

Special expatriate tax regime

Eligibility and time limits

Beneficiaries

The expatriate tax regime applies to individuals who previously resided outside France

They must not have been residents of France for tax purposes during the five calendar years prior to their taking up their duties in a company based in France.

These individuals must have been recruited by a company based in France

They must have been recruited in one of two ways:

– The employee was «recruited by a company established in another State» (intra-group transfer)

This is the case for individuals who were previously employed by a company based outside of France and who were called on to carry out duties in a company based in France that has links with the original company, whether these links have to do with share capital, or are legal or commercial in origin, among others.

Whenever a link is established between the company based in France and the original company, the fact that a new employment agreement is executed with the company based in France is not such as to reclassify this intra-group transfer as an external hire.

This particularly concerns employees who have been posted abroad as part of an intra-company mobility scheme, e.g. someone who has been posted from a foreign parent company to a subsidiary based in France.

It is also understood that the host company may not exist legally in France on the date of the expatriate employee taking up his or her duties, if the purpose of his or her arrival in France is related to the creation of that company.

– The employee is directly recruited abroad for a position in a company in France (external hire)

At the time of recruitment by the company based in France, the individuals concerned may already be employed in an entity based abroad which has no connection with the company based in France, or be carrying out an activity on a self-employed basis or not have any activity (students taking up their first job, for example).

On the other hand, individuals who have come seeking work in France on their own initiative or who have already established their residence in France at the time of recruitment are not eligible for the expatriate tax scheme.

Note: Entitlement to the regime is not contingent on the employment contract or its rider stipulating the period of employment in France, nor on the contract having been executed for a fixed term.

Conditions for tax domiciliation in France and period of application

Employees who are resident in France for tax purposes starting on the date they take up their duties are eligible for the expatriate scheme

Assessment of this tax residency requirement takes into account the expatriate employee's personal situation

Entitlement to the scheme applies only in respect of the years for which expatriate employees have, on one hand, their household or principal place of residence in France and, on the other, carry out a primary occupation in France.

Failure to comply with one of these cumulative conditions with respect to a single year does not exclude entitlement to the scheme in respect of previous or subsequent years in which the conditions are met.

In addition, taking into account the constraints which may exist, particularly professional constraints (e.g. a probationary period for the individual in question, the spouse's professional situation) or family-related (such as schooling for children), it is agreed that the regime may apply for the year in which employees take up their duties in France, even if the household is set up in France at the latest before the end of the calendar year following that in which they take up their duties.

For example, an employee taking up duties in France in January 2019 may benefit from the regime as from the taxation of income for the year 2019 if he or she sets up house in France by 31 December 2020 at the latest.

If he/she sets up house in France after that date, he/she will not be permanently rendered ineligible for the regime. He/she will be able to benefit from the regime with respect to income earned as from the year in which the household is established. For example, if he/she takes up his or her duties in January 2019, but establishes a household in France from March 2021, he/she would be able to benefit from the regime for income earned as from 1 January 2021 until 31 December 2027 at the latest.

The regime can be applied for up to nine full years after the employee takes up his or her duties and takes account of career developments in France within the host company

Starting with the 2017 Budget Act, the maximum period of application for all new employees as from 6 July 2016 has been set at 31 December of the eighth calendar year following the taking up of duties in the host company.

This period of application allows, for example, a person taking up a position in France on 1 January 2018 to benefit from the scheme until 31 December 2026, i. e. for a total of nine years.

Eligibility for the scheme ends if the employee leaves the host company before this term ends, even if he or she remains resident in France for tax purposes.

Entitlement to the scheme shall, however, be maintained in the event of a change of functions within the host company or in the event of a change of employer within the same group, regardless of whether the duties performed are similar to the original ones.

However, continuation of the regime in the case of a change of function does not extend its total duration, which is calculated based on the date the employee first took up his or her duties.

Income tax benefits of the expatriate regime

Under the expatriate tax regime the following are exempt from income tax:

- Additional compensation directly linked to the exercise of a professional activity in France (**expatriate bonus**)¹;
- The **share of compensation relating to the foreign activity** carried out in the interests of the employer;
- 50 % of **income from investments** from foreign sources²;
- 50% of certain **intellectual and industrial property rights** from foreign sources² (royalties earned by writers or composers and their heirs or legatees, **rights earned by inventors** either through licensing their patents or assigning or granting trademarks, processes or manufacturing formulae)²;
- 50% of **capital gains on the sale of securities** and ownership interests from foreign sources³.

In addition to these exemptions, the expatriate scheme allows beneficiaries to deduct contributions to supplementary retirement and supplementary pension schemes with which they were affiliated before arriving in France.

Exemption of additional compensation

[Expatriate bonus]

The scheme is based on the principle that employees shall be taxed in France on an amount at least equivalent to the compensation earned in the same company by a non-expatriate employee
[reference compensation]

The expatriate's taxable income must, after exemption of the expatriate bonus, remain at least equal to the reference compensation, which in principle corresponds to the amount paid for similar functions within the company during the calendar year in which the expatriate employee took up his or her duties in France. If there are no similar functions within the company, legislation provides that the reference compensation may be the same as that paid for similar functions in comparable companies based in France.

This principle must be complied with even when the expatriate bonus is calculated on the basis of a percentage of total compensation (see below).

Defining the reference compensation for application of this principle is a matter of fact specific to each company with the latter being required to have supporting evidence justifying the method used.

1. For companies, the expatriate bonus can be exempted from payroll tax.

2. Payment of which is made by a person based outside France in a State or territory which has concluded a tax treaty with France that contains an administrative assistance clause to combat tax evasion and avoidance.

3. In cases where the depositary of the securities or, failing that, the company whose securities are to be sold is based outside France in a State or territory which has concluded a tax treaty with France that contains an administrative assistance clause to combat tax evasion and avoidance.

However, to take account of any practical difficulties in identifying relevant terms of comparison, particularly in the case of highly individualised compensation, the tax administration accepts several methods:

- The situation may be assessed in reference to compensation paid to an employee with comparable professional experience in similar functions to those of the expatriate employee in similar companies based in France even though similar functions to those of the expatriate employee may be held in the company;
- The “reference compensation” may be also equal to the lowest salary earned by an employee with similar experience to that of the expatriate employee and performing similar functions within the company or within a similar company based in France, either during the year in question or in the three previous years;
- The situation may be assessed solely with respect to the year in which the employee takes up his or her duties if the amount of the expatriate bonus is determined and fixed, and if the employee’s duties do not change during the period of expatriation.⁴

As a result, to provide the option of broadening the benchmark, even if there are in-house comparables in the company, the reference compensation may be the same as that paid for similar functions in comparable companies based in France. Lastly, although it requires that the expatriate’s professional experience be taken into account, the term “similar functions” allows for internal or external comparables to be used as regards functions that are not exactly the same.

In principle, the bonus should be stipulated in the employment contract

To be eligible for exemption, the expatriate bonus must appear in the employment contract or corporate officer status or, where applicable, in a rider to it drawn up prior to taking up the position in France.

Nevertheless, the employer is not obliged to determine the amount beforehand.

The tax administration’s guidelines state that, whenever the “expatriate bonus” cannot be determined in advance for its actual amount to the nearest euro, either in relation to its nature or the method of calculation, it is sufficient if the bonus is calculated on the basis of objective, specific criteria mentioned in the employment contract or corporate officer status. Consequently, the bonus may be determined as a percentage of the base compensation, which itself includes a variable portion, or as a percentage of the variable portion of the compensation alone. For instance, the bonus may be set at 30% of the fixed compensation, at 30% of the base compensation, that itself includes a variable portion, or at 30% of the variable portion of the compensation alone.

This method of determining the bonus makes it possible to take into account the situation of employees whose compensation, both contractually and objectively, provides for a variable portion that is performance-based.

If all the stipulated conditions are met, the income tax exemption is applicable – provided that the taxable amount remains equal to or greater than the reference compensation (see above) – to the total amount of the bonus paid in connection with expatriation, without the employee having to prove its purpose.

The bonus may be assessed on a flat-rate basis

When the position was taken up on or before 15 November 2018

Expatriates recruited directly abroad by companies based in France can opt for a flat-rate assessment of their expatriate bonus if:

- The contract does not stipulate an expatriate bonus
- The contract does stipulate an expatriate bonus: the employee can thus choose between a flat-rate assessment or an assessment of the real amount of the bonus

If they opt for the flat-rate assessment, the expatriation bonus that is tax-exempt is deemed to be equal to 30% of total compensation. This is the maximum percentage, it being understood that the remaining 70% is taxable and may not be less than the reference compensation (see above).

4. This is not applicable in cases where the expatriate bonus is calculated as a percentage of the base compensation or in cases where the employee chooses flat-rate assessment of the bonus.

When the position is taken up after 15 November 2018

Expatriates transferred by a company based outside France to a company in France who take up their duties on or after 16 November 2018 may opt for the flat-rate assessment of their expatriate bonus under the same conditions described above. This applies to compensation due after 1 January 2019.

Details: Various bonuses, income from the exercise of stock options not covered by Article 80 bis of the French General Tax Code (CGI) and gains from the acquisition of bonus shares not covered by Article 80 quaterdecies of the CGI (hereinafter "non-qualifying compensation") may be part of the expatriate bonus stipulated in the employment contract or, where applicable, in a rider to the employment contract drawn up prior to the expatriate taking up the position in France.

This non-qualifying compensation may be eligible for exemption provided it is taxable in France under the ordinary rules for wages and salaries in the year in which the expatriate bonus qualifies for exemption.

When the expatriate bonus stipulated in the employment contract or, where applicable, in a rider to it drawn up prior to taking up the position in France is given as a percentage of the base compensation (which may or may not include a variable portion), then this expatriate bonus can include non-qualifying compensation (if any) provided it is taxable in France under the ordinary rules for wages and salaries in the year in which the expatriate bonus qualifies for exemption.

When an expatriate opts for the flat-rate assessment of the expatriate bonus at 30% of total compensation, this expatriate bonus includes any non-qualifying compensation provided it is taxable in France under the ordinary rules for wages and salaries in the year in which the expatriate bonus qualifies for exemption.

The reference compensation corresponds to full net annual compensation used as a reference and taxable under the ordinary rules for wages and salaries, which must therefore include non-qualifying compensation that is taxable under these rules.

Changes in the bonus over time

As a practical rule, it is accepted that, whenever the amount of the salary granted following a change in duties – within the company for which the expatriate employee moved to France or in the event of a change of employer within the same group – is at least equal to that of the previous position, the amount of the new expatriate bonus shall be presumed to be at least equal to that established for the previous position.

Moreover, if, for the purposes of exemption, the expatriate bonus must appear separately in the employment contract or corporate officer status, or, where applicable, in a rider thereto drawn up prior to taking up duties in France⁵, there is no requirement that the amount so established be the same.

It is possible to predict that this bonus will evolve according to criteria that must be specified. There is nothing to prevent this bonus from being degressive (or even progressive), which is in line with the practices of companies.

Combined exemptions in the case of income in connection with an assignment carried out abroad

The expatriate bonus exemption may be combined with exemption of the share of compensation arising from an assignment carried out abroad.

Nevertheless, this combination is capped and can take one of two forms, which the taxpayer can freely choose:

- An overall cap: in this case, the expatriate bonus exemption (possibly limited with respect to the reference compensation, see above) and the portion of compensation corresponding to the assignment carried out abroad may not exceed 50% of the total compensation
- A cap solely on the exemption on compensation corresponding to the assignment carried out abroad: in this case, the exemption for this portion may not exceed 20% of the taxable compensation of the individual in question, net of the expatriate bonus (possibly limited with respect to the reference compensation, see above).

5. Except in cases where directly-recruited employees opt for flat-rate bonus assessment. In these cases, the bonus does not have to be stipulated separately.

Other tax benefits

Property wealth tax (IFI)

In respect of property wealth tax, expatriates are individuals who were not residents of France for tax purposes during the five calendar years prior to the year in which they establish their tax domiciliation in France.

Unlike the special income tax regime which is specific to expatriates, no conditions regarding employment are attached to the property wealth tax.

The expatriation regime entitles its beneficiaries to a partial property wealth tax exemption: they are only taxable on property and property rights located in France.

As a result, in practice, they remain under the same taxation regime as when they were non-residents of France.

The regime applies for each year when the taxpayer is resident in France for tax purposes up to 31 December of the fifth year following the year when he/she set up his/her tax domiciliation in France.

Thereafter, the expatriate is liable to property wealth tax under the same conditions as other French residents.

Where applicable, this partial exemption applies without prejudice to the special income tax regime which is specific to expatriates.

Payroll tax (TS)

Employers are liable for payroll tax (*taxe sur les salaires*, TS) when they are based or domiciled in France, they pay salaried compensation, and they are exempt from VAT for at least 90% of their turnover during the calendar year prior to the payment of salaried compensation.

The expatriation regime provides a payroll tax exemption for the expatriate bonus paid to expatriate employees who took up their positions in France after 6 July 2016 in the commensurate amount of the income-tax exempt expatriate bonus under the special income tax regime which is specific to expatriates.

For expatriate employees who opt for flat-rate assessment of the expatriate bonus, this exemption applies to a fraction of 30% of their compensation.

The payroll tax exemption applies under the same conditions regarding tax domiciliation and period as those laid down for entitlement to the above-mentioned income tax exemption.

All of the tax authorities' guidelines are available online or on the bofip.impots.gouv.fr website.

Tax ruling and guarantees in the event of a tax audit

Legal certainty

Expatriate taxpayers and their employers can make use of existing procedures that provide them with significant legal certainty.

Taxpayers are now able to ask the Public Finances Directorate General, either at local or central level, to make a decision concerning a point of tax law (Book of Tax Procedures - LPF, Art. L.80 A, 1st para.) or actual circumstances (LPF, Art. L.80 B). In this respect, responses to individual taxpayer requests may be relied on by the interested parties under Article L.80A, 1st para. of the LPF provided they include an interpretation of tax legislation, i.e. when their purpose is to specify in law the meaning and scope of the legislation and regulations applying to the preferential regime for expatriates.

In turn, the guarantee set out in Article L.80 B-1° of the LPF allows the taxpayer to rely on the authorities' formal decisions concerning the assessment of actual circumstances based on tax legislation. Such decisions must have been taken prior to the end of the time limit for submitting returns. They must relate to the taxpayer him/herself and have been made following a specific, full and genuine request made by a person acting in good faith.

Examples with respect to the expatriate regime

The above-mentioned formal decisions, taken either to interpret tax legislation, or by assessing specific circumstances, may be relied on by the relevant taxpayers vis-à-vis the tax authorities pursuant to an audit procedure.

This applies, for instance, to an expatriate taxpayer who has received confirmation from the tax authorities that he/she can be considered as having been recruited directly abroad to hold a position in a company in France (external hire).

In this case, the option for the flat-rate assessment of the expatriate bonus may not be called into question during the audit, by reclassifying the external hire as an intra-group transfer.

In the same manner, when an expatriate taxpayer has received confirmation that the additional compensation related to the expatriation, which is exempt in this respect, is not excessive in relation to the reference compensation designated for similar duties, the exempted amount of the bonus may not be called into question by criticising the chosen amount of reference compensation.