

Mobility: Immigration alert

February 2024



France

New guidance regarding employer tax due for companies that hire or host foreign nationals

Executive summary

The French authorities recently released guidance regarding the payment of the “employer tax” by companies that employ or host foreign workers. This tax, which was previously collected by the French Office for Immigration and Integration, will be collected annually by the French tax authorities starting in 2024.

Background

The employer tax (also known as “OFII tax”), set by Article L.436-10 of the French immigration code (CESEDA), is levied on French organizations that employ local hires or permanent transferees, host intracompany assignees or serve as the representative of a foreign company that sends its employees to France to provide services.

The employer tax is computed based on the foreign individual's contractual arrangement, the duration of their employment contract and the compensation they earn. It is due only in connection with first-time applications on behalf of individuals seeking to perform professional activities in France (including individuals already residing in France who obtain a residence permit that allows them to work for the first time, such as individuals who change status from student to employee). The tax does not apply to renewal applications.

The following employers are exempt from paying the tax:

- ▶ Employers of household employees/domestic workers
- ▶ Public institutions or foundations that hire foreign researchers or teachers at the university level

Certain individuals are also exempt, including:

- ▶ Nationals of EU and EEA Member States, Switzerland, Monaco, Andorra and Saint-Martin
- ▶ Students in France
- ▶ Talent Passport and Intra-Company Transfer (ICT) Permit holders (and their accompanying family members)
- ▶ Holders of residence permits that automatically confer the right to work (e.g., spouses of French nationals, family members of EU nationals, dependents entering France under the family reunification procedure, permanent residence card holders)

The terms and conditions for declaring and paying the employer tax changed as of 1 January 2023, and the first window for payment (for calendar year 2023) opened in February 2024.

Key developments

The authorities recently provided new guidance regarding the terms and conditions for declaring and paying the employer tax for calendar year 2023, which vary depending on the value-added tax (VAT) regime that applies to the French entity:

- ▶ Taxpayers subject to the standard tax regime (which applies to most employers): Appendix 3310A-SD of the VAT return for the month of January 2024 must be filed between 15 and 26 February 2024 (if the return is for the first quarter of 2024, it must be filed between 15 and 24 April 2024)
- ▶ Taxpayers subject to the simplified tax regime: Form 3517-S-SD of the VAT return for 2023 must be filed for the fiscal year in which the tax became due (i.e., by 3 May 2024 in most cases)
- ▶ Taxpayers not liable for VAT: Appendix 3310A-SD of the VAT return must be filed by 25 February 2024

To help companies calculate the employer tax due, the tax authorities released Form 2859-FC-SD together with an explanatory note. Companies may retain the form in the event they receive questions from the authorities.

Impact on employers

Under the previous tax regime, French companies automatically received tax payment requests from the French Office for Immigration and Integration. Starting with calendar year 2024, companies are now required to determine the amount of tax due each year and report this amount in their VAT returns.

Key steps

EY will continue to monitor these developments. Should you have any questions, we encourage you to contact one of our immigration professionals.

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