

GMS Flash Alert



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France - Penalties Calculated on Annual Tax Liability, Not Balance of Tax Due

France's State Council (*Conseil d'Etat*)¹, the highest administrative court in France, recently issued a particularly severe ruling in the case of a taxpayer who had failed to file an annual income tax return. The State Council was asked whether, in the absence of a tax return, penalties should be based on the tax shown on the assessment before considering amounts already paid (advance payments or withholdings), or based on the balance owed by the taxpayer after deducting such amounts. The State Council held that penalties are based on the amount of tax mentioned on the assessment, without deducting any advance payments or withholdings.

WHY THIS MATTERS

The State Council's ruling serves as a stark reminder to assignees and mobility professionals that the penalties for failing to file an individual tax return, where required, can be very serious. That is the case, even where the balance due after taking into account advance payments and taxes withheld is negligible. Employers should clearly communicate responsibilities and timelines to their employees with respect to timely (and accurate) filing of returns, particularly their tax-equalised employees.

Late-Filing Penalties

A taxpayer who submits a return late or fails to file a return is subject to penalties. The penalty is equal to 10 percent of the amount of tax due where the taxpayer files a return late in the absence of a formal notice from the French tax administration, or within 30 days of receiving a formal notice. However, the penalty can be increased to:

- 40 percent if, a taxpayer has failed to submit a return within 30 days of a formal notice.
- 80 percent in the case of discovery of a hidden/undeclared activity.

Court Opinion

In view of the deterrent and onerous nature of these penalties, the State Council ruled that the penalties to be levied on taxpayers who fail to meet their income tax reporting obligations, must be based on the amount of tax due as calculated on the assessment, without deducting any advance payments or withholdings already made.

KPMG INSIGHTS

The chances of further litigation before the administrative courts in this case are nil. A possible recourse would be based on the European Convention on Human Rights, which would take years. The ruling is about late-filing penalties, not late-interest penalties, which may also be due: it is accepted that interest is based on the balance of tax due.

New assignees should be made aware of the risks of not filing an income tax return and neglecting their administrative duties.

Employers and employees concerned about their compliance obligations in a cross-border situation, particularly in circumstances when information required for the returns could be made available late, should contact their qualified tax professional or a member of the Global Mobility Services team with KPMG in France (see the Contacts section).

FOOTNOTE:

1 *Conseil d'Etat - 4 January 2023 N° 488915 (JORF n°0008 du 11 janvier 2024 at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000048911286>)*.

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Contact us

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