cross-border commuter in respect of the eligible employment.

- **Switzerland**

French working days performed by qualifying cross-border commuters benefiting from the arrangements covering the cantons of Vaud, Valais, Neuchâtel, Jura, Berne, Basel-Land, Basel-Stadt, Solothurn remain taxable in France.

For more information on these measures please refer to our tax alert dated 30 March 2020.

New agreements for non-qualifying commuters

France has now concluded additional agreements with Belgium, Germany and Switzerland that contain measures for all other 'ordinary' or 'non-qualifying' cross-border commuters (those commuters who are not subject to the special rules referred to above).

These new agreements take effect from 14 March 2020 to 31 May 2020 inclusive for Switzerland, from 11 March 2020 to 31 May 2020 for Germany, and from 14 March 2020 to 30 June 2020 inclusive for Belgium. They are all capable of being renewed if deemed necessary, either automatically or upon States' decision.

New protective measures for "ordinary commuters"

Non-qualifying cross-border commuters are generally subject to taxation in the State where employment duties are performed. This means that a resident of France who ordinarily works in another country but who is forced to work from home in France due to Covid-19 restrictions would expect to be taxable only in France in respect of the earnings for those French home workdays.

Under the terms of the new agreements, such home work days can be treated as if they were days spent working in the other State where the employee would ordinarily have expected to work had it not been for the Covid-19 situation. This means that the personal tax position in relation to the employment income should be as it would have been had the employee not been forced to work from home.

Option to choose the country of taxation

The agreement between France and Switzerland will apply automatically. However, should the taxpayer prefer to treat the home working days in the normal way and be taxed in the State of residence, he or she can elect for that treatment instead (opt out).

For the agreements with Belgium and Germany the taxpayer must elect to treat the home working days as if they were days spent working in the other State (opt in).

The option, to opt out or opt in (as applicable), will likely have to be exercised while filing the annual income tax returns for 2020. This timing will allow the taxpayer to take an informed decision after considering all relevant factors. The taxpayer will have to keep at the disposal of the authorities an attestation from his employer confirming the number of days worked at home due to Covid-19.

Next steps

Employers should take account of the new agreements when processing tax withholding at source during the current restrictions. Should employers continue to encourage or authorize home working in the State of residence after the expiry of the agreements the personal tax consequences will need to be carefully analyzed.

Assistance of EY Société d'Avocats

Our team of lawyers can assist you to manage with the crisis generated by the Covid-19 outbreak.

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