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From:
Sent: Thursday, February 16, 2012 2:43 PM
To:
Cc:
Subject: RE: IRC 3121(l) as it interacts with a Totalization Agreement

The correct answer is the second theory set forth in your e-mail. If a U.S. citizen is transferred permanently by their employer to work in a foreign country, his or her wages should be subject to only foreign social security taxes, and not US social security, even if a section 3121(l) agreement has been entered into with respect to that individual. The detached worker rule only applies if the employee is transferred to work in a foreign country for five years or less. If the detached worker rule doesn't apply, then the individual is subject only to social security taxes in the foreign country where they are working (and is not subject to U.S. social security taxes).

Rev. Rul. 79-232, 1979-2 C.B. 359 provides that amounts paid by a domestic corporation under a section 3121(l) agreement are considered taxes for purposes of sections 3101(c) and 3111(c). Thus, to the extent that the totalization agreement provides that the wages of an individual employee are subject exclusively to foreign social security taxes, the employer is relieved of the obligation to make payments under the section 3121(l) agreement for that employee. The general rule set forth in totalization agreements is that an employee is subject to social security taxes of only the country where they are working. The exception, under which the employee is subject to only social security taxes of the home country from which they were sent, only applies if the employment in the foreign country is not expected to exceed 5 years.

Hope this is helpful.