

Covid-19

French tax measures for international commuters

30 March 2020



In the context of the Covid-19 epidemic, French resident commuters are impacted in their professional activity. Home office, travel restrictions and containment measures are factors that may impact tax liability or tax residency. Authorities have provided guidance but some questions remain open.

Qualified cross-border commuters

Where a cross-border agreement exists, commuters are generally subject to income tax only in their State of residence for the activity performed in the neighbor State, provided this activity doesn't exceed a certain number of days outside the border zone of the neighbor State.

In a press release, France has announced an agreement with Germany, Belgium, Switzerland and Luxembourg with effect from 14 March which leads to the following specific measures for French resident employees.

Germany

The applicable 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. The French administration has confirmed this will apply to remote working performed during the crisis.

Belgium

The cross-border status only applies to employees already considered as such before 1 January 2012.

Based on the applicable tax treaty, days spent in specific situations are not considered within 30 workdays threshold authorized outside the border zone. The Belgian authorities have confirmed the crisis is a *force majeure* situation as defined in the Treaty, so that home-office will not be counted in the 30 workdays threshold.

Switzerland

French working days performed by French resident cross-border commuters should remain taxable in France where the employer is located in the cantons of Basel-Stadt, Baselland, Bern, Jura, Neuchâtel, Solothurn, Valais and Vaud.

In the canton of Geneva, cross-border workers are taxed at source, but a source tax regularization can be filed for days worked outside Switzerland. Further guidance will be required to determine if the French workdays are taxable in France and in that case, if the Swiss employers must retain the French tax at source.

Luxembourg

The tax treaty provides for an exclusive taxation of the salary in the State of activity unless more than 29 days are performed abroad.

France confirmed home-office workdays will not be considered in the 29 workdays threshold.

Italy - Spain

No announcement has been made concerning cross-border commuters. However, the applicable tax treaties do not provide for a specific count of days to spend in each State. The consequences of the crisis should therefore remain limited.

Ordinary commuters

To date, no protective announcement has been made for employees who do not have cross-border commuter status.

Potential impacts in France

Commuters without cross-border status who are residents of France and carry out their activity exclusively for an employer established in a foreign State have their salary taxed exclusively in that State. From now on, their forced home office days are taxable in France. This change could be a significant constraint for both employees and employers.

Potential impacts in the foreign State

The 183-days rule in bilateral tax treaties allows an exclusive taxation of the salary in the State of residence of the internationally mobile employee, provided the employer is established in that State and that the employee does not spend more than 183 days a year in a foreign State where the activity is partially carried out. Some employees who are "locked down" in a foreign State during the crisis may become partially taxable in that foreign State should the 183-day threshold be exceeded.

Tax resident status

The number of days spent in a State is one of the criteria for tax residence. Restriction measures may have an impact on tax residence depending on the duration of the travel restrictions, especially in situations where the employee is "locked down" in a neighbor country with his/her family.

The **United Kingdom** has announced that in strictly defined cases related to Covid-19, days spent in the United Kingdom will not be considered for the test of the tax residence status. In France, no such announcement has been made.

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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