

Short-term business travel to France

Prepared by:

Jérôme Régnier, Tax Manager, RSM France
Jerome.regnier@rsmfrance.fr, +33 1 47636700

Alexandre Mathy, Tax Consultant, RSM France
Alexandre.mathy@rsmfrance.fr, +33 1 47636700

Short-term business travelers (STBTs) are foreign nationals who are individuals who cross a country border for a short period of time for employment-related purposes. This often triggers unexpected tax and reporting obligations for both employees and their employers.

These employees are working in France for a short period of time (generally less than a three-month period) while continuing to maintain their tax residence in their home country. These obligations can place significant administrative and tax burdens on multinational companies that may not be aware of the exposure to penalties and other regulatory risks.

To minimize costs, it is imperative both employers and employees are aware of the tax implications of working in France.

Tax residency

To determine your residence for tax purposes, international tax treaties establish criteria that take precedence over national legislation.

These criteria may vary depending on the tax treaty. If there is no tax treaty between the two countries in question, then each country's national legislation applies.

Under French domestic law, a French tax resident is a person who meets at least one of the French tax code criteria (article 4A of the French tax code):

- The family/household is in France (spouse and children)—this criterion is the most important under French domestic rules
- The employee spends more than 183 days a year in France
- The professional activity is carried out in France

In addition, and in certain specific situations, couples who do not live together could have a mixed residency status.

Short-term Schengen visa

To be able to enter and stay for up to three months in France, a foreigner must usually have a short-term visa.

This uniform visa is common to the Schengen area (an area comprising 26 European countries that have officially abolished all passport and all other types of border control at their mutual borders. The area mostly functions as a single jurisdiction for international travel purposes, with a common visa policy). It allows the holder to stay in France and in the other countries of this area, with some exceptions.

This concerns foreigners who come to France for a maximum of three months and who do not have a residence permit or a long-stay visa.

Schengen visas can be granted for several reasons, in particular a professional trip, and must be supported by several documents.

In the context of a short-term assignment, foreign nationals in France are generally considered as nonresidents as they do not meet any of the criteria to consider them as residents. If a foreign employee meets one of the criteria above to be considered a French resident, he/she will be taxed on his/her worldwide income regardless the source of that income.

Income tax

With regard to tax, foreign nationals are often treated as nonresidents of France and are tax limited on their French-source of income only. Remuneration paid for an activity in France is considered a French salary and therefore, taxable in France. In general, salaries paid to nonresidents are subject to withholding tax in France, unless otherwise provided for in a double-tax treaty. To avoid double taxation, the withholding tax applied in France results, in general, in the elimination of this double taxation in the home country (when there is a tax treaty between France and the home country of residence) by application of a tax credit.

Withholding tax is applied in France according to a scale (updated annually—refer to the table below). The declaration of withholding tax is an obligation of the employer, who must declare and pay the tax due in France on a quarterly basis in the year N.

The employee has to file an annual income tax return for the first time, in year N+1 (generally in May) regarding the year N, to report the portion of income linked to the French activity, and the total tax deducted at the source. Above certain thresholds, the employee will potentially be liable for additional tax after filing this return.

Exception: A temporary assignment clause. Most double-tax treaties provide for such a term in the context of a temporary assignment. Remuneration received by a resident of one of these countries—in respect of an employment exercised in the other state—shall be taxable only in the first state if:

- The recipient is present in the other state for a period not exceeding 183 days in any 12-month period
- The remuneration is paid by, or on behalf of, an employer who is not a resident of the other state
- The remuneration is not supported by a permanent establishment or a fixed base which the employer has in the other state

If all three conditions are met, the employee would be on a “temporary assignment” within the terms of the clause and would therefore not be taxed in France on such remuneration.

For short-term business and non-tax residents, there is no monthly payee as you earn application (i.e., no French Prélèvement à la source/PAS) but a quarterly declaration, in certain circumstances.

Withholding tax rates on salaries applicable in 2022

Requirement	Year	Quarter	Month	Week	Daily
0% for the fraction	Less than 50 018 €	Less than 3 755 €	Less than 1 252 €	Less than 289 €	Less than 48 €
12% for the fraction between	15 018 € to 43 563 €	3 755 € to 10 891 €	1 252 € to 3 630 €	289 to 838 €	48 € to 150 €
20% for the fraction	Above 43 563 €	Above 10 891 €	Above 3 630 €	Above 838 €	Above 140 €

Permanent establishment risk

Depending on the business activities carried out by the employee, it is possible for the individual to create entity-level tax filing and payment obligations for the employer.

This could occur if the employee's activities constitute a permanent establishment (PE) or taxable presence.

According to French tax rules, the exercise of a business activity is characterized by operating an establishment in France, carrying out transactions in France through a dependent representative, or carrying out transactions that are part of a complete business cycle of production in France with several persons working on the same cycle.

The applicable double-tax treaty should also be considered, as it also provides a definition of permanent establishment.

Social security and certificates of coverage

Posted worker from the EU and Switzerland

Social security coverage is required for all employees. In principle, a worker is affiliated in the country where he works, and generally it is the country of the employer.

However, it is possible by exception for an employee to remain attached to the social security system of his home country in the context of a secondment.

A posted employee is an employee sent by his original employer based abroad to carry out a temporary assignment in France and who could be maintained under his home social security scheme. The subordination link with the original employer is maintained during the assignment.

A certificate of coverage must be obtained (e.g., an A1 certificate for EEA countries, Switzerland and the United Kingdom).

Any posting to France, regardless of the employee's nationality, must be declared in advance by the employer based abroad using the Ministry of Labour's SIPSI teleservice. In this case, the employee may, under certain conditions, continue to be covered by the social security system of his usual state of employment. Social security contributions are paid in the country of origin.

Posted worker from countries other than the EU, EEA or Switzerland

Seconded employees covered by a bilateral treaty

Seconded employees from countries that have signed a bilateral treaty with France may remain affiliated to the social security system of their country of origin during all or part of their secondment to France. France has a totalization agreement in force with 41 countries which generally permits an employee and an employer to be exempt from French social security contributions provided certain requirements are met and a valid certificate of coverage is in place.

Seconded employees not covered by a bilateral treaty

In the absence of a bilateral social security agreement, employees sent to France must be affiliated to the general French health insurance scheme.

If the employer has an establishment in France, it will be necessary for this establishment to take the necessary steps to register for social security.

If the company, whose head office is abroad and without an establishment in France, recruits a foreign employee from a country not covered by a bilateral tax treaty, the employer must fulfil its obligations to declare and pay contributions to the URSSAF (URSSAF d'Alsace—CNFE—Centre national des firmes étrangères) of Bas-Rhin.

Payroll impacts

In principle, since the short-term business worker will come for a limited period in France and will be, under certain conditions, maintained under his home country payroll and social security, no French payroll will be required accordingly.

How can RSM help?

Noncompliance with local requirements may lead to financial and reputational risks and exposures that could put business objectives and projects at risk if international jurisdictions refuse an employee's entry. Failing to meet local requirements may hinder expansion to new markets, lead to monetary penalties and expose the organization to legal challenges from employees and authorities.

Posted worker: Prior declaration

Prior to the start of the French assignment, a specific declaration of posting is to be submitted by the home country employer to the French labor inspectorate via the SIPSI online portal (<https://www.sipsi.travail.gouv.fr>). Any extension of time must be filed electronically. The home country employer must appoint a representative in France for the duration of the French assignment who will perform the employer's French compliance obligation on his behalf. This representative can be an employee of the host country entity. The home country employer must appoint a representative in France for the duration of the French assignment who will perform the employer's French compliance obligation on his behalf. This representative can be an employee of the host country entity. Employers of workers posted in France must comply with various mandatory labor regulations.

Short term services provided as part of one-off events are generally exempt from obligation of prior declaration of posting and do not require the appointment of a representative provided they pertain to certain category of activities including artists, athletes and members of the teams accompanying them, official delegates, researchers or teachers speaking at conferences, seminar and scientific events.

The reporting obligations described above need to be carefully managed to ensure that all requirements are met and that tax liabilities are minimized. Organizations may want to establish a compliance checklist in connection with their STBTs.

We utilize bespoke software to manage large populations of visitors and proactively advise on thresholds. We also utilize more practical reporting methods with clients who only need to manage a handful of globally mobile employees. Our international professionals will provide clarity regarding the complex tax compliance requirements that your business travelers face globally.

Checklist for managing risks of noncompliance

- ✓ Payroll tax exposure: Payroll compliance should be monitored by the company as payroll audits have become increasingly common.
- ✓ Immigration risks: It is imperative that STBTs adhere to immigration laws. Any visa/work permit requirements should be identified prior to traveling to the other country.
- ✓ Corporate tax risks: The employee's activities in the host country can create PE risk and tax filing/payment obligations at the corporate level. The applicable double-tax treaty should be reviewed, as a mitigation strategy may need to be put in place.
- ✓ Regulatory risks: French requirements must be considered to reduce the possibility of triggering any regulatory issues in the host country.
- ✓ Reputational risks: There is increased pressure on multinationals to show that they have a process in place for monitoring STBTs and managing risks of noncompliance.

+1 800 274 3978
rsmus.com

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