

# HR & Tax Alert



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## France - practical implications of the favourable tax regimes for “impatriates” and for mobility premiums

October 2006

There have been recent developments in respect of the requisite conditions associated with the payment of tax free Mobility Premiums and the favourable “impatriate” tax regime.

Companies may be required to undertake certain actions prior to 31 December 2006 to ensure that they take full advantage of the two favourable tax regimes.

### 1. MOBILITY PREMIUMS (ARTICLE 81AII OF THE CODE GÉNÉRAL DES IMPÔTS)

Legislative changes and associated commentaries published by the French tax administration have significantly modified the conditions that need to be satisfied in respect of tax free Mobility Premiums

To qualify for tax exemption, the Mobility Premiums must now:

- be paid in respect of overseas business travel undertaken in the direct and exclusive interest of the employer;
- be paid in respect of overseas business travel which requires the employee to be present in the other country for at least 24 hours;
- be determined in advance of the overseas business trips and should be determined based on the following criteria:
  - the number of business trips
  - the length of the business trips,
  - the geographic location of the business trips,
  - the level of remuneration of the employee.

The legislation stipulates that the premiums cannot exceed 40% of the remuneration (excluding the premium) of the employee, and must;

- be paid only to salaried employees tax resident in France (“mandataires sociaux” and individuals who are not employed under a contract of employment are now excluded from this regime);
- be paid by an employer established in France or by employers established in another EU Member State or an EEA Member State with whom France has concluded a tax treaty containing a reciprocal legal and administrative cooperation clause. Employees whose employers are established in Monaco, Andorra, Liechtenstein and Switzerland are specifically excluded from this regime.

Employers need to determine the methodology used to calculate and pay the premiums and need to document the details of the premium within the contract of employment (either amend the existing contract or prepare an addendum to the underlying contract).

Prior to 31 December 2006, employers must ensure that:

- the new rules concerning the determination of Mobility Premiums are being satisfied;
- the relevant contracts of employment/addenda accurately reflect the new conditions;

- employee communications and related documents destined for employees correctly reflect the new conditions;
- the Mobility Premiums are correctly reported on the employees' payslips and on the employer year end return (DADS-U);
- employees have been advised of their reporting obligations in respect of Mobility Premiums together with the new tax treatment of the payments (Mobility Premiums are now taken into consideration for the calculation of the effective rate of taxation to be applied to other taxable income exemption with progression).

## 2. FAVOURABLE "IMPATRIATE" TAX REGIME (ARTICLE 81B DU CODE GENERAL DES IMPOTS)

Under Article 81B, taxpayers who are sent to France by their overseas employer to undertake an assignment for a "limited period" can exclude from their taxable remuneration those elements of remuneration directly related to their expatriate assignment (generally understood to mean expatriate benefits and allowances).

To benefit from these provisions, the taxpayer must not have been considered tax resident in France in the 10 tax years immediately preceding the commencement of their assignment and their assignment must commence on or after 1 January 2004.

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The favourable provisions apply up to the 31<sup>st</sup> December of the year of the fifth anniversary of their arrival in France.

If the amount of remuneration which remains subject to French income tax after applying the above relief is less than the level of remuneration paid locally in France for the same or similar (analogous) position, the relief will be restricted so that expatriates will declare at least the same taxable base of remuneration as a local employee in the same or similar position.

The original Article 81B legislation has recently been amended. The 10 year residency look-back clause has been amended to 5 years (applicable to transfers on or after 1 January 2005). In addition, a further favourable disposition has been added providing a potential exemption of up to 20% of residual taxable remuneration (taxable remuneration after having exempted the expatriate elements) in respect of remuneration relating to non-French workdays.

Prior to 31 December 2006, employers must ensure that:

- the elements of remuneration directly related to employees' French assignments have been excluded from the net taxable remuneration figure on French payslips and correctly reported on the year end employer return (DADS-U);
- the element of remuneration relating to non-French workdays has been excluded from the taxable base.

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