

Taxing commuters from France: the agreement of 1983

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The Franco-Swiss double taxation convention of 9 September 1966 follows the general principle of taxation in the state of employment. For frontier workers it refers to special agreements. The agreement that matters for Basel was concluded between the Swiss Federal Council and the French Government on 11 April 1983 and concerns the taxation of the remuneration of frontier workers.¹ It applies to frontier workers resident in France and employed in one of the eight participating cantons, among them Basel-Stadt and Basel-Landschaft. The canton of Geneva is not a party and follows its own model, under which Geneva taxes the French commuters at source and pays a compensation to the neighbouring French départements.²

Under the agreement of 1983 the salary of a frontier worker is taxable only in France, the state of residence. A frontier worker in this sense is a person who resides in France, works in one of the participating cantons and returns to the residence as a rule every day. The employee must hold a residence certificate issued by the French tax administration, which the Swiss employer keeps as proof that no Swiss tax at source is due.³ In exchange for giving up its taxing right, Switzerland receives a financial compensation. France pays to the participating cantons an amount equal to 4.5 per cent of the gross annual remuneration of the frontier workers concerned. The cantons may share part of this amount with their communes.⁴

The compensation model differs from the German solution in a significant respect. Under the Swiss–German convention, Switzerland collects its 4.5 per cent directly through the employer's tax at source. Under the Franco-Swiss agreement, France collects the entire tax and then transfers the compensation to the cantons, which places the cantons in the position of creditors of the French state. The cantons depend on French data on the

number of commuters and their salaries. Disputes about the accuracy of these data have occasionally arisen, which explains why the more recent arrangements provide for an automatic exchange of salary information.

The definition of the frontier worker under the agreement of 1983 contains a tolerance for days on which the employee does not return home. According to the administrative practice of the two states, a commuter keeps the status if the number of non-return days for professional reasons does not exceed 45 in a year.⁵ The threshold thus differs from the 60-day rule of the German treaty, a difference that matters for employers whose staff travel. A Basel employer whose commuters from Alsace and Baden take the same business trips may find that the French commuters lose their status earlier than their German colleagues.

1 Notes

1. Agreement of 11 April 1983 between the Swiss Federal Council, acting on behalf of the cantons of Bern, Solothurn, Basel-Stadt, Basel-Landschaft, Vaud, Valais, Neuchâtel and Jura, and the Government of the French Republic on the taxation of the remuneration of frontier workers (SR number to be verified). See also the Convention of 9 September 1966 between Switzerland and France for the avoidance of double taxation with respect to taxes on income and on capital (SR 0.672.934.91), Art. 17 para. 4. References to be verified. ↩
2. On the Geneva model, based on the agreement of 29 January 1973 between the Swiss Federal Council, on behalf of the Republic and Canton of Geneva, and the French Government on the financial compensation for French frontier workers employed in Geneva (compensation of 3.5 per cent of gross salaries to the départements of Ain and Haute-Savoie), see the cantonal publications. To be verified. ↩
3. Art. 1 and 2 of the Franco-Swiss agreement of 11 April 1983 and the related administrative instructions, in particular the certificate of residence for frontier workers (form 2041-AS). Form number to be verified. ↩
4. Art. 3 of the Franco-Swiss agreement of 11 April 1983 on the compensation of 4.5 per cent of gross remuneration. On the amounts received by Basel-Stadt and Basel-Landschaft, see the cantonal financial statements. Figures to be verified. ↩

5. On the tolerance of 45 days of non-return under the Franco-Swiss agreement of 1983, see the exchange of letters and the administrative instructions of the French Direction générale des finances publiques and the Swiss Federal Tax Administration. To be verified. ↩

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