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**France – Council of State  
Clarifies Payroll Taxes for  
Expatriate Employees**

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## flash International Executive Alert

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France's Conseil d'Etat (Council of State) has handed down a decision concerning the territoriality principle in respect of the base for payroll taxes, the responsibilities of employers, and the impact of employee cross-border movements.<sup>1</sup>

### Background

When sending employees abroad, French employers have two options for providing social protection to their outbound assignees.

Employers can maintain home country coverage under a bilateral/multilateral agreement or under domestic rules (this is called "détachement"). Under the détachement option, seconded employees retain full benefits of the general social security scheme, and the costs are those associated with French social security (approximately 23-25 percent social security contributions for employees and 40-50 percent for employers).<sup>2</sup>

Alternatively – and this is a more common route – employers can maintain coverage under optional insurance plans that mirror the various plans existing within the mandatory social security system (this is called "expatriation") and this option is usually less expensive.

In addition to social security contributions per se, employers that are established in France are required to pay a number of payroll taxes such as tax on training, participation in vocational training, and participation in the construction effort (*cotisations supplémentaires de participation des employeurs à l'effort de construction, de taxe d'apprentissage et de taxe de formation professionnelle*). The basis for such contributions is the same as for social security. The Council of State's recent decision addresses these contributions – including in the case of outbound employees.

### Position of French Tax Administration and Council of State's Decision

The French tax administration had taken the position that the remuneration paid to "expatriate" employees should be included in the tax base for the payroll taxes even though employees working abroad are no longer paying into the mandatory social security plans.

The question put to the Council of State was: Should the remuneration paid to "expatriate" employees be exempt from payroll taxes since their base is aligned with that for social security contributions?

The Council of State has answered in the negative. According to the judges, the reference to the basis for social security allows for the determination of what needs to be included in the taxable base, but has no impact on the rules of territoriality.

The fact that the taxable base is the same as the one used for social security purposes does not alter the scope of the taxes. Employers established in France must pay payroll taxes on remuneration paid to their employees, regardless of where they carry out their activities and the choices made regarding social security coverage for employees working abroad.

#### **FIDAL Note**

As a result of the recent decision, it is now clear that remuneration paid to expatriate employees must be subject to the tax on training, participation in vocational training, and in the construction effort. Please note, a payroll tax called “taxe sur les salaires” itself was not affected by the present finding, where, in various earlier cases, similar rules of territoriality had already been reaffirmed.

French employers will need to review the situation as this Council of State decision is a reversal of earlier case law where an Administrative Court of Appeal had considered that the remuneration of expatriates was not to be included in the tax base for these taxes and contributions. Employers dealing with payroll taxes should seek advice on their compliance obligations from a qualified tax professional.

#### *Footnotes:*

1 Conseil d'État, N° 346808, ECLI:FR:CESSR:2013:346808.20130408, 8 avril 2013. See: <http://arianeinternet.conseil-etat.fr/arianeinternet/ViewRoot.asp?View=Html&DMode=Html&PushDirectUrl=1&Item=67&fond=DCE&exte=sociale+ET+avril+2013&Page=17&querytype=simple&NbEltPerPages=4&Pluriels=True> .

2 For an article on expatriation and détachement, see: D. Hoff and A. Atchadé, “*Expatriation vs. Détachement: Why It Is Important to Be Mindful of the Meaning of Words*,” KPMG’s *The Expatriate Administrator* (Winter 2012/2011, vol. 4). See: <http://www.us.kpmg.com/microsite/tax/ies/tea/winter2010/> .

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### Save the Date!

The 2013 Global Mobility Forum will be held in Barcelona, Spain from 8-10 October 2013, at the Hilton Diagonal Mar Hotel, Barcelona, Spain.

KPMG's 2013 Global Mobility Forum is designed to provide insights, leading practices and ideas to help turn these challenges into opportunities. We have invited corporate professionals – with experiences ranging from international human resources and tax, to immigration and employment law – to join together and discuss new strategies for integrating global mobility and talent management.

Please 'Save the Date' in your calendar today and join us in Barcelona, Spain, at KPMG's Global Mobility Forum 2013. We have planned a fantastic line-up and look forward to seeing you there!

For more information, please contact your local KPMG IES/People Services professional.

The information contained in this newsletter was submitted by FIDAL Direction Internationale in France. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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