

# France/U.S. Legal and Tax Framework: Recent Updates

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## A Few Words About Us (1/2):

- Paris Office Opened February 2014
- Cohen & Gresser's Third Office (after New York and Seoul)
- 14 Fee Earners (9 Attorneys + 5 Interns on January 1, 2016)
- M&A / Corporate / PE / VC
- Employment
- Tax
- IT

## A Few Words About Us (2/2):

- Clients Range from Start-Ups to Large International Groups such as LVMH, UBS, Bertelsmann, Bayer, Deutsche Bahn
- Examples of High Profile Matters: Club Med Takeover Battle, Titan/Goodyear/French Government

## Original background

- I. International mobility: employment and tax aspects
- II. Relationship between parent company and subsidiary company
- III. Impacts of the recent ECJ decision regarding « Safe Harbor »

# Original background

*Various legislative attempts to be more investor-friendly*



[www.psdgraphics.com](http://www.psdgraphics.com)

- France was ranked 31<sup>st</sup> out of 189 economies by the World Bank Group with respect to the « Ease of Doing Business » in 2015 (*Doing Business 2015, Going Beyond Efficiency, World Bank Group, 12<sup>th</sup> edition*); top ranked in 2 categories:
  - 3<sup>rd</sup> in “Enforcing contracts” (e.g. procedures, time and cost to resolve a commercial dispute)
  - 6<sup>th</sup> in “Starting a business” (e.g. procedures, time, cost and paid-in minimum capital to start a limited liability company)
- Simplification measures impacting French corporate laws & regulations over the past years:
  - More pragmatic governance rules in *French sociétés anonymes* and “easy-to-handle” SAS corporate form
  - Recent reform of the incentive mechanisms allowing corporate officers and employees to access share capital of operating and holding entities
  - Reduction of regulatory complexity: creation of a one-stop shop for incorporation formalities resulting in easier and faster incorporations
  - Easier (and online) communication with the Trade and Companies Registry / less paperwork and fewer filing obligations
- R&D corporate tax credit seems to turn into a success story despite initial hick-ups

# International mobility

## *Employment and tax aspects*



# International mobility – key considerations

## Immigration and formalities

- **Immigration:** Does the employee need / have a visa, work permit or residence permit ?

2 main types of visa:

- ✓ Short term visa or Schengen visa (up to 90 days)
- ✓ Long term visa (beyond 90 days)
- **Formalities:** Are there any formalities to comply with before the secondment ?
  - ✓ Posting of worker's declaration
  - ✓ Work authorization application



# International mobility – key considerations

From an employment and social security point of view

- **Social security:** What is the duration of the mission in France ? Could the employee continue to benefit from the social security system of the country of origin ?
- **Governing law:** Which law will apply during the secondment in France ? In case of termination of the employment contract ?

French public policy rules will apply: minimum wage, working hours, working conditions, discrimination and equality between men and women, paid vacation and maternity leave, health and safety, illegal work.

French rules governing the termination of the contract will not apply.

- **Remuneration package:** Which immigration package for the employee ?
  - ✓ Expatriation premium
  - ✓ Cost of living adjustment
  - ✓ Moving expenses
  - ✓ School fees, etc.

From an employment and social security point of view

**Example :**

- Implementation of a worldwide strategy
- Secondment for 4 years to the French subsidiary
- Position held in France: General manager (corporate officer)

## From a tax perspective

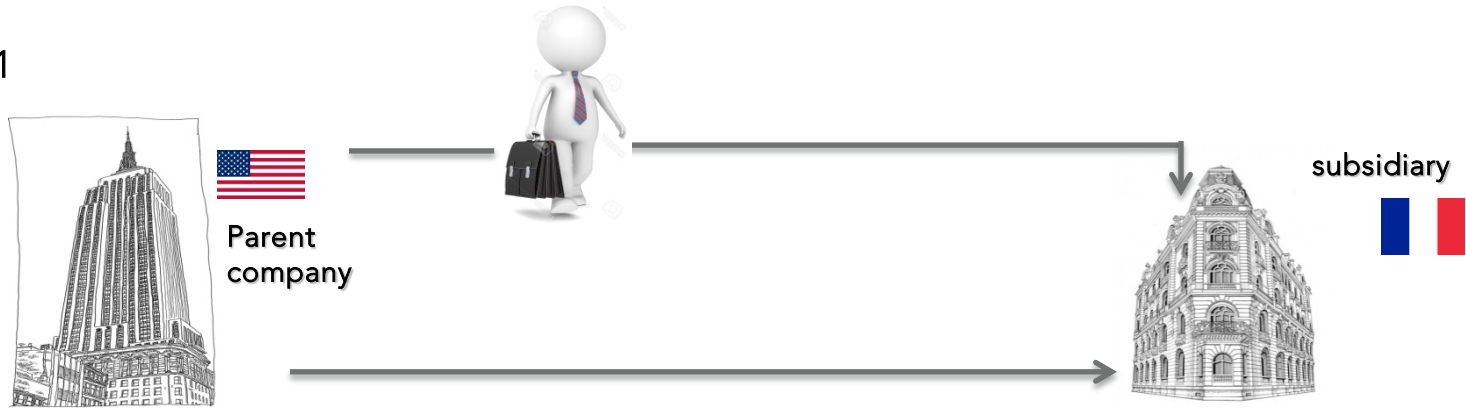
### Global mobility : Tax aspects for the employee

- Short term vs. long term assignments
- For short term assignments (Article 15 § 2 of the France/US tax treaty)
  - Exception to the principle of taxation in state of exercise of the activity for short-term assignments
  - Subject to the following conditions:
    - ✓ Stay in the US for a period or periods not exceeding 183 days in the calendar year
    - ✓ Compensation paid by an employer not based in the US; the local entity must not provide any allowance or benefits to the individuals

## From a tax perspective

Tax aspects for the employee  
*US expatriates in France*

### Example 1

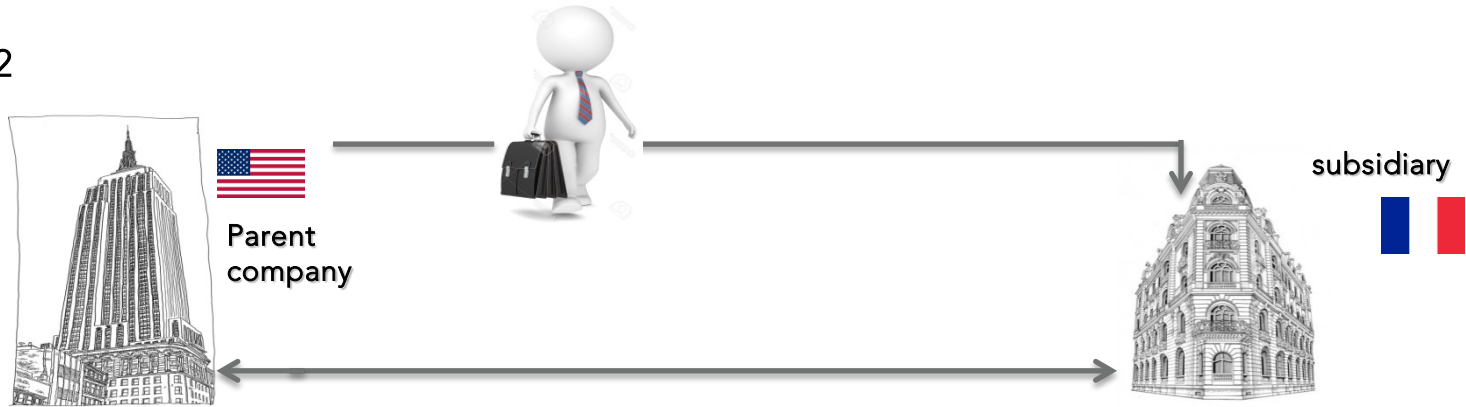


- Implementation of a worldwide marketing strategy
- Secondment for 4 months to the French subsidiary
- Taxation in the US of the compensation received

## From a tax perspective

Tax aspects for the employee  
*US expatriates in France*

### Example 2



- Parent company is an engineering company
- The sub needs an additional employee for a specific contract, implemented by the subsidiary
- Secondment for 4 months of a US engineer who will work under the direction of the subsidiary
- Taxation in France of the compensation paid (WHT)

## From a tax perspective

### Global mobility: Tax aspects for the group

#### Enlargement of the impatriate regime

- As of 2015, an intragroup transfer of an employee from a US parent company to a French subsidiary might be eligible to the impatriates regime in France
- The impatriates regime provides for tax benefits for employees living outside France since more than 5 years

## From a tax perspective

### Global mobility: Tax aspects for the group

The impact of BEPS on global mobility:

- Increase of PE exposure (have significant activities relating to the conclusion of a contract been performed?)
- Country per country report → number of local employees to be disclosed
- Skilled employees with specific knowledge or expertise may be considered to be taking IP with them → impact on the pricing of the secondments
- Review of intercompany service fees

# Relationship between parent company and its subsidiaries

« *Les liaisons dangereuses* » ?





# Relationship between parent company and subsidiary company

## From a tax perspective

### BEPS impacts (October 2015)

- Final report was issued in October 2015
  
- Actions:
  - Action 1: digital economy
  - Action 2: hybrids
  - Action 4: interest deduction
  - Action 5: treaty abuse prevention
  - Action 6: PE status
  - Action 8, 9, 10, 13: transfer pricing
  
- Practical consequences and perspectives

## Relationship between parent company and subsidiary company

### From an employment law perspective

- Co-employment under French law: a changing concept which aims to increase parent companies' financial exposure
  - What is co-employment?
  - The French Supreme Court is fortunately interpreting the co-employment criteria restrictively
- Recent decision on liability of parent companies for employees of subsidiaries (Cour de cassation, September 15, 2014)

# Safe Harbor



## Safe Harbor: decision of ECJ

- Tidal wave: October 6, 2015
- Building the dam: January 31, 2016
- Availability of various traditional solutions
- Current comfort zone: between a rock and a hard place

## Safe Harbor: decision of ECJ

### Tax consequences

- Based on this decision, are FATCA / CRS still applicable?
- Potential liability of foreign financial institutions

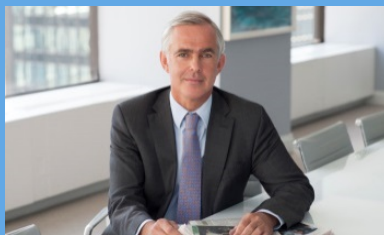
Thank you – merci !

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