The ‘in patriates’ tax regime after the 2017 Finance Bill: an increasingly attractive mechanism

The in patriates tax regime as provided for by Article 155 B of the French Tax Code is one of the most efficient tax exemption mechanisms currently in force under French tax law. It results from various improvements introduced since 2003, up to and including the latest additions applied by the 2017 Finance Bill.1

Nicolas Pregliasco
Partner
pregliasco@galahad-legal.com

History of the special tax regime

Originating from the Amending Finance Law 20031, this tax regime had originally only provided for a tax exemption on additional compensation items relating to ‘in patriation’, paid to employees or to corporate officers who were not resident in France for tax purposes during the 10 year period prior to their employment in France. The process of in patriation involves the relocation of foreign employees or managers to the parent country of the organisation (i.e. France). From 20052, the period of time required not to be domiciled prior to their employment in France was reduced from 10 to 5 years and an additional exemption on payments for days worked outside of France was introduced.

In 20083, the tax system was extensively reshaped to include both individuals directly recruited abroad and the self-employed. Additionally, it also introduced a partial exemption for “passive” income earned or received outside France. Finally, in 2015, the Macron Law4 reduced the consequences associated with a change in roles within the same company or the same group for in patriates.

The 2017 Finance Bill5 has further reinforced the attractiveness of the tax regime by extending the maximum period of its application from 5 to 8 years. Some companies can now gain a direct financial advantage from this tax regime: there is now an exemption of payroll tax (“Taxe sur les salaires”) on the so-called “in patriation premiums”, i.e. compensation items relating to pay as from 1 January 2017. These new measures, although only applicable to inbound expatriates/in patriates who started working in France on or after 6 July 2016, make this tax regime even more advantageous. However it is still relatively unknown to companies recruiting eligible individuals and to the potential beneficiaries themselves.

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3 Law to modernise the economy 2008-776 dated 4 August 2008.
4 Law 2015-990 dated 6 August 2015.
5 Law 2016-1917 dated 29 December 2016, art. 71.
Employees and corporate officers benefitting from the tax regime

Article 155 B of the French Tax Code provides for a number of time-sensitive options for income tax exemption benefitting the category of taxpayers known as “in-patriates”. The system can apply to employees and to corporate officers who meet the following conditions:

- have a fixed-term or permanent employment contract in a company based in France either through a company based abroad, or recruited directly by the company based in France;
- have not been tax domiciled in France within the meaning of article 4 B of the CGI, or been resident in France within the meaning of the international tax agreements during the five calendar years prior to the year in which they assumed their duties in France;
- have designated France as their tax domicile and residence within the meaning of the international agreements, from the time of their appointment in France. This condition is loosely interpreted by the tax authority, which has specified that the tax system could apply to individuals who did not fix their tax domicile in France at the same time as they took up their post:
  - from the year of their appointment if the in-patriate settled in France during the calendar year of their appointment or the following year;
  - from the year they fixed their tax domicile in France if they settled in France after the end of the calendar year in which they took up their post.

It is important to note that individuals fulfilling these conditions are eligible for this tax system regardless of their nationality. As a consequence, the tax system can be applied to foreign, as well as to French nationals. It should be kept in mind that, subject to meeting specific conditions, non-salaried workers having assumed their duties in France between 1 January 2008 and 31 December 2011 may equally benefit from the tax system for a period of 5 years.

Tax exemptions on income provided for by the regime

Employees and corporate officers who meet the conditions above qualify for the following exemptions:

- Exemption for supplementary bonuses/premiums directly linked to in-patriation, or “in-patriation bonuses”, subject firstly to such bonuses being provided for in their employment contract or corporate appointment (or in a rider to such contracts) and secondly, to their bonuses being determined prior to the in-patriate commencing his duties in France. For in-patriates recruited...
directly abroad by a French company, this bonus may be assessed at a fixed amount of 30% of their remuneration\(^{16}\). It is important to note that this fixed percentage assessment cannot apply to individuals assigned by a foreign company to a French company. The responsible administrative body in France has thus specified that it could not in principle apply to intercompany postings.

- Exemption of the portion of their salary exclusive of the inpatrination bonus, which corresponds to days worked abroad during the tax year\(^ {17}\).

- A 50% exemption for ‘passive’ earnings paid by an entity based in a State that has a tax agreement with France containing an administrative assistance clause with a view to measures against fraud or tax evasion. This partial exemption is aimed at certain intellectual or industrial property products\(^ {18}\), earnings from capital assets (particularly dividends and interest) and capital gains from sales of securities and ownership interests abroad.

These exemptions only relate to income tax and have no effect on social security contributions or social charges on investment income from assets or investment products to which they are subject.

It is equally important to note that inpatient employees and officers may, during the period of application of the system, subject to certain limits\(^ {19}\), deduct contributions paid to the supplementary pension and welfare schemes in which they participated before arriving in France\(^ {20}\).

In addition, individuals benefitting from this tax regime can, in practice, also benefit from the provisions of article 885 A of the CGI (this legislation applies to individuals who were not tax domiciled in France for at least 5 years prior to becoming so).

In this regard, only their property held in France can be used to determine their assets liable for ISF (solidarity tax on wealth), which is calculated up to 31 December of the fifth year following the year in which their tax domicile was fixed in France. Conversely, property located outside France held by these individuals is neither subject to this tax nor taken into account when assessing whether they have exceeded the tax threshold.

**The cap on exemptions**

Exemptions are capped by in two ways:

- Firstly, the “inpatrination bonus” exemption is limited by reference to employees who have equivalent pay but do not benefit from this status: the inpatriate’s pay, after deducting the inpatrination bonus, should thus be at least equal to that received in respect of equivalent posts in the same company, or failing which in similar companies based in France, by employees who are not inpatriates. The tax authority accepts that the “reference pay” in question should be equal to “the lowest pay received by an employee with experience comparable to that of the

\(^ {16}\) BOI RSA-GEO-40-10-20-20120912 n°80 to 100.

\(^ {17}\) BOI-RSA-GEO-40-10-20-20140210, n°220 and following; in accordance with I. 4, of article 155 B, this exemption cannot be added to the exemption of expatriation bonuses provided for by article 81 A II of the CGI\(^ {17}\).

\(^ {18}\) Products referred to in article 92, 2-2° and 3° of the CGI.

\(^ {19}\) These limits are provided for in the fourth paragraph of Article 83 1° quater of the CGI and the second and third paragraph of article 83 2° of the CGI.

\(^ {20}\) Article 83 2°-0 ter; this deduction is accepted so long as the regimes meet the conditions set by directive 98/49/EC dated 29-6-1998.
In a group of companies during the 5 years in question or during the three preceding years 

- After applying this first ceiling, beneficiaries must opt for one of the following two limiting mechanisms:
  - an overall ceiling of 50% of their taxable pay before applying the system; or
  - a ceiling calculated according to the portion of their pay which relates to days worked outside France: this ceiling is equal to 20% of their taxable pay minus the amount of the inpatriation bonus.

The maximum period of application of the tax regime

Taking into account the adjustments made by the Finance Act, it is now important to distinguish whether the inpatriate took up the appointment in France before or after 6 July 2016. The system may apply to employees or corporate officers who took up their post before that date, up to 31 December of the fifth year following the year of their appointment. For others, this tax regime can now be applied up to 31 December of the eighth year following the year of their appointment.

This tax regime will cease to apply if any of its conditions are not met. One should however bear in mind that, after the Macron Law, the General Tax Code expressly provides that a change of post within the same company or within the same group of companies during the 5-year period does not call into question the application of the regime. This addition only applies to changes in post that occurred after 7 August 2015.

Finally, it should be noted that currently the 5-year period provided for by article 885 A of the CGI, during which only property and assets located in France are liable for Wealth tax (ISF), has not been extended to 8 years. Accordingly, individuals who were appointed after 6 July 2016 may qualify for the inpatriates tax regime up to the end of the 8-year period, but their ISF tax base will be assessed by taking into account their property located in France and outside France after the 5-year period.

By way of example, an individual recruited by a French company and having fixed their tax domicile in France in December 2016 will theoretically benefit from the inpatriates system until 31 December 2024. On the other hand, their ISF taxable assets will include their assets outside France as from ISF 2022 (i.e. ISF on assets held as at 1 January 2022).

Exemption from payroll tax

Inpatriation bonuses paid after 1 January 2017 to employees or corporate officers appointed on or after 6 July 2016 are exempt from payroll tax. This exemption, provided for by the 2017 Finance Act, does not however apply to pay relating to days worked abroad. Furthermore, for individuals recruited directly from abroad by a company located in France, the amount of the bonus exempted from payroll tax is equal to 30% of their pay, regardless of the level of tax income they have selected.

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21 BOI-RSA-GEO-40-10-20-20151120, n°150.
22 BOI-RSA-GEO-40-10-20-20151120, n°310.
24 Law 2015-990 dated 6 August 2015, art. 263.
25 For the application of this measure, the notion of a group is construed as the group formed by a company and the companies it controls, under the conditions defined in article 233-3 of the code de commerce [business law].
26 Law 2016-1917 dated 29-12-2016 art. 71; article 231 Q bis of the CGI [General Tax Code].
The declaration requirements of beneficiaries: declaration of selected options for assessment of bonus and exemption cap

No prior approval is required in order to benefit from the inpatriates regime. On the other hand, beneficiary employees or corporate officers are required, when filing their tax returns, to opt for either the overall cap on exemption at 50% or the 20% ceiling regarding pay for days worked abroad. For employees recruited directly abroad, their declaration must also indicate their selected option for assessing the inpatriation bonus according to the actual or inclusive mode (i.e. 30% of their taxable pay).

The amount of the inpatriation bonus and expected pay for days worked abroad must also be declared in the tax return (up to 2015, the relevant line was DY on form 2042 C). The distinction between the taxable fraction and the exempted fraction of income referred to as “passive” must also be included in the 2047 forms (dividends and interest in particular) and 2074 IMP (capital gains on sales made by inpatriates)27.

The declaration requirements of employers: the often neglected calculation and declaration of all exempted amounts

Employers, still bound in respect of 2016 to submit a DADS-U [unified-annual declaration of social data], and employing individuals who benefit from the inpatriates tax system, should, in principle, as for the DSN [nominative social data declaration], distinguish between the amount of salaries subject to income tax and the total amount exempted under this system. Thus, the inpatriation bonus should appear in the sub-heading S40.G40.00.069.001 – the exempt inpatriation bonus, but also the portion of remuneration pertaining to days worked abroad by the interested parties.

One should bear in mind that many companies still neglect to calculate these benefits in a way that takes into account the entirety of the mechanism. It is thus frequently the case that while inpatriation bonuses are often distinguished from the taxable salary, where these are provided for in the employment contract or corporate appointment, French companies recruiting directly from abroad often neglect the option for employees or corporate officers to benefit from the exemption of a bonus set at 30% of their pay. Finally, the tax exemption relating to days worked abroad is also often overlooked by the employer for a variety of reasons: a lack of understanding of the system, lack of data relating to the individuals concerned travelling abroad within the company, and failure to calculate this portion of their pay.

It is important to remember that any error made by the employer in calculating and declaring the exemption for which inpatriates qualify (for example in the absence of a calculation of the pay for days worked abroad) will have an impact on the pre-completed inpatriates’ declaration. These errors could lead to these employees being over-taxed if they are not given the opportunity to correct their declaration themselves. When tax at source will come into force, any error committed in this respect will be paid for each month by an excess deduction of tax on income.

On the contrary, for inpatriates who rectify their pre-completed declaration, the discrepancy between the incorrect figures declared by their employer and the sums declared by the beneficiary will automatically be reassessed by the tax authority. If this correction is not accepted, the inpatriate must

27 Forms used for the declaration of income for 2015.
justify their refusal, and, if appropriate, provide a certificate from their employer explaining this discrepancy.

In addition, Employers may be liable for tax penalties provided for by article 1729 B of the CGI for omission or inaccuracy\textsuperscript{28}.

**Options for regularisation within the regime**

Finally, it is important to remember that individuals who qualify for this tax regime but who have not opted for it (or who have only partially benefited, for example by omitting to request exemption for passive income, or by failing to rectify incorrect amounts communicated by their employer to the tax authority) may, within a limitation period require their previous declarations of income to be corrected in order to obtain reimbursement of tax on income that was incorrectly paid. The tax authority generally looks kindly upon such requests, as long as the taxpayer can prove they have met all the necessary conditions

Nicolas Pregliasco
Partner
pregliasco@galahad-legal.com

\textsuperscript{28} A fine of €15 per inaccuracy or omission; the minimum amount for this fine is set at €60 and the maximum at €10,000.