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Global Employment Solutions

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Sweden:
The Social Security Agreement between Sweden and South Korea Will Enter Into Force on 1 June 2015

Overview

On September 11, 2013, we reported that Sweden and South Korea signed a social security agreement that will simplify posting of employees between South Korea and Sweden. The Swedish government has now issued a final proposal that the agreement will enter into force.

Key benefits of the agreement

The social security agreement governs the South Korean and Swedish welfare system for old age, survivors, and sickness/activity benefits (pension rights). The agreement determines the applicable laws on coverage in South Korea or Sweden with regard to the pension rights. As a main rule, an employee is covered by the pension scheme in the country where the work is performed.

The social security agreement governs situations where Swedish individuals covered by the Swedish laws are posted to work in South Korea and where South Korean individuals covered by the South Korean laws are posted to work in Sweden. Under the social security agreement, such posted employees should, in certain cases, remain in the statutory pension scheme in their home country, although the work is carried out in the other country. The social security agreement also ensures that an employee continuously accrues pension rights whilst working outside of the home country and that pension-related social security charges do not have to be paid in both countries. The possibility to aggregate the insurance periods from the contracting states is especially important from a South Korean perspective, since you have to work 10 years before you can actually exercise any pension rights. However, it is also important from a Swedish perspective, since the aggregation may, under some circumstances, open up the possibility for supplementary pension.

According to the social security agreement, an employee who is posted by the employer in the home country to work in the other contracting state shall continue to be covered by the social security in the home country, provided that the anticipated duration of the work does not exceed 24 months (two years). Subject to the agreement between the contracting states, the employee shall remain in the home country's social security system for another 36 months (three years). Hence, the employee can continuously, for a period of up to five years, be covered by the social security system of the home country and will therefore continue earning pension rights and pay contributions in the home country. Since the social security agreement only covers pension rights, social security contributions with regard to other social security benefits may have to be paid and reported in the country where the work is carried out.

According to the transitional provisions, events and insurance periods already fulfilled, should be taken into consideration when deciding an individual's right to benefits according to the agreement. However, the agreement does not give the right to payments of benefits before 1 June 2015.

Deloitte's view

The bill is an unprecedented one in Sweden, and is seen to be a strong deterrent to curb the several Swedish persons currently reside in South Korea and more Swedish individuals are expected to live and work in South Korea in the future.

The harmonization of social security coverage between Sweden and South Korea is of great importance for companies in Sweden and for companies planning to enter into the South Korean market. Moreover, the social security agreement between South Korea and Sweden can result in cost savings for Swedish and South Korean employers. It also simplifies handling for Swedish employers when hiring South Korean workers and also for companies that assign Swedish persons to work in South Korea. The government presented a bill containing proposals to the Swedish Parliament during the spring of 2014. Both countries have, during April 2015, approved the agreement being applied. Hence, the agreement will now enter into force on 1 June 2015.

Sweden is currently negotiating similar social security agreements with Japan and China. An agreement with India also entered into force last year. Sweden has already entered into similar Social security agreements with several countries (Bosnia-Herzegovina, Chile, Israel, India, Canada, Cape Verde, Croatia, Morocco, Serbia, Turkey, and the USA).

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Taiwan:
Revision of Individual Tax Calculation Method for Married Couples

Overview

According to the amendment of Article 15 of the Income Tax Act announced by the president on January 21, 2015, in addition to the two methods, either calculating all income taxes jointly, or computing income taxes levied on salary separately, married taxpayers may now choose to calculate taxes on all their income separately.

This revision is effective from January 1, 2014. The 2014 Taiwan tax returns to be filed by May 2015 are subject to this amendment.

Background

According to the Income Tax Act, if the taxpayer and his/her spouse are separated due to irreconcilable differences or domestic violence, they may file tax returns separately. Otherwise, married taxpayers are required to file a joint return.

Prior to the amendment, the taxation of the income tax return could be calculated by the following methods: (1) Calculating tax on the aggregate income of the taxpayer, his (her) spouse, and their dependent; or (2) Calculating tax levied on the salary income of a taxpayer or his (her) spouse separately, and then aggregating rest of the income and calculating the tax accordingly. After the amendment, the taxpayer and his (her) spouse may calculate their taxes on all their income respectively.

Summary of revision

The method of calculating all income taxes separately is summarized as follows:

1. If the taxpayer chooses to calculate income taxes separately from his (her) spouse, the taxpayer may claim his (her) own personal exemption, special deduction for property transaction losses incurred by himself/herself, special deduction of income from salaries, special deduction for savings and investment, and special deduction for the disabled or handicapped on his/her part of tax calculation.
2. Exemptions, standard deductions, and itemized deductions attributed to the spouse or dependents, as well as special deductions for the household, should all be claimed on the spouse’s tax calculation.
3. The special deduction for savings and investment not exceeding NT$270,000 (around US$9,000) per year must be deducted from the spouse’s taxable income first. Any deduction remaining thereafter may then be claimed by the taxpayer.

Deloitte’s view

Since the taxes on income from the spouse’s salary are already allowed to be calculated separately, this revision does not benefit much to married couples whose income mainly comes from salary. On the other hand, families whose income mainly comes from sources other than salary, such as professional income, passive income, etc., may reduce their taxes substantially by calculating their taxes separately.

It is suggested that taxpayers should use the e-Filing system provided by the Ministry of Finance to file their taxes. The system would calculate their taxes under a different method and select the most favourable one for the taxpayer.

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Global Rewards Updates:
United States: IRS Updates Correction Program for Retirement Plans

Background

The Internal Revenue Service (“IRS”) has long recognized that errors often arise in the administration of retirement plans, and that these errors can jeopardize the tax-advantaged status of these plans. To accommodate plan administrators who wish to remedy these errors, the IRS established the Employee Plans Compliance Resolution System (“EPCRS”) to allow plans to maintain their tax-favoured status. EPCRS was most recently restated pursuant to Revenue Procedure 2013-12.

There are two main ways under EPCRS for employers to correct failures voluntarily: the Self-Correction Program (“SCP”) and the Voluntary Correction Program (“VCP”). The primary difference is that VCP involves the submission of an application to the IRS to obtain specific IRS approval for the correction, but under SCP, the employer corrects the failure on its own, without involving the IRS. The benefit of a VCP submission over SCP is that it can provide explicit IRS approval of a proposed correction. VCP is also available for certain failures that are not eligible for SCP, and in some cases, VCP permits methods of correction that are not permissible under SCP.

In early 2015, the IRS published Revenue Procedures 2015-27 and 2015-28 to make certain modifications to EPCRS. Generally, these updates revise acceptable corrections for certain failures. These updates do not replace Revenue Procedure 2013-12, but simply modify certain provisions.

Summary of changes

Revenue Procedures 2015-27 and 2015-28 introduced a number of modifications to the existing correction procedures of Revenue Procedure 2013-12, including:

- Clarification of various approaches for correcting overpayment failures;
- Modification of the safe harbour correction method for failure to implement employee elective deferrals pursuant to an automatic contribution feature;
- Modification of the alternative safe harbour method for calculating earnings on certain automatic contribution failures;
- Modifications to encourage early correction of employee elective deferral failures;
- Modification of the period of time for certain corrections of excess annual additions under certain defined contribution plans;
- Reduction of the VCP fees for certain required minimum distribution and participant loan failures;
- Clarification of required forms for plan sponsors wishing to use the Model VCP Submission Documents;
- Clarification of provisions related to the requirement to submit a determination letter, including clarification concerning certain corrective amendments made to pre-approved plans; and
- A number of other miscellaneous modifications.

As this list is not exhaustive, we recommend reading through both recent Revenue Procedures in their entirety for additional details.

Updated EPCRS provisions

Although a number of modifications and clarifications were made to Revenue Procedure 2013-12, there are a few that warrant particular mentioning:

Flexibility in correction of overpayment: In some cases, an operational failure results in a participant receiving an overpayment of his or her plan benefits. Previous IRS guidance suggested that the overpayment could be corrected by obtaining repayment of the overpayment from the participant. Although the previous guidance provided alternatives, some plan sponsors interpreted the previous requirement as obligating them to seek repayment from participants. This imposed a hardship on plan participants in certain situations, particularly those involving elderly retirees who had been collecting benefits that included overpayments, for whom the repayment obligation would be particularly harsh. In the revised guidance, the IRS relaxed the requirement that the plan sponsor seek repayment of the overpayment from the participant, and clarified that in certain cases, it was permissible for the plan sponsor to reimburse the plan, rather than the participant. The guidance also clarifies that a retroactive amendment may also be appropriate, subject to rules governing the acceptability of retroactive amendments. The IRS is currently seeking comments on the specifics of this correction.

Extended relief for correcting excess annual additions: Under Revenue Procedure 2013-12, a plan with repeated excess annual additions in violation of IRC Section 415(c) would be considered to have inadequate administrative procedures if such excesses were not corrected within 2½ months of the plan's limitation year. Under the self-correction eligibility requirements of EPCRS, a plan that lacks adequate administrative procedures is not eligible to self-correct significant failures, and would therefore be required to use VCP in all cases. Revenue Procedure 2015-27 modifies the EPCRS to extend the period of time to return elective deferrals to affected employees from 2½ months to 9½ months after the end of the plan's limitation year.

Reduced corrective contributions for certain corrections of employee elective deferral failures under an IRC 401(k) or 403(b) plan: Generally, where a participant's deferral election has not been implemented, EPCRS correction procedures require a qualified non-elective contribution ("QNEC") equal to 50% of the participant's missed deferrals. Revenue Procedure 2015-28 reduces or eliminates the corrective QNEC in certain cases.

- **No QNEC required:** The corrective QNEC is not required where the deferral election is implemented within three months of when the failure occurred.
- **Reduced QNEC:** The corrective QNEC is reduced to only 25% of the missed deferrals if corrected more than three months after the failure occurred, but not later than the end of the second plan year following the plan year in which the failure occurred.
- **Special rules for correcting missed deferrals for eligible employees subject to an automatic contribution arrangement:** Corrective relief is available for a failure to implement an automatic contribution feature for an affected eligible employee or failure to implement an affirmative election of an affected employee pursuant to such arrangement. No corrective QNEC is required if the correct deferral election is implemented no later than the end of the 9½-month period after the end of the plan year of the failure. This safe harbour correction is only available with respect to plan failures that begin on or before December 31, 2020. The IRS plans to assess whether to extend this relief beyond December 31, 2020.

In each case,

- The update does not eliminate the requirement for corrective matching contributions based on the full missed deferral (adjusted for earnings), if applicable, which must be made within the timing required for correcting significant operational failures under SCP.
- The affected participant(s) must be provided with a notice that includes a description of the error and the corrective steps that have been taken.
- The required timing for the correction may be accelerated if the affected participant notifies the plan sponsor of the error.

These changes, among others, are meant to encourage voluntary correction and may ultimately reduce the cost of self-correction.

Action

As the IRS has been actively auditing retirement plans, the EPCRS is meant to promote use of SCP and VCP in an effort to streamline the process. We can provide consulting assistance with respect to the implementation of a self-correction under SCP or with the preparation of a VCP application, with proposed corrections for review.

As a practical matter, we suggest that plan administrators continue to review plan operations as a means to identify and correct plan failures. Correcting failures under the EPCRS may help avoid or reduce future monetary sanctions if a qualification issue were to be discovered upon audit.

Additionally, we are able to assist with a plan qualification self-compliance review as a pre-emptive means to proactively correct plan failures prior to being audited.

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Have a question?
If you have needs specifically related to this newsletter's content, send us an email at clientsandmarketsdeloittetax@deloitte.com to have a Deloitte Tax professional contact you.