

Luxembourg/France Tax Alert

New French withholding tax: impacts on the Luxembourg companies employing French tax residents

14 December 2018

Overview: new French withholding tax

France will be moving to a current year tax at source system starting **January 2019**.

This major change regarding the timing of the tax payments is paired with the transfer of the responsibility of calculating, collecting and paying the income tax due on the compensation and benefits from the individuals and the French tax authorities to their employers, French or **foreign**, and/or to the individuals itself.

The employer has to comply with the new withholding tax obligations on compensation and benefits when:

1. The **employee is a French tax resident** and
2. Perform his/her professional activity **partly or fully in France** and
3. He/she has an employer located in France or **outside of France**

Foreign employers will have to make a distinction between workdays in France and workdays outside of France:

- Where the non-French employer has employees who are French tax residents, its **French withholding obligations** (responsibility of calculating, collecting and paying the French income tax due) are applicable to the **portion of compensation and benefits related to workdays in France**.
- For the **portion of compensation and benefits related to workdays outside France**, the French withholding tax is directly paid by the French tax resident employees via monthly or quarterly withholdings made directly by the French tax authorities on the bank account of the employees, i.e. **no French tax obligations borne by the non-French employers**.

The portion of compensation for which a tax credit (equal to the French tax) or a tax exemption is granted in France in application of a tax treaty signed by France is not subject to the new French withholding tax. This means that any employment income which is not taxable in France, falls out of the scope of the withholding tax obligation.

Impact for the Luxembourg companies employing French tax residents

The new French withholding tax obligations to be borne by the Luxembourg employers while being existent under the current double tax treaty between France and Luxembourg might increase under the future double tax treaty.

1. Under the current double tax treaty between France & Luxembourg (treaty signed on 1 April 1958)

Based on the current tax treaty between France and Luxembourg, a French tax resident employee who is working in France for a **temporary assignment for less than 183 days remains taxable in Luxembourg and not in France**, provided that the cost of this compensation is borne and paid by the Luxembourg employer.

However, employees who have workdays in other countries than France and Luxembourg are taxable in France on that portion of remuneration.

Below you will find an overview of potential scenarios and its impact:

<i>Assumptions:</i> - French tax resident employee - Luxembourg employer	LUXEMBOURG	FRANCE
Working in Luxembourg and in France for a temporary assignment for less than 183 days	100percent taxable in Luxembourg and not in France for the compensation related to the professional activity performed in France, provided that the cost of this compensation is borne and paid by the Luxembourg employer	<p><u>No action to be taken</u></p> <p>=</p> the compensation related to the French workdays is not subject to the new French withholding tax, i.e. no French tax obligations on the Luxembourg employers
Working in Luxembourg and having foreign workdays (i.e. other countries than France and Luxembourg)	Taxable in Luxembourg for the Luxembourg workdays	Taxable in France for the foreign working days <u>Employee responsibility:</u> the employee will be subject to a direct debit from their bank account as an advance payment towards this tax. This amount is

		<p>appears on their year -2 or year -1 income tax bill as "acompte contemporain".</p> <p>No obligation for the Luxembourg employer</p>
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In case the French resident employee would **exceed the 183 days of working in France**, then the Luxembourg employer is obliged to operate the French withholding tax on the portion of compensation and benefits related to the French workdays and register with the French tax authorities (see formalities below)

2. Under the future double tax treaty between France & Luxembourg (entering into force to be confirmed)

Under the future double tax treaty between France and Luxembourg, in case of any professional activity performed partly in France by French tax resident employees of Luxembourg companies, it is anticipated that the **taxation will be due in France in more cases** since the maximum number of French workdays switches from 182 days to 29 days. Note that these 29 days also includes workdays performed in third countries (not being Luxembourg). Please refer to our Tax Alert dated 23 March 2018.

Below you will find an overview of potential scenarios and its impact:

<i>Assumptions:</i>	LUXEMBOURG	FRANCE
<p>- French tax resident employee</p> <p>- Luxembourg employer</p>		
Working 100percent in Luxembourg and having no other foreign or French workdays	100percent taxable in Luxembourg	<u>No action to be taken</u>
Working in Luxembourg and having both foreign and French workdays for 29 days maximum	100percent taxable in Luxembourg	<u>No action to be taken</u>
Working in Luxembourg and having more than 29 French workdays	Taxable in Luxembourg for the Luxembourg workdays	Taxable in France for the French workdays and subject to the new French withholding tax

		<p><u>Action to take by the Luxembourg employer:</u></p> <p>=</p> <p>Luxembourg employer is required to register with the French tax authorities, to file "PASRAU" monthly returns, calculation, collection and payment of the monthly French withholding tax.</p> <p>The withholding tax to be levied by the Luxembourg employer (effective tax rate percent) will/has been communicated to the residents and is determined based on year -2 or year -1 tax return.</p>
<p>Working in Luxembourg and having more than 29 foreign workdays (i.e. other countries than France and Luxembourg)</p>	<p>Taxable in Luxembourg for the Luxembourg workdays</p>	<p>Taxable in France for the Foreign workdays</p> <p><u>Action to take by the employee:</u></p> <p>=</p> <p>The employee will be subject to a direct debit from their bank account, as an advance payment towards this tax. This amount appears on their year -2 or year -1 income tax bill as "acompte contemporain".</p>
<p>Working in Luxembourg, having more than 29 workdays outside of Luxembourg and having (i) French workdays as well as (ii) foreign workdays (i.e. other countries than France and Luxembourg)</p>	<p>Taxable in Luxembourg for the Luxembourg workdays</p>	<p>Taxable in France for both the foreign and French workdays</p> <p>=</p> <p><u>Actions to be taken :</u></p>

		<p>(i) By the Luxembourg employer:</p> <p>For the French workdays – same as described above</p> <p>(ii) By the employee:</p> <p>For the foreign workdays – Same as described above</p>
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3. Conclusion

The introduction of this new French withholding tax system for French residents will have an impact across the border.

Both French residents employed by a Luxembourg employer as well as the Luxembourg employer itself will be impacted. Keeping a travel calendar will become important, as one will need to make a distinction between the days worked in Luxembourg, in France and the ones in other third countries.

Moreover, Luxembourg employers will need to prepare for the implementation of the French withholding taxes. The French resident employees are recommended to verify whether they have received from the French tax authorities their effective tax rate percentage and/or the amount of withholding tax.

The GES teams at both Deloitte Taj (France) and Deloitte Luxembourg are at your disposal should you require additional assistance regarding the new tax obligations on Luxembourg employers for their French tax resident employees under the new French withholding tax legislation.

Your contacts

Pierre-Jean Estagerie

Partner – Deloitte Luxembourg

Tel : +352 45145 4940

pjestagerie@deloitte.lu

Marleen Vandenput

Director - Deloitte Luxembourg

Tel : +352 451 454 216

mavandenput@deloitte.lu

Nadia Hamya

Partner – Taj

Tel: +33 1 40 88 70 29

nhamya@taj.fr

Thomas Wane

Manager – Taj

Tel: +33 1 55 61 67 36

twane@taj.fr

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

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