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Sweden:

An increase of employer social charges may affect companies with employees posted to the USA, Canada, Quebec, or India

Overview

On 10 September 2014, the Swedish Tax Agency published guidelines stating that employers posting employees in certain countries must pay the general salary fee even if the employee remains only partly in the Swedish social security system. This will lead to an increase of employer charges for employers with employees posted to the USA, Canada, Quebec, or India, i.e., countries with which Sweden has entered a social agreement covering pension rights.

The Swedish Tax Agency's standpoint

The general salary fee is included in the employer social security charges for employees posted abroad who entirely remain subject to the Swedish social security system. The general salary fee has up to now not been charged for employees posted abroad who only partly remain subject to the Swedish social security system.

The social security agreements that Sweden has entered with the USA, Canada, Quebec, and India only determine the applicable laws on coverage regarding age, survivors, and disability pension (pension rights). Until now, employer charges for employees posted to these countries, holding a Certificate of Coverage from Sweden, have been 13.48% (13.78% for employees posted to Quebec) in social charges and no general salary fee has been levied.

The Swedish Tax Agency's standpoint is now that the general salary fee should be included in employer charges even when the employee only partly remains in the Swedish social security system. The general salary fee amounts to 9.88% for 2014. As a result of the revised position, employer charges for employees posted abroad while remaining in the Swedish social security system with regards to only pension rights would amount to 23.36% for 2014 (23.66% for employees posted to Quebec).

For Swedish employers with employees posted in the USA, Canada, or Quebec, the increased employer charges are due from the 1 January 2015. For employers with employees posted to India, the increased employer charges are due from the 1 of August 2014 (the date the social security agreement between India and Sweden entered into force).

Deloitte's view

The reasoning and timing behind the Swedish Tax Agency's released guideline is unclear. No changes have been made to Swedish internal law governing employer charges and no new case law has been issued in this regard to support the Swedish Tax Agency's standpoint. However questions were raised in connection to the implementation of the Social security agreement between Sweden and India which forced the Swedish tax agency to clarify its view and interpretation of the legislation around the general salary fee.

Due to the above the legal value of the standpoint, which can ultimately have to be decided in court, can be questioned. However, as it is the official view of the Swedish Tax Agency the recommendation would be to comply with the position until otherwise decided via case law and/or changes in legislation.

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United States: IRS simplifies requirements for certain Canadian retirement plan reporting for eligible taxpayers

Overview

On October 7, 2014, the IRS issued Rev. Proc. 2014-55, which changed the method for electing to defer income accrued in certain Canadian pension plans pursuant to the US Canada Income Tax Treaty. The new rules make the election automatic for many taxpayers

and remove the annual Form 8891 filing requirement for registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs).

Background

Under US domestic law, US citizens and residents are generally subject to tax annually on income accrued within Canadian pension plans regardless of whether a distribution has been received during the tax year. Under previous guidance, taxpayers could elect to defer current taxation on the undistributed income under the US-Canada Income Tax Treaty until distributions were received from the plan. This election was made on Form 8891 in the case of RRSPs and RRIFs and on a statement attached to the return with respect to Canadian Registered Pension Plans and Canadian Deferred Profit Sharing Plans. Under the prior rules, by filing Form 8891, taxpayers were also exempted from having to separately disclose their RRSPs and RRIFs on Forms 8938, 3520, and 3520-A.

Failure to make a timely election under the prior rules would result in a taxpayer being taxable each year on undistributed plan earnings unless retroactive relief was requested through IRS-prescribed procedures.

Automatic election and reduced reporting requirements

Under the new guidance in Rev. Proc. 2014-55, the election to defer accrued income until distribution for certain Canadian pension plans is now automatic for eligible individuals. Additionally, the annual reporting required on Form 8891 for RRSPs and RRIFs and other statements for Canadian Registered Pension Plans and Canadian Deferred Profit Sharing Plans has been removed.

An *eligible individual* is a beneficiary of a covered plan who:

1. Is a US citizen or resident,
2. Has satisfied the requirement for filing a US income tax return for each year of citizenship or residency,
3. Has not reported income from the undistributed plan earnings during any taxable year, and
4. Has reported any and all distributions from the plan in prior years.

Eligible individuals who did not previously make an election are treated as having made an election in the first tax year in which they were an eligible individual, thereby preventing the need for retroactive election relief. The election applies separately to each plan a taxpayer has an interest in, and once made cannot be revoked without the consent of the IRS.

Individuals who do not qualify as “eligible individuals” do not benefit from the new automatic election regime and remain currently taxable on accrued income in Canadian pension plans. Such individuals must seek IRS approval to make the election to defer earnings in their Canadian pension plans.

Information reporting requirements have also been reduced under the new rules. The annual reporting requirement under Rev. Proc. 2002-23 has been eliminated, which also eliminates the need for Form 8891, which will be obsolete effective December 31, 2014.

Individuals are still subject to foreign financial asset informational reporting requirements unrelated to the US-Canada Income Tax Treaty. Such requirements may include disclosure of assets on Form 8938 or FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR). The exemption that allowed plan custodians not to file Form 3520-A and plan beneficiaries not to file Form 3520 with respect to RRSPs and RRIFs remains in effect.

The new rules are effective for tax years ending after December 31, 2012, and Form 8891 will become obsolete as of December 31, 2014.

Deloitte's view

The new rules put Canadian pension plans on par with US qualified plans for a number of taxpayers. These taxpayers will no longer be required to make timely elections to defer income nor will they have to annually report information to maintain those elections. Like US plan beneficiaries, they will not be taxable until they receive distributions from the plan. Those taxpayers who do not qualify for the new automatic election regime will either be subject to current taxation on plan earnings or will be required to seek IRS approval to make the elections to defer.

Those taxpayers subject to FBAR reporting requirements and/or Form 8938 reporting will continue to have to disclose their interests in Canadian pension plans as under prior rules. Such individuals that previously disclosed their RRSPs and RRIFs on Form 8891 will now do so on Form 8938 instead. While the new rules are effective for the 2012 tax year, taxpayers who have extended the due date of their 2013 tax returns should still consider filing Form 8891 as the 2013 Form 8938 has not been updated for the new rules.

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Global Rewards Updates: Australia: Government announces new tax concessions for Employee Share Schemes

Background

The tax rules applying to employee share schemes (ESS) in Australia underwent significant changes in 2009. The changes took the Australian tax regime out of step with most of

Australia's trading partners by imposing income tax at vest rather than when share options are exercised or shares are sold.

The Australian Government announced on 14 October 2014 proposed changes to the tax treatment of ESS for all companies and a special tax regime for start-up companies.

Changes

The Australian Government has announced that it is proposing to unwind the 2009 ESS changes with new tax rules to come into effect as of 1 July 2015, i.e. the start of the 2015-16 Australian tax year. However, it is currently unclear whether existing equity grants prior to this date will be grandfathered or subject to the new rules.

1. Significantly, the new tax rules as announced will mean taxation of share options will generally be at exercise (instead of at vesting) for employees of all companies who operate schemes not taxed at grant (i.e. deferred tax schemes).
2. New tax concessions are planned for employees of eligible "start-up" companies. A "start-up" company is currently defined as one that meets all of the following criteria:
 - a. A company with aggregated turnover of not more than A\$50 million;
 - b. An unlisted company; and
 - c. A company incorporated for less than 10 years.

For start-up companies:

- Options that are offered at a small discount and held by the employee for at least three years will have taxation deferred until sale of the underlying shares (therefore no taxation at grant, vesting or exercise).
- For shares, a small discount of up to 15 percent on the market value at the date of grant will be exempt from tax where the shares are held by the employee for at least three years.
- An extension to the maximum deferral of tax from 7 years to 15 years will be provided to "give start-ups more time to be competitive and succeed".

Deloitte's view

Share options – The taxation of share options moving back to the date of exercise for everyone and not just start-ups is a positive change from the government. This is subject to the new legislation being drafted appropriately, which is still subject to consultation.

Concessions for "start-up" companies – With regards to the concessional treatment and eligibility criteria for start-ups, this is another positive move by the government to help stimulate the Australian economy. Deloitte Australia are pleased to see a close alignment to their recommendations that were submitted to Treasury in February 2014.

There are, however, still a lot of unanswered questions with the "devil in the detail", such as:

- How will the company prove start-up status (i.e. the A\$50m aggregated turnover – is this from the company’s last profit and loss statement)?
- Will the Australian Taxation Office or other body have to approve the start-up concession or is it self-assessment?
- How do you easily value shares in an unlisted company to determine the tax market value of an option by way of the (to be) revised valuation tables in the ESS regulations?
- Is there a cap on the total value exempted from tax under the 15% small discount start-up concession for shares (as in certain circumstances this could result in a large tax free amount)?
- Is the start-up concession available to founders and investors as well as employees or just employees?
- Is this start-up concession for Australian business only or will it be used to attract overseas companies to Australia as well (providing they meet the definition)?
- Will ESS reporting be required for companies eligible for the start-up concessions where they are not subject to income tax?

Action

Deloitte will continue to work with the government on these proposed changes. If your company would like to be part of the Deloitte representations to Government, then please join the debate at the following website <http://www.retainingtalent.com.au/> and share your views.

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Global Rewards Updates: Belgium: Availability of corporate tax deductions

Background

Although the individual tax and social security treatment of share options is explicitly provided for in Belgian legislation, this is not the case for the corporate tax treatment of share option plan expenses recharged by a foreign parent entity to their Belgian subsidiaries.

Case law: ‘capital loss on shares’ is not deductible

In a case recently presented to court, a Belgian subsidiary had considered the entire amount of share option plan expenses that were recharged to it by its South African parent company, as

tax deductible. Two types of expenses relating to share option plans were recharged to the Belgian subsidiary:

1. Administrative expenses, such as overhead costs for the preparation of the plan, consultant, management costs and transaction costs; and
2. The capital loss incurred by the South African company, i.e. the negative difference between the exercise price at which the Belgian employees exercised the share option and the acquisition price that the South African company paid for the underlying shares.

The deductibility of the first category of expenses is explicitly recognised under Belgian legislation. However, there is some disagreement regarding the second category of expenses and, contrary to general expectations, the Brussels Court of Appeal agreed with the tax authorities' position that the capital loss on shares is not deductible.

Deloitte's view

- Companies should take this decision into consideration when recharging to Belgium subsidiaries of overseas parent companies.
- Where a company recharges (or plans to recharge) a 'loss on shares' (relating to share options or other similar equity plans) to Belgium, we recommend that further guidance be sought from a tax advisor.

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