Mobility: tax alert

March 2017

France

France introduces financial penalties for failure to produce certificates of coverage in real time whilst expanding means of audit and enforcement

Executive summary

Recent legislation has been enacted in France authorising Labor Inspectors ("*Inspecteurs du Travail*") and Social Security Auditors ("*Contrôleurs URSSAF*") to carry out on-site inspections of certificate of coverage retention records and, where employers are found not to be complying, to apply financial penalties to sanction such non-compliance.

We believe employers in France should expect an increased number of audits in this area given that two agencies may now initiate such audits and should take appropriate steps to ensure their paperwork and records are up to date and compliant.

Background

Foreign workers can maintain home country social security coverage and remain exempt from French contributions while performing their employment activity in France based on either:

- EU regulations for individuals from the EEA and Switzerland
- Existing Social Security Agreements signed with France for individuals from other countries outside of the EEA and Switzerland

1 December 2016 saw the introduction of new labor law requirements which apply to secondees in the form of the mandatory submission of a pre-posting declaration via the SIPSI governmental e-tool. Now, from 1 April 2017, the French social security authorities are introducing an on-demand obligation for employers to produce valid certificates of coverage for individuals remaining within their home country social security scheme.

Key considerations

There are two major obligations for employers willing to maintain home country contributions in respect of their secondees:

- Certificates of coverage must be obtained prior to the secondment, confirming that home country social security legislation applies during the full duration of the French employment.
- Employers must ensure that such certificates are available to the seconded employee, the French host entity, and if applicable, the appointed French representative of the foreign employer, from the first day of the secondment or working arrangement in France.

From 1 April 2017, the 2017 French Social Security Financial Bill introduces a new provision in the French Social Security Code to sanction non-compliance with these requirements.

Previously, social security audits had occurred approximately every three years. As a result of the legislation, French Labor Inspectors and Social Security Auditors will now be empowered to request copies of the certificates and, where appropriate, apply financial penalties either during a social security audit conducted by a Social Security Auditor or a random check conducted by a Labor Inspector.

The penalty for non-compliance amounts to one month's social security ceiling (EUR 3,269 for 2017) per infringement and can be assessed upon either the French host entity or the appointed French representative of the foreign employer. Furthermore, this fine will be doubled if the employer commits a second infringement within a 24 month period starting from the date of the first infringement. Further infringements will give rise to penalties levied at this inflated level to the extent that they are incurred within a 24 month period starting from the previous infringement.

As a deferral measure, the penalty will not be applied if proof of the submission of the certificate of coverage application can be evidenced during the inspection and the certificate is then subsequently produced within two months of the date of the deemed infringement.

Additional considerations
In practice, the issue of a valid certificate of coverage may depend not only on the home country social security authority but also on the French social security authorities who sometimes must provide their agreement to the issue of the certificate. Such approval from the French authorities is often delayed where insufficient information has been provided by the home country authorities, as a result of either the home country authority's application process and/or the quality of data provided by the home country employer, which leads to further communication between the authorities and the home country employer or their designated agent.

To address this issue it is recommended that employers provide as much information up front as possible to address the employment relationship and subordination as between the employee and the home country employer, host country entity, or both entities.

Finally, the French authorities are now systematically requesting to review copies of assignment letters for inbound employees and therefore employers should ensure that these are readily available and that their processes are robust enough to respond to questions from the French authorities if needed.

Next steps
Employers should be aware of their increased obligations and ensure that their entire French-posted population contributing to a non-French social security scheme under an international agreement is covered by valid certificates of coverage for the entire duration of their respective assignments.

Employers should also carefully factor the timeframe to apply and obtain certificates of coverage, together with supporting documentation to be provided to the French authorities, notably when it comes to exceptional secondments. Moreover, employers should consider proactive monitoring of applications and regular follow-ups with both the home country and French authorities for such cases if this is not already part of their usual processes.

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