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France: Income tax withholding considerations regarding internationally mobile employees

Overview

As from January 1, 2019, France will be moving from a system where personal income tax is paid one year in arrears by individuals to a current-year withholding tax at source system for compensation and benefits taxable in France that are paid to tax-resident individuals by French or foreign employers. French and foreign employers of French tax-resident individuals should update their policies and processes so that they can begin properly withholding tax as from January 1, 2019, and there are a number of specific issues that employers with internationally mobile employees should consider.

The significant change regarding the timing of tax payments is combined with the transfer of the responsibility for calculating, collecting and paying the income tax due on compensation and benefits from individual employees and the French tax authorities to the French or foreign employers, where tax-resident employees receive compensation and

benefits taxable in France. (Employers of nonresident employees who receive some of their compensation/benefits in relation to French work days fall outside the scope of the new withholding tax system, since such individuals already are subject to a nonresident withholding tax.)

The new obligations on employers will be especially challenging for companies with internationally mobile employees, which may need to review and adjust their internal processes or create new processes to handle their initial registration with the French tax authorities and ongoing monthly compliance tasks. They will need to process the data provided by the French tax authorities (including the withholding tax rates for employees), determine the proper tax basis and calculate the tax, withhold the tax and pay it to the tax authorities, in addition to filing the relevant French tax forms.

The changes necessary to comply with these new obligations will depend on the organization, its assignee population and its mobility policies.

Urgent actions for foreign employers

The obligation for employers to begin withholding tax will become effective for compensation and benefits paid to tax resident employees as from January 1, 2019. This obligation applies to foreign employers (*i.e.* companies not located in France) of employees who are seconded to France, even if the employee is paid via a foreign payroll.

To be ready to comply with the new rules from January 1, 2019, foreign employers should take certain actions as soon possible, notably, appointing an accredited French withholding tax representative (for non-EU employers), registering the company with the French tax authorities and opening a company bank account in the SEPA zone if they do not already have such an account. (The SEPA zone comprises the EU member states, Iceland, Liechtenstein, Monaco, Norway, San Marino and Switzerland.)

The French tax authorities will make the registration forms for foreign employers available by mid-October 2018. Affected foreign employers should start the registration process before the end of November 2018 to be ready by January 1, 2019, particularly since the tax authorities have indicated during informal discussions that they will be lenient in imposing any lateness penalties for employers that commence the registration process before December 2018.

Determination of the tax base for inpatriates and expatriates

While the withholding tax rates to be applied to employees will be communicated to employers by the French tax authorities, the calculation of the withholding tax may be challenging for assignee populations (inbound and outbound employees, *i.e.* "inpatriates" and expatriates). French and foreign employers have the responsibility for determining the tax base subject to withholding tax, and most inpatriates and expatriates benefit from various favorable tax regimes in France (including special tax regimes for inpatriates and expatriates and a French tax credit equal to the French tax due on foreign income, to avoid double taxation).

The tax authorities have listed some specific exclusions from the salary income that will be subject to withholding tax for internationally mobile employees. The following income will be excluded from the tax base:

- Tax-exempt allowances and benefits under the tax regime for inpatriates, within the limits of the reference salary;
- Tax-exempt salary income or additional allowances under the tax regime for expatriates; and
- Salary income related to non-French work days taxed abroad for which France allows a tax credit equal to the French tax due on the income based on a tax treaty between France and the other country.

Consequently, all employers (French and foreign) should make sure that they implement the appropriate processes and have the tools available to determine the correct basis for the withholding tax.

Since the tax regimes for inpatriates and expatriates previously were applied and administered via the individual's French income tax return, it is likely that payroll departments or payroll providers may not have the tools and processes necessary to determine the tax base for inpatriates and expatriates. Company processes and payroll tools may need to be implemented or adjusted to ensure that the company properly applies the various favorable French

tax regimes for internationally mobile employees to determine the appropriate basis for the withholding tax applicable to the employees.

Withholding tax rate for new inpatriates

For inpatriates arriving in France in 2018 or later, the French tax authorities generally will require the French or foreign employer to withhold tax (for a period up to 20 months) at the “neutral” tax rate for single taxpayers, which is a standard rate that will apply where the tax authorities are unable to determine a rate. This is because, for newly arrived inpatriates, the tax authorities will not be able to use their normal method of determining the withholding tax rate based on the income declared in the employee’s previous French income tax returns. However, employees will have the option to request the “personalization” of their tax rate based on the current-year income tax estimated by the employee.

The use of a neutral tax rate may lead to excess withholding, causing cash flow issues (for the company and/or the inpatriate, depending on the company’s mobility/tax equalization policy) in many cases. The excess withholding will be corrected via the filing of the inpatriate’s individual income tax return, which will not occur until the following year.

Therefore, employers should consider calculating an estimate of the current-year taxable remuneration (as from the 2019 tax year) for inpatriates who arrived in France in 2018 or later, to provide a basis for determining a personalized withholding tax rate and potentially avoiding a cash flow issue for the company and/or the inpatriate.

The tax authorities are expected to publish a procedure soon, under which taxpayers that newly arrive in France could request the personalization of their tax rate upon their arrival.

Below is a simplified hypothetical example (based on certain assumptions) of the potential cash flow impact of applying a neutral rate, compared to applying a personalized rate, for an inpatriate tax resident who arrives in France in January 2019, receives annual gross compensation of EUR 150,000 and is married with three dependent children. The tax regime for inpatriates is applied in calculating the tax base when applying the personalized rate, but not when applying the neutral rate.

	Taxable basis (EUR)	Tax rate	Withholding tax (EUR)
Tax calculated with neutral rate	123,889	28%	34,691
Tax calculated with individualized rate	69,378	5.21%	3,612
Annual cash flow impact			31,079

If no personalized tax rate is requested for the employee in this scenario, tax would be over-withheld by around EUR 31,000. The reimbursement of the excess withholding would not occur until September 2020.

Mobility/tax equalization policies relating to tax refunds

Under the rules of the new withholding tax system for compensation and benefits, it is anticipated that individuals will receive income tax refunds (where the withholding tax paid by the employer is higher than the final income tax due) in September of the following year (“Year+1”) after filing their individual French income tax returns that will be due in May of Year+1.

It is important for French or foreign companies with tax-equalized inpatriates to update their mobility or tax-equalization policies to ensure that potential tax refunds related to tax-equalized compensation and benefits that are received from the tax authorities by inpatriates are effectively reimbursed by the inpatriate to the company, and to clarify the process that will have to be followed.

Application of transition-year tax credit (CIMR)

To prevent individual taxpayers from suffering a double tax burden in France, each French taxpayer will be granted a tax credit to be deducted from the 2018 income tax calculated by the French tax authorities in the summer of 2019. However, the tax credit will not be available for “exceptional income” and income not subject to withholding tax, which will remain subject to tax in 2019.

Exceptional income received in 2018 will include certain types of compensation and benefits, including certain equity compensation and other income that is not deemed to be received on an annual basis, and the kinds of income that fall into this income category may be open to interpretation. The legislation allows an employer or an employee to request a ruling from the tax authorities to determine whether income is exceptional or non-exceptional with respect to compensation or benefits paid in 2018.

Internationally mobile employees may receive types of compensation and benefits that could be considered exceptional income, including specific items of remuneration linked to their mobility and non-qualified equity compensation.

French and foreign employers should consider reviewing all remuneration items to assess their eligibility for the transition-year tax credit, consider requesting a ruling from the tax authorities if it is unclear whether an item of income is exceptional and secure the application of the tax credit for internationally mobile employees.

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France: New withholding tax system for individuals: What you need to know

Overview

Starting on January 1, 2019, there will be significant changes to the way tax resident individuals pay their taxes in France as the country moves from a system where personal income is paid one year in arrears to a current year withholding tax at source system. This change was confirmed by the finance minister and the tax administration on September 4, 2018, following several weeks of mixed messages.

This seminal change regarding the timing of tax payments is combined with the transfer of responsibility for calculating, collecting and paying the income tax due on compensation and benefits from individual employees and the French tax authorities to the employer (whether French or foreign) where the employees receive compensation and benefits taxable in France. In other words, under the new rules, French resident employers will be responsible for withholding tax on behalf of their employees, with respect to income from employment.

A transitional rule will apply to prevent the double payment of tax in 2019 due to the new withholding tax system, with a one-time tax credit granted to taxpayers that will be deductible from the 2018 French income tax due in 2019.

This article provides key information on the upcoming changes.

Summary

The new withholding tax system will be applicable to income paid as from January 1, 2019, and there is no possibility to postpone the application of the new system.

The following income will fall within the scope of the new regime:

- Compensation income (defined broadly to include compensation or benefits paid by an employer to its employee, including income from stock option plans that are nonqualifying for French tax purposes);
- Pension income (including retirement pensions and alimony);
- Various types of allowances (health, insurance);
- Self-employment income; and
- Rental income.

Compensation or a benefit paid by an employer to its employee is taxable in France when it relates in whole or in part to an activity performed in France (days worked in France), or in the absence of days worked in France, when an applicable tax treaty or other international agreement allocates taxing rights to France. As a result, any compensation or benefit paid by an employer to a French tax-resident employee who is fully or partly working in France will be subject to the withholding tax.

The net taxable salary income that will be considered the basis for the calculation of the withholding tax will be the gross amount of compensation and benefits paid monthly less the social security and retirement employee contributions (French or foreign). The employer is responsible for determining the basis – no assistance will be provided by the French tax authorities.

The French tax authorities have listed some exclusions from the salary income subject to the current year general withholding tax that will be of interest to the employers of internationally mobile employees. The following income that may be received by internationally mobile employees is excluded from the basis when calculating the withholding tax:

- Tax-exempt allowances and benefits under the French tax regime for “inpatriates” within the limits of the reference salary;
- Tax-exempt salary income or additional allowances under the French tax regime for expatriates; and
- Salary income related to non-French work days taxed abroad for which France allows a tax credit equal to the French tax due on the income based on a tax treaty between France and the other country.

Employer responsibilities

The employer will be responsible for assessing, collecting and paying the withholding tax on compensation and benefits paid to its employees. All employers, regardless of whether they are French or foreign, will be subject to the new withholding tax obligations, even where an employee is not remunerated through a French payroll.

An employer will be required to comply with the new withholding tax obligations for compensation and benefits where:

- The employee is a French tax resident and he/she carries out activities partly or fully in France and the individual has an employer in or outside France.
- The employee is a French tax resident and carries out his/her activities abroad but an applicable tax treaty or an international agreement allows France to tax the salary income received and the employer is located in France. If the employer is located outside France, the French tax authorities will withhold the tax directly from the employee's bank account. (Employers of nonresident employees who receive some of their compensation/benefits in relation to French work days fall outside the scope of the new withholding tax system since such individuals already are subject to a nonresident withholding tax.)

Tax rate

The tax rate will be determined by the French tax authorities and communicated to the employer, who then will be required to apply the rate. The tax rate will be either a default rate, an optional rate or a “neutral” rate:

- **Default rate:** This rate will be based on the average rate payable on income declared in the individual's previous French income tax returns.
- **Optional rate:** An individual can opt to have the tax rate adjusted to the average income tax rate of the household or can elect to have an "individualized" rate applied between spouses. In this case, the employee can ask the French tax authorities to calculate the rate and notify the employer.
- **Neutral rate:** A neutral rate may apply if the tax authorities are unable to determine a rate, *e.g.* where the individual recently established tax residence in France (*i.e.* the individual does not have a French tax record for the previous three years) or where the tax authorities are unable to find the tax records of an employee based on the references provided by the employer. Since in such circumstances the tax authorities cannot use a previous French income tax return to determine and communicate a rate to the employer, they will request that the employer apply the neutral tax rate. (Using the neutral tax rate can lead to significant over-withholding, which will be regularized via the filing of the annual tax return, sometimes up to 20 months later.)

The employer must apply the tax rate to taxable compensation and benefits paid monthly in order to assess and deduct the withholding tax from the income payable to the employee and remit that amount to the French tax authorities on a monthly basis.

It should be noted that the tax rate communicated by the French tax authorities to the employer is confidential information as defined by the French criminal code and, therefore, the employer is subject to the professional confidentiality rules. Divulging the information or any misuse of the information will be subject to a fine of up to EUR 300,000 and five years' imprisonment. As a response to the critics of the new current year general withholding tax, the authorities in France have made it clear that they will prosecute any breach of confidentiality.

Withholding process for foreign employers

As mentioned above, foreign companies employing employees in France fall within the scope of the French income tax withholding regime. In particular, this will affect employees who are seconded to France via an intragroup transfer, while remaining on their home country payroll.

The new income tax withholding is a challenging process for foreign employers, who will have to register with the French tax authorities and comply with reporting and withholding requirements via the new PASRAU system (withholding system for foreign employers).

Non-EU employers will have to designate an accredited representative located in France. The representative can be member of the group of which the employer is a member.

The French tax authorities will make registration forms for foreign employers available by mid-October 2018. Affected foreign employers should initiate the registration process as soon as the forms are available to be prepared for their obligations that will apply as from January 01 2019. The tax authorities have indicated during informal discussions that they will be lenient in imposing any lateness penalties for employers that commence the registration process before December 2018.

Tax credit for 2018

To prevent individual taxpayers from suffering a double tax burden in France, each French taxpayer will be granted a tax credit to be deducted from the 2018 income tax calculated by the French tax authorities in the summer of 2019. However, the tax credit will not be available for "exceptional income" and income not subject to withholding tax, which will remain subject to tax in 2019. Exceptional income for 2018 that will remain taxable in 2019 includes:

- Severance payments;
- Corporate officer termination payments;
- Income from company profit-sharing and savings plans;
- Deferred compensation;
- Equity income (from qualified share plans); and
- Other income that is not deemed to be received on an annual basis.

To prevent aggressive tax planning in relation to income received in 2018, the legislation provides that the tax credit will be calculated on "non-exceptional" income received in 2018 and deducted from the 2018 French income tax due

on such income. No credit will be granted for exceptional income received in 2018, which means that the 2018 French income tax related to such income will be due and payable in a lump sum by mid-September 2019. The latter exceptional income category may present a challenge in the case of certain items of compensation or benefits received in 2018 since the kinds of income that fall into this income category may be open to interpretation. The legislation allows an employer or an employee to request a ruling from the tax authorities that determines whether income is exceptional or non-exceptional with respect to compensation or benefits paid in 2018.

While the determination of the income eligible for the tax credit will be responsibility of individual employees when filing their 2018 French income tax returns in 2019, employers may wish to consider providing employees with the appropriate information relating to their 2018 French income tax obligations.

Deloitte's view

With only three months remaining before the new rules become effective, employers need to begin preparing for implementation, and communicating with and training personnel to ensure a successful and smooth deployment.

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Mongolia: Monthly minimum wage increase in 2019

Overview

On August 20, 2018, the National Committee issued a decision to increase the monthly minimum wage from MNT 240,000 to MNT 320,000 under the Minimum Wage Act, as of January 1, 2019 (under current exchange rates, MNT 320,000 is approximately USD 130).

What this means for your business

Social security: Employee and employer social security contributions will increase for certain employees as a result of the increase in the monthly minimum wage. The following table shows the social security rates that will be effective in 2019 and 2020:

Type of Social Security	2019		2020	
	Employer Contribution	Employee Contribution	Employer Contribution	Employee Contribution
Pension insurance	8.5%	8.5%	9.5%	9.5%
Benefits insurance	1%	0.8%	1%	0.8%
Health insurance	2%	2%	2%	2%
Unemployment insurance	0.2%	0.2%	0.2%	0.2%
Industrial accident/occupational disease insurance	0.8% – 2.8%	–	0.8%-2.8%	–
Total	12.5% – 14.5%	11.5%	13.5% – 15.5%	12.5%

The employee's monthly social security contribution will be capped at 11.5 percent of 10 times the monthly minimum wage in 2019, and 12.5% in 2020. For example, if an employee's monthly gross salary is MNT 4,200,000, the employee's social security contribution will be capped at MNT 368,000 per month in calendar year 2019. There is no cap on the employer's contribution.

Foreign employees and workplace fee: Employers currently pay a workplace fee of MNT 480,000 per month for each foreign employee on the payroll, which is twice the current monthly minimum wage. As a result of the increase in the monthly minimum wage, employers will have to pay MNT 640,000 per month per foreign employee in 2019.

Deloitte's view

Employees in Mongolia will welcome the increase in the monthly minimum wage. Mongolian businesses will need to plan their business costs to adapt to the changes.

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Sweden: Adoption of the economic employer concept has been postponed

Overview

In June 2017, the Swedish Tax Agency submitted a proposal to the Department of Finance requesting that Sweden apply the concept of an economic employer to the interpretation of Swedish internal legislation. The plan was to implement the proposal with an effective date of January 1, 2019.

Please refer to the Newsflash on December 7, 2017, "Sweden— Economic employer," for more details about the original proposal.

URL: <https://www2.deloitte.com/se/sv/pages/tax/articles/tax-alert-the-legislative-changes-regarding-economic-employer-are-delayed.html?id=us:2sm:3na:gis:awa:tax:101918&sfid=70110000002Dnr7>

However, the proposal has been postponed because the legislative work required to implement it has not yet been finalized. Thus, Sweden will not adopt the concept of an economic employer as of January 1, 2019.

According to current legislation, Sweden applies a formal employer approach to the interpretation of Article 15.2 of tax treaties. This means that, for purposes of the 183-day rule in the tax treaties, the employer is considered to be the one who is legally responsible for the employee and who is paying out the salary.

Based on the current Swedish interpretation of the employer concept, the 183-day rule is applicable when a foreign employee works in Sweden for a temporary period and receives remuneration from a foreign employer, even if the cost for the work is recharged to and borne by a Swedish company for which the actual work is performed.

Sweden will continue to follow the formal employer approach until the concept of an economic employer is adopted and implemented.

Deloitte's view

Since many countries apply the concept of an economic employer, it is our view that the proposal will be implemented, although a bit delayed.

The current proposal also includes increased withholding and registration obligations for foreign employers with employees in Sweden, resulting in an increased administrative burden. The proposal has been subject to criticism, also as it will have a wider impact than originally intended. Thus, it is possible that there will be changes made to the proposal before it is adopted.

However, it is important for employers to start preparing their organizations for the upcoming changes, including analyzing the categories of employees that could be affected and the extent to which the proposed changes in registration and withholding obligations will be applicable.

Deloitte will continue to monitor the progress of this proposal and will provide an update regarding the outcome.

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United States: Guidance on the Paid Family and Medical Leave Credit

Overview

On September 24, 2018, the Internal Revenue Service (IRS) issued Notice 2018 71 (the "Notice"), which provides important guidance on the new paid family and medical leave credit added by the 2017 Tax Reform legislation.

The credit is provided by Section 45S of the Internal Revenue Code (IRC), and it allows eligible employers to claim a general business credit for up to 25 percent of the amount of certain wages paid to qualifying employees for up to 12 weeks of family or medical leave. The IRS guidance in the recently issued Notice answers many questions about this credit.

New guidance

The Notice provides its guidance in the form of 34 questions and answers. Three sections are devoted to critical definitional issues, and one section is devoted to calculating and claiming the credit.

Eligible employer

In order to be eligible to claim a Section 45S credit, an employer must be an "Eligible Employer," which means the employer must have a written policy in place to provide employees with paid family and medical leave. The policy must provide for at least two weeks of paid leave for full-time employees and a prorated amount of paid leave for part-time employees.

The Notice clarifies requirements for the policy, including when the policy must be in place. Significantly, the Notice explains that the written policy requirement can be satisfied through multiple documents viewed collectively. The Notice also provides that, in general, a written policy must be in place on the later of a policy's adoption date or effective date.

As a result, an employer would not be eligible to take the credit on wages paid prior to the date a written policy is put into effect. However, the Notice provides a special transition rule for 2018 that allows a written policy to be put into place retroactively, thereby allowing the credit to be claimed for wages paid for leave taken earlier in 2018, even before the paid leave policy was adopted.

Under the Notice, an employer is not required to notify employees of the written policy as a condition for qualifying as an Eligible Employer. However, if an employer chooses to provide notification to employees of the written leave policy, the notification must be provided to all qualifying employees.

Family and medical leave

The Section 45S credit is based on wages paid to qualifying employees while on leave to attend to medical-related or family-related needs delineated in the 1993 Family and Medical Leave Act (FMLA), the federal legislation that mandates unpaid leave options. The Notice refers to these reasons for leave as "FMLA purposes." The Notice provides clarification on the following issues:

- While the credit is related to the FMLA, there were questions about how they are linked. The Notice makes clear that a written policy does not have to permit leave for all FMLA purposes. For example, an employer may provide paid leave related to the birth of a child, but not for other FMLA purposes, such as to care for a sick relative, and not lose eligibility for the credit.
- To claim the credit on specific wages paid, the leave cannot be provided for a purpose not covered by the FMLA. If an employer's written policy provides paid leave for employees to care for sick children or parents, which are FMLA purposes, as well as paid leave to care for other relatives (e.g., grandparents), the employer's overall written policy will not be disqualified. However, the paid leave provided to care for other relatives will not be eligible for the credit. As a result, employers who are more generous with their programs will need to find ways to properly track reasons for leave so as not to take improper credits.

Minimum paid leave

To qualify for the credit, an employer's written policy must provide leave not only for appropriate FMLA purposes, but to all "qualifying employees." A qualifying employee must have been an employee for one year or more and, in the previous year, must not have earned more than 60 percent of the amount that qualifies an individual as a "highly compensated employee" as defined in IRC Section 414(q). For 2017, this threshold was \$120,000; accordingly, only employees who earned \$72,000 or less in 2017 can be "qualifying employees" for 2018. (Fiscal year employers are given additional choices about the measuring year.)

The Notice gives important latitude to employers in measuring the threshold year of service, but specifically states that an employer cannot look to a minimum hours standard used in connection with the FMLA. The Notice also includes additional detail regarding the compensation threshold and provides helpful choices about how to measure compensation for fiscal year employers.

Through a series of questions and examples, the Notice reinforces the idea that while an employer cannot exclude any class of employees that otherwise meet the definition of a qualifying employee, employers can still offer differing levels of payment for different types of qualifying employees (e.g., paying leave at 50 percent of normal wages for newer employees, while paying leave at 100 percent of normal wages for employees with more than 10 years of service), as well as provide different levels of payment for different FMLA purposes (e.g., paying for medical leave at 75 percent of normal wages, while paying for leave to care for a sick child at 100 percent of normal wages).

Other important issues addressed

The Notice, through direct questions and examples, helps address additional issues that came to light following the passage of Section 45S, including, but not limited to:

- **Short-Term Disability and Third-Party Payers:** The Notice clarifies that a credit can be taken on amounts paid pursuant to either insured or self-insured short-term disability programs, so long as all other requirements are met. Similarly, an employer can still claim a credit for amounts provided through a third party (e.g., a professional employer organization), so long as that third party does not claim the credit.
- **State Programs and Paid Leave Requirements:** Leave paid through state or local government programs or leave required to be provided on a paid basis by applicable state law does not qualify for the credit. However, the Notice clarifies that paid leave provided in excess of state law requirements or in excess of amounts provided by state or local government programs may qualify for the credit.
- **Credit or Deduction:** The Notice reiterated that if an employer claims a Section 45S credit, that credit amount reduces the amount of compensation deduction dollar for dollar. Additionally, any wages paid that serve as the basis for any other IRC Section 38 credits (e.g., Work Opportunity Tax Credit or Research Tax Credit) cannot be counted for purposes of the Section 45S credit.
- **Aggregation:** Section 45S provides that all members of a 50 percent controlled group shall be treated as a single taxpayer. However, the Notice clarifies the precise reach of this declaration, indicating that entities are considered separately for purposes of setting policies, calculating the credit, and electing whether to use the credit. As a result, a determination of Eligible Employer status can be evaluated separately by each member of a controlled group. This would allow for separate evaluations of different related businesses and potentially increase the likelihood that an entity can use the credit.

The Notice is effective as of September 24, 2018, and applies to wages paid in taxable years beginning after December 31, 2017, and before January 1, 2020.

Deloitte Views

The Notice answers critical questions, including:

- Is it too late to put a new policy into place?
- Do state laws make it impossible to take the credit?
- Does an employer need to consider all employees in its controlled group?
- Does an employer need to have a one-size-fits-all program for all qualified employees?

The Notice generally provides some clarity and taxpayer-favorable answers, but employers should be thorough in applying these new provisions and supporting credit eligibility.

With these additional clarifications, employers can take a fresh look at the opportunity presented by the family and medical leave credit, and work with their advisers to evaluate any needed changes to existing policies, move forward with new policies, or put systems in place to help calculate the credit.

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