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The Affordable Care Act: Impact on international assignments

The landscape of US health care

In 2010, the United States passed legislation which introduced sweeping changes to the landscape of US health care and imposed requirements for coverage. This legislation, which is commonly referred to as the Affordable Care Act (ACA), presents a myriad of complex issues related to internationally mobile employees. In particular, as employers prepare to meet their 2015 year end ACA reporting requirements, special attention should be given as to how employees on assignment to or from the US should be reported.

As background, the ACA has two primary requirements for health care insurance coverage: the individual mandate, and the employer mandate. Although these two mandates are closely related, the requirements for each are unique and do not align precisely. In the simplest terms, the individual mandate requires that all US persons maintain health insurance coverage throughout the year for themselves and members of their household. The employer mandate requires that large employers offer coverage to employees and their dependents.

Review and download a full list of references online.
URL: http://www2.deloitte.com/us/en/pages/tax/articles/the-affordable-care-act-impact-on-international-assignments.html?id=us:2sm:3na:gis:awa:tax:021216

Overview of ACA requirements

In order to address the complications that an international assignment can add to ACA coverage and reporting, it is critical to understand the general concepts of the individual and employer mandates, including what constitutes an acceptable health care plan, which

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individuals and companies are subject to these requirements, when an exemption may apply, and the reporting requirements placed on large employers.

Applicable Individuals: Although the general rule that large employers must provide coverage to full-time employees seems consistent with the requirement that individuals must maintain coverage, there are disparities in who is considered an applicable individual for the purposes of both requirements, which can create confusion when trying to apply the two mandates concurrently.

Employers are required to provide MEC to full-time employees and their dependents, or face a penalty. The determination of who is considered a fulltime employee requires a thorough analysis of the hours worked by the employee, typically calculated by "looking back" to the prior year of service. For the purposes of determining full-time status, only hours of service related to work performed in the US are included. Therefore, an individual working outside the US would not be considered a fulltime employee and the employer is not required to offer that individual coverage. When an employee transfers into or out of the US during a given year, using hours from the preceding year can produce odd results. For example, if a full-time employee transfers from the US to another country in January, the employer could be subject to ACA penalties for failing to offer the employee coverage that year even if the employee does not return to the US. To address this issue, the regulations include specific rules for international transfers which in many cases allow them to be treated as new hires.

The individual mandate generally applies to all US citizens and residents, but does not apply to individuals who are nonresident aliens. Similar to the exclusion of non-US hours for the employer mandate, the individual mandate includes several exceptions for individuals who live outside the US.

The first is an exemption which applies to any month in which an individual is considered to be an "exempt noncitizen," which requires that the individual is not a US citizen and is not present in the US for at least one day during the month. Therefore, individuals who move into or out of the US during a given year will generally be able to qualify for an exemption for the months in which they were not living in the US, provided they are not a US citizen.

There is also an exception for US citizens or residents residing outside the US, based on qualification for the foreign earned income exclusion. The foreign earned income exclusion is available to US citizens who have their tax home in a foreign country and are a bona fide resident of that country for an entire taxable year. It is also available to US citizens or residents who meet the physical presence test by remaining outside the US for 330 days in a rolling 365-day period, which can span multiple tax years. For any month in which an individual is eligible for the foreign earned income exclusion, that individual is deemed to have MEC for the given month. This treatment applies regardless of whether the individual chooses to claim the benefits of foreign earned income exclusion on the individual income tax return.

The individual mandate requires that coverage is maintained for the individual's entire household, which includes the taxpayer's spouse if filing a joint return and also any dependents. The final ACA regulations clarify that a dependent includes any individual who qualifies to be claimed as a dependent on the tax return, regardless of whether that individual is actually claimed.

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The individual and employer mandates are complicated even in the purely domestic context. Employees on international assignments can present a variety of unique considerations. These complications arise for both assignments to and from the US. Download the full article to explore additional requirements under the ACA, as well as examples that illustrate how the ACA requirements apply to these mobile employees.

Review the full article online.
URL: http://www2.deloitte.com/us/en/pages/tax/articles/the-affordable-care-act-impact-on-international-assignments.html?id=us:2sm:3na:gis:awa:tax:021216

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Australia:
Australia and India social security agreement

Overview

The bilateral social security agreement between Australia and India came into effect from 1 January 2016.

The purpose of the agreement is to prevent the double-coverage of pension/ superannuation guarantee obligations and help individuals qualify for pension entitlements in either country.

The agreement is broadly similar to social security agreements that Australia has concluded with other countries, and is one of a number of agreements entered into in 2014 between Australia and India aiming to strengthen the economic relationship and encourage the flow of workers between the two countries.

Prevention of double-coverage: The agreement will assist workers who are seconded by their employer in one country to work for the employer (or a related entity) in the other country, but remain covered by their 'home' country's pension/superannuation legislation. They can apply for exemption from having to comply with the 'host' country's superannuation/pension legislation.

- The exemption applies for up to five years (or such longer period as may be agreed between Australia and India).
- The exemption can also apply where the worker is first seconded to another country and subsequently seconded between Australia/India.

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In each case, the exemption avoids the double-coverage of pension benefits occurring where such workers would be required to make pension contributions in both countries.

Pension entitlements: The agreement also helps individuals access their home country's pension system by including periods spent in the other country toward any time-based qualifying conditions for certain pension entitlements in either country.

This can help former Australian residents or former Indian residents to claim certain pension benefits from their home country, and should provide more certainty (and income) for individuals who have retired in the other country.

The agreement applies to the Australian Age Pension and the Indian old-age pension, survivor pension and Permanent Total Disability pension for employed persons.

Deloitte's view

The introduction of an agreement to prevent the double pension coverage is welcomed by Deloitte.

The agreement will eliminate the need for employers to pay a pension contribution in both countries while an employee is on assignment from 1 January 2016. This means, for Indian assignees in Australia, the company may no longer be required to contribute to an Australian superannuation fund. This will further eliminate the need for Departing Australia Superannuation Payments to be made on departure from Australia, in relation to new assignments where no superannuation contributions have been made for the employee. These two factors will reduce the compliance burden on employers and reduce the tax burden on the superannuation benefits provided to the employees.

Employers should consider applying for a Certificate of Coverage (CoC) from the Australian Taxation Office for any Australians on assignment in India. Similarly a CoC should be obtained from the Indian authority for those employees on assignment to Australia.

The CoC should be considered for any assignments already in place and those which commence after 1 January 2016. If the employer holds a CoC, it will avoid the requirement to continue any double pension payments and an adjustment should be made within the relevant payrolls.

The agreement is a positive step in enhancing the economic relationship between India and Australia and improves the value of an assignment between the two countries.

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Malaysia:
Revised budget news

Overview

In addition to the 2016 National Budget announced on 23 October 2015, the Minister of Finance presented the revised Budget on 28 January 2016, with a view to mitigate the impact from declining oil prices and global economic uncertainties. Below are the salient issues pertaining to an individual.

Employees' Provident Fund – Reduction in employee's statutory contribution rate

The employee's monthly statutory contribution rate for the Employees' Provident Fund (EPF) will be reduced from 11% to 8% for members below age 60 and 5.5% to 4% for those aged 60 and above. This will take effect starting March 2016 salary/wages (contribution by 15 April 2016) until December 2017 salary/wages (contribution by 15 January 2018).

However, members can opt to maintain the current contribution rate of 11% by completing the "Notice to Contribute More than Statutory Rate (Employee's Share)" [Form EPF17A (Khas 2016)].

There is no change to the employers' statutory contribution rates, i.e., it will remain at 12% (for employees earning above RM 5,000) and 13% (for employees earning RM 5,000 and below).

The new monthly EPF contribution rates (Schedule Three) will be made available by the EPF from 16 February 2016 onwards.

Effective date: From March 2016 to December 2017

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Special tax relief for individual taxpayers

The government has reintroduction a one-time special tax relief of RM 2,000 for individual taxpayers with a monthly income of RM 8,000 or below.

Effective date: Valid for the year of assessment, 2015

Deloitte's view

Subsequent to the tabling of the 2016 National Budget in October 2015, the government has now recalibrated the budget with the aim to optimize the country's development and operational expenditure amidst falling oil prices, slower economic growth, and escalating costs of living.

The measures mentioned above are aimed to help the rakyat (i.e., citizens) cope with the rising cost of living.

To increase the people's discretionary income, the government has agreed to lower the employees' contribution to EPF by 3% beginning March 2016 through December 2017. Contribution by employers will remain unchanged. The new rate means employees have the option of contributing only 8% of their salary to the EPF. This is expected to increase private consumption expenditure. However, this will also mean that EPF members will face a reduction in their savings for retirement.

The special tax relief was last introduced for the year of assessment of 2013. The reintroduction is expected to benefit 2 million taxpayers and is poised to encourage economic growth by increasing the spending power of consumers.

The special tax relief will be effective for those eligible in the coming 2015 tax return filing, which is due by 30 April 2016. We are pending further clarification on the aggregate income threshold, rather than the monthly income basis, for relevance to the eligibility to claim the special tax relief.

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