



# GMS Flash Alert



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## France – Withholding Tax Regime Guidelines Issued for Transition Year

French tax authorities have provided guidance<sup>1</sup> concerning income earned in 2018 in light of the introduction of the new withholding system of tax collection coming into force in January 2019.

The latest batch of commentaries covering the transitional measures for tax year 2018 was published on August 1, 2018.

### WHY THIS MATTERS

The introduction of a withholding system of tax collection in France is fast approaching. The French administration has been publishing its position in the form of commentaries in a rather piecemeal way over the last few months.<sup>2</sup>

Employers should review – if they have not already done so – their payroll processes, policies, and systems to make sure they are ready to comply with the rules from January 1, 2019. In addition, employers should understand the impact of the transition year on budgeting and costs.

### Transitional Measures: a Tax Credit on 2018 Income

The transition mechanism will take the form of a tax credit (the so-called “tax credit for modernization of the recovery” (*crédit d’impôt pour la modernisation du recouvrement*), known as “CIMR”)<sup>3</sup>. The tax credit will apply to the tax corresponding to any “non-exceptional” income received in 2018.

### Exceptional Versus Non-exceptional

The notions of “exceptional” and “non-exceptional” income have been challenging for employers and practitioners. Broadly speaking, what makes income exceptional is its nature rather than its amount.

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The fact that amounts received in 2018 are higher than those received in previous or subsequent years will not in itself render the income exceptional: changing jobs or doing more or less overtime will not jeopardize the application of the CIMR. The rationale is that the amounts originate in the contract of employment and are not exceptional.

Certain types of employment income are clearly stated in the published guidance as being exceptional such as (the list is not exhaustive):

- golden parachutes and “hellos” (para. 60);
- the taxable amount of severance pay (para. 40);
- one-off allowances such as relocation allowances (para. 70);
- amounts distributed under French profit sharing schemes (*Participation and Intéressement*), that are not invested in a PEE (French employee savings scheme) (para. 100);
- amounts that are not paid in accordance with the normal payment schedule – for instance if the employer changes the usual calendar for the payment of a bonus paid in 2018, that bonus will be deemed “deferred” or “anticipated” income if the payment occurred (as the case may be) in 2017 or in 2019 in the absence of the change (para. 250).

## Supererogatory Remuneration

Matters get a little more tricky where “supererogatory” remuneration is concerned (the word in French is “surérogatoire” which literally means that which is not obligatory; which is simply advised or recommended; added without necessity; or superfluous).

The French tax administration states that “supererogatory” remuneration is remuneration which is not related to the employment contract or the corporate office or going beyond what the contract provides.

The analysis of the supererogatory nature, or not, of items of remuneration will therefore need to be done on a case-by-case basis. The administration states that a bonus mentioned in the employment contract is not considered supererogatory when it fulfills two cumulative conditions:

- the payment, including the calculation method, is determined in the employment contract, and
- the amount paid in 2018 does not exceed the amount due when the conditions are met.

Bonuses (called “gratifications” in the French text) whose terms of payment are not stated in the employment contract, and for which employees are not in a position to determine the amount on their own, are considered to be supererogatory and not eligible for the CIMR. However, the administration agrees to take them into account when calculating the CIMR if they meet the two conditions:

- the gratification is both awarded and paid in the usual manner, and
- its amount is not excessive when compared with those usually awarded.

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## FIDAL NOTE

### Getting Clarification from the Tax Administration

If in doubt, the taxpayer may question the tax administration. Employers are not obligated to qualify the income paid in 2018 to their employees for CIMR purposes, but they may wish to give employees such information. A specific procedure has been set up to allow employers to apply for a ruling. Failure of the administration to respond to the employer's request for a ruling after the expiry of a three-month period will constitute tacit acceptance of the analysis made in the application.

### Applying to Residents Versus Nonresidents

As a reminder, only taxpayers that are tax residents of France are concerned by the withholding rules and the transitional measure. The tax collection method for nonresidents remains the same as previously (via a system of nonresident withholding).

### Next Steps for Employers to Consider

Employers are advised to seek professional assistance in understanding the rules and their impact on their operations, global payroll processes, and policies.

Fidal uses a combination of industry and payroll tax expertise to support employers in the transition to Pay-As-You-Earn and employer withholding.

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## FOOTNOTES:

- 1 For the notification of the guidance (in French) in the online *Bulletin Officiel des Finances Publiques-Impôts*, click [here](#).
- 2 For our earlier report, see GMS [Flash Alert 2018-038](#) (26 February 2018).
- 3 To avoid having to oblige taxpayers to pay tax twice in 2019 (i.e., on prior year income for 2018 and current year for 2019), the government has decided that a special tax credit will apply on non-exceptional income, meaning that, for most taxpayers, 2018 will be a "tax-free" year.

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