

## HRD of large firms: What about the tax liabilities of your expatriates/impatriates?

March 2004

Should an employer be concerned with the tax liability of his employees? Perhaps not always. But when expatriations/impatriations are involved, it is legitimate – and indeed advisable – that he should be. In fact, the country or countries to which he assigns his employees are likely to have tax systems different from those of the home country. A lighter tax charge gives the employer an argument to convince an otherwise reluctant future expatriate. On the other hand, a heavier tax burden represents a handicap and disincentive which the employer will have to take into account when negotiating the terms of the foreign assignment contract.

You, as the employer's HRD, should consequently be aware of the tax implications of expatriation. What incomes do your expatriates have to declare, and to whom? On what forms? Are they taxable in France? To what exemptions are the expatriates/impatriates entitled? These are all elements which you should be aware in order to negotiate a solid and equitable foreign assignment contract.

The ELAN, with its expatriation consultants and partners, is prepared to help you answer these questions. First of all, one has to determine whether or not your employee is a tax resident in France. It will then be possible to consider the special situations of tax non-residents and tax residents in France. Last, the present note will suggest policy measures you may want to introduce in your firm with regard to its expatriate staff's taxes.

### I. Are your expatriates/impatriates “tax residents” (“résidents fiscaux”) in France?

When an employee leaves to work abroad, he generally remains subject to taxation in his country of origin, but also in the foreign {“host”} country to which he is assigned. Depending on his situation, he may have to pay tax twice for the same income (double taxation). It is therefore essential to be fully informed about his liabilities **before he leaves**, in order to take them into account when negotiating the terms of his foreign assignment contract.

The first step will be to determine in which country your employee will have his **tax residence**, i.e. the country where he will have to declare all his income, whether or not it originates (“has its source”) there. This does not, however, dispense him from paying some taxes also in the country or countries in which he is not a tax resident, to the extent that the income originates there.

*[Example: you send a French employee to work abroad for three years. His family accompanies him, and he rents out his French house. He will pay no French taxes on his foreign earnings, but he will be taxable in France for the rental income received there].*

In order to determine the country of “tax residence” one must take into account both the laws of the home country and those of the host country. Generally:

- Your employee has his tax residence in the **host country** (the country to which he is assigned):
  - If he is single, and his foreign assignment last more than 183 days. Note, however, that he does not become a French tax resident at the end of the 183 days, but on the first day of his assignment if the mission lasts more than 183 days. This is also the case if he is married under the regime of separate property (“*séparation des biens*”), and no longer lives with his spouse.
  - He is married, and his family accompanies him. In some cases he may – even if his family does not accompany him – have a tax residence both in the host country and in his country of origin
- The employee retains his tax residence in his **home country** (country of origin) if
  - he is single, and his foreign assignment does not exceed 183 days
  - he is married, but his family does not accompany him.

For additional information: see the French law (**article 4B of the Code Général des Impôts**) which specifies that France is the country of your employee’s tax residence if one of the following four conditions are met:

- (a) **His family center (“*foyer familial*”) is in France if:** he is a French citizen who left to work abroad, but his family remained in France; he is a foreign national who works in France, and his family has accompanied him there. Note: the “family center” is irrelevant for the tax status if the employee is divorced, separated or married under the separation of property (“*separation des biens*”) regime.
- (b) **France is his principal place of stay (“*séjour*”):** he has spent more than 183 days per year in France, or his stay in France has been longer than in any other country
- (c) **France is the country of his main professional activity:** i.e. he spends most of his work time in France;
- (d) **France is the center of his economic interests:** this criterion is the most difficult one to establish. It takes into account the taxpayer’s financial and property interests to determine whether most of his income originates in France, regardless of the time he spends there.

Apart from these French criteria, it may be that the employee’s country of origin considers him also as a tax resident. This means that he is subject to double taxation, except where France has concluded a tax treaty with the country of origin<sup>1</sup>.

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<sup>1</sup> Cf. Appendix to this note, listing the 102 countries which have signed a tax treaty with France.

Note, however, that in any event the laws of both countries apply to the expatriate/impatriate. All the tax treaty does is to avoid double taxation, using generally the following criteria:

- (a) **The taxpayer's permanent place of living:** his tax residence is the place where he lives, alone or with his family;
- (b) **The taxpayer's vital interests:** if the tax residence cannot be determined under (a) above, it will be the place where the taxpayer has the closest personal, family and patrimonial ties (family relations; political and cultural activities; children's schooling; sources of income, etc.)
- (c) **The taxpayer's citizenship:** if his tax residence can be determined neither under (a) nor under (b), it will be that of his citizenship.

If the taxpayer is a double national, the ministries of finance of both countries will have to agree on a case-by-case basis.

## II. Your employee is not (or not any longer) a tax resident in France. What is his position under the French tax system?

Even if your employee's tax residence is not (or no longer) in France, he still retains some obligations under the French tax system.

### A. Tax clearance ("*quitus fiscal*") before departure from France

If your employee is a French citizen assigned to work abroad, where he will have his tax residence, he must IMPERATIVELY obtain a tax clearance from his tax office **before leaving**.

This clearance is obtained once the taxpayer has declared his income and paid the taxes due. The request for clearance is not submitted in March of the following year, as would have been the case if the taxpayer had remained in France, but must be filed within **30 days before his "tax departure"** from France.

Note: the date of "tax departure" does not necessarily mean the date of the taxpayer's physical departure from France. If he (or she) is single, or married and his spouse leaves France at the same time as he does, the two dates coincide. But if he is married and the spouse does not leave France at the same time as he, the taxpayer's "tax departure" from France corresponds to the date of the physical departure of the spouse who leaves last.

In order to obtain a tax clearance, the taxpayer must appear at his tax office, fill out the declaration and pay his taxes. He must declare all the income received on his bank account between January 1 and the date of his "tax departure". If the taxpayer fails to obtain his tax clearance, he will incur a charge of 0.75 % per month interest and a penalty of 10 %.

## B. French taxes during the foreign assignment

Even if the expatriate no longer has his tax residence in France, he remains taxable there with regard to income from French sources. Examples: he rents out his French house, perceives dividends, or you call him back to France to work for some weeks, etc.

Note: if the expatriate retains at his disposal a dwelling in France, e.g. for his vacations, French tax law considers that he earns three times the rental value of that dwelling; while this income may be fictitious, it will have to be declared, and taxes be paid with respect to it.

To avoid this kind of taxation, an exemption may be claimed when obtaining the tax clearance (“*quitus fiscal*”); it will normally be granted, without too many problems, for the first three years of a foreign assignment. In subsequent years, an exemption may be claimed for this fictitious income if:

- the foreign host country (country of residence) has a tax treaty with France; or
- the taxpayer can prove that he pays taxes in the host country amounting to at least 2/3 of what he would have had to pay in France without that exoneration.

As regards income actually received from French sources, France withholds the tax on the expatriates’ salary, as well as some personal property income. Your employee is thus not obliged to include these incomes in his declaration.

On the other hand, all his other income from French sources has to be declared. In particular, tax on the rent received from the tenant of an apartment – furnished or not – owned by your employee will not have been withheld at the source. Such still un-taxed incomes will consequently have to be declared to the French tax authorities.

When filing his return, your expatriate employee must thus submit the following forms:

- **2.042**, for salaries paid in France for an activity carried out in France (or form **2.042 NR** if it is a first return as a non-resident), in the exceptional case where the tax on salary has not been retained at the source.
- **2.041 E**, if his salary for professional activities carried out in France exceeds 25 euro per day.
- **2.044**, for his rental income;
- **2.049**, for real estate capital gains realized before January 1, 2004; after that date, real estate gains are taxed upon receipt, and need thus not be reported.
- etc.

The minimum tax rate for these incomes will be 25 %, except if your expatriate employee can prove that he would have had to pay less if he had been a French tax resident. For that purpose, he must declare all his income (including income from foreign sources) on line TM of table 8 of **form 2.042**. This will allow the tax authority to calculate the tax the expatriate would have paid as a French tax resident, and if appropriate to reduce his tax liability. The expatriate will have to attach the supporting documentation, including copy of his foreign tax return, to his French declaration.

The deadline for non-resident taxpayers depends on his country of residence:

- April 30, if he is employed in Europe or in one of the Mediterranean rim countries;
- May 15 for Africa and North America;
- May 31 for Central and South America;
- June 30 for all other countries.

### C. Return to tax residence in France

All your returning employee has to do is to give his new address to the tax center for non-residents, which will forward it to the appropriate tax office. In his next tax declaration due in March he will have to declare:

- His income from French sources received during the particular year;
- All his income (including income from foreign sources) from the time of his return to French tax status to December 31.

The date of return to French tax status corresponds to the date of the expatriate employee's physical return if he (or she) is single or – in the event that he is married – when both return at the same time. If the employee is married but the spouse does not return at the same time, however, the date of return to French tax status corresponds to the date when the first of them returns.

Note further: since at present the French government seeks to encourage impatriation, some measures benefiting impatriates have been added to the 2003 financial law (**Article 23 of Law No.2003-1312 of December 30, 2003**). They provide that:

1. Any taxpayer (non-French or French) who settles in France after January 1, 2004 may – as long as he/she has not had his/her tax residence in France during the past 10 years – deduct any expatriation allowances from the declared income. This tax abatement applies until December 31 of the 5<sup>th</sup> year spent in France, and has a ceiling: the declared income must correspond to the average income in the taxpayer's profession.

*[Example: if the employee's annual earnings amounted to 50.000 Euros, of which 15.000 Euros corresponded to an expatriate allowance, but the average salary in his professional category was 40.000 Euros per annum, he could not deduct the entire 15.000 Euro allowance, since this would leave him with an annual base salary of 35.000 Euros, i.e. less than the prevailing 40.000 Euro average. Consequently, all he could deduct would be 10.000 Euros, leaving him with an annual 40.000 Euro income]*

2. Impatriates who – voluntarily or not – continue under the social security, welfare or pension schemes of the foreign country from which they come, may deduct from their income the amount of the respective contributions.

### III. Your employee is a tax resident in France. What is his position under the French tax system?

#### A. Your employee is a French tax resident who has been assigned to work in a foreign country, but has left his family behind, and has consequently still a French tax home:

His salaries received abroad are not mentioned in this income declaration in France.

The income declaration of the tax home will take into account only the global (i.e. French and non-French) income of the spouse who has remained in France (and where appropriate of the children who remained there), plus the income from French sources of the spouse residing abroad in the event that he is married under the joint property (“*communauté de biens*”) regime.

If he is married under the separate property regime (“*séparation de biens*”) regime, the declaration of the spouse who remained in France will include only his/her global income. The income from French sources of the expatriate spouse will be reported in an income declaration of non-residents, and must be filed with the above-mentioned Tax Center for Non-Residents.

#### B. Your employee is a foreign national, who has come with his family to work in France, and is consequently considered a French tax resident

He must declare all his global (i.e. French and non-French) income every year in March. His income from foreign sources will either

- be exonerated in France, but taken into account to determine his tax rate;
- be taxed also in France. However, double taxation will be avoided by a tax credit
  - equal to the tax paid abroad; or
  - equal to the tax your employee would have had to pay in France if the income had been received in France.

If there is no double taxation treaty with the foreign country, his income received there is taxable in France, unless the taxpayer can prove by appropriate documentation that it has been already been subject to a tax amounting to at least 2/3 of the tax which he would have to have paid in France.

In any case, these are the forms which your employee will have to fill out for his declaration: 2.042; 2.042 C and 2.047.

**In any event you should advise your employee to add to his declaration a letter explaining his particular situation.**

#### **A. Foreign bank accounts**

Whatever the position of your employee – in particular if his salary is to be paid into a foreign bank account! – he must **IMPERATIVELY** declare the existence of this account, and of any other foreign bank accounts he may hold, on form **3.916 EXP**. Failing this, he risks a fine of 750 Euros (as of 2003 legislation) for each non-declared account, and the amounts credited to that account will be taxable in France.

#### **IV. What can you do about your expatriate/impatriate employees' taxes?**

Given the complexity of the tax situation of expatriates and impatriates, the minimum you can do is to advise them on their exposure to taxation. You should for instance never let a French employee leave on a foreign assignment before he has obtained his tax clearance (“*quitus fiscal*”)! As regards your impatriates, put them in touch with their tax office (which depends on their place of residence) and offer them – at least to those not familiar with the French language – some help in filling out their income declaration.

You may go one step further, however, and consider some financial involvement. Contrary to what may be assumed, this is often in *your* interest, and not only in the interest of your employees. In fact, if you assign your future expatriates to several countries, it may well be that some of them would enjoy a more favorable tax position than others. There might thus be a risk of provoking jealousies, and you may not be able to assign your best staff to countries with a heavy tax load.

Beyond this, it should also be kept in mind that some financial involvement to help your employees handle their tax liabilities will not necessarily add significantly to your costs. It is indeed possible to conceive of systems where expatriates to low-tax countries would help carry the extra tax burden of expatriates to high-tax countries. Example:



You withhold from the salaries of all your employees the taxes they would have paid in their home country, and assume the responsibility for paying their actual taxes in the foreign countries to which they have been assigned. The different levels of taxation will thus be equalized. There will be no jealousies, and the additional cost to you will be negligible, except possibly in terms of administrative management.

If such a system, while perfectly equitable for all employees, seems too complicated to you, you might – as is currently often done – opt for an expatriation allowance that takes into account the tax differential. This would of course apply only to expatriates assigned to high tax-rate countries. It should be kept in mind, however, that the level of the expatriation allowance would be based only on estimates of the actual tax burden and that, as noted above, the expatriation allowance itself would normally be subject to taxation.

Be that as it may, you would do well to discuss all this with your future expatriate before his departure, when the contractual terms of his foreign assignment are being negotiated. It will thus be important for you, as the employer, to keep fully informed in order to answer the future expatriate's questions, and propose to him the most equitable arrangements.

*This article has been reviewed by  
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**APPENDIX: listing of the 102 countries which have signed a tax treaty with France.**

The text of the convention applicable in your case can be downloaded on  
[http://www2.impots.gouv.fr/conventions\\_fiscales/index-d.html](http://www2.impots.gouv.fr/conventions_fiscales/index-d.html)

Algeria	Iceland	Pakistan
Argentina	India	Philippines
Armenia	Indonesia	Poland
Australia	Iran	Portugal
Austria	Ireland	French Polynesia
	Israel	
Bahrain	Italy	Quebec
Bangladesh	Ivory Coast	
Belgium		Rumania
Benin	Jamaica	Russia
Bolivia	Japan	
Botswana	Jordan	Saint-Pierre and Miquelon
Brazil		Saudi Arabia
Bulgaria	Kazakhstan	Senegal
Burkina Faso	Kuwait	Singapour
		Slovakia
Cameroon	Latvia	Slovenia
Canada	Lebanon	South Africa
Central African Republic	Lithuania	South Korea
China	Luxembourg	Spain
Congo		Sri Lanka
Cyprus	Madagascar	Sweden
Czech Republic	Malaysia	Switzerland
	Malawi	
Denmark	Mali	Thailand
	Malta	Togo
Egypt	Mauritania	Trinidad and Tobago
Equator	Mauritius	Tunisia
Estonia	Mayotte	Turckey
	Mexico	
Finland	Monaco	Ukraine
	Mongolia	United Arab Emirates
Gabon	Morocco	United Kingdom
Germany		United States of America
Ghana	Namibia	
Greece	Netherlands	Venezuela
	New Caledonia	Vietnam
Hungary	New Zealand	
	Niger	(Ex) Yugoslavia
	Nigeria	
	Norway	Zambia
	Oman	Zimbabwe



***Further Reading:***

Les impôts en France 2003-2004. Jean-Yves Mercier and Bernard Plagnet. Francis Lefebvre. 2003.

Fiscal 2004. Francis Lefebvre.

Les impôts de l'expatrié. Yannick Aubry. Gereso Édition. 2003.

Guide 2003 des déclarations de revenus françaises. Centre de la mobilité internationale.

*(You can order this guide by contacting CMI at 3 ter, rue Fleurie, 37340 Ambillou. Phone : 02 47 55 95 61).*

Conventions fiscales internationales. Francis Lefebvre.

Le livret du Français à l'étranger. Ministère des Affaires étrangères. 2001.

Le guide du retour en France. Association pour la formation professionnelle française à l'étranger. 1999.

Fiscalité française et mobilité internationale des salariés. Mirko Hayat and Valérie Stéphan. Economica. 1997.

Fiscalité internationale. Pierre-Jean Douvier. Litec. 1996.