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India:
Amended India tax return forms seek year-wise details contributions for taxable social security withdrawals

Background

In April 2018, the Central Board of Direct Taxes (CBDT) had notified the tax return forms for financial year (FY) 2017-18. Notably, the use of simplified Form ITR 1 was restricted to ordinarily resident tax payers.

CBDT has periodically released updated versions of the forms between April 2018 and 31 August 2018. Currently, CBDT has released newly amended versions of Forms ITR 2 and ITR 3 that will capture details of taxable social security (*i.e.*, provident fund (PF)) income.

As per domestic law, PF accumulations withdrawn before completion of five years of continuous service are taxable as specified in the year of withdrawal. However, there was no requirement to disclose year-wise details of past contributions which are taxable. The current changes to the forms address this aspect.

Disclosure required now

Details about taxable PF withdrawals that will need to be disclosed on Forms ITR 2 and ITR 3 include:

- Assessment year;
- Income benefit (PF contributions and the interest thereon); and
- Tax benefit (Differential tax liability on account of PF income).

These details need to be mentioned separately for each year of contribution.

- To meet this requirement, taxpayers need to compute their year-wise employer contribution including interest, and employee contributions, which are taxable and disclose this amount on Forms ITR 2 and ITR 3.

Source: www.incometaxindiaefiling.gov.in

Deloitte's view

The Indian government has been adopting various measures to enhance disclosure requirements and ensure correct income reporting by taxpayers. The changes made to tax return forms are in line with these objectives. Any taxpayer filing a tax return for FY 2017 18 after 31 August 2018, will have to use the revised versions of the forms.

Prior to this amendment, tax return forms were modified to capture income details from savings accounts, fixed deposits, and interest on income tax refunds separately. Although taxpayers have always had to correctly report their income details on their tax returns, it is all the more imperative now with the tax authorities widening their coverage (for *e.g.* reviewing interest on PF accumulations post cessation of employment).

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United States:
California income tax remittances for overseas business travelers

Overview

Employees traveling into California on business for short periods of time can create state compensation reporting and tax withholding responsibilities for their employers. California has rules in place requiring compensation reporting and tax withholding for business travelers using the employees' US Social Security number (SSN). (Note: these rules vary in each state.)

Business travelers from outside the United States present an additional level of complexity if those travelers are not eligible to apply for an SSN, even in situations when they have a valid work visa, as certain types of visas do not permit applying for an SSN. Therefore, employers cannot remit California taxes via payroll for employees without valid SSNs, as required under California law.

Impact of the ITIN and income tax treaties

Individuals who are not eligible to apply for a US SSN based on their visa may be eligible for an Individual Taxpayer Identification Number (ITIN). In order to report and remit California taxes, employees are able to apply for an ITIN by filing a US federal tax return and, once the ITIN is received, then file a California income tax return to satisfy their personal tax obligation. However, this filing and payment of taxes does not relieve employers from the obligation to report and withhold California taxes. A failure to remit taxes may result in penalties assessed on the employer. In addition, an ITIN cannot be used for California employer payroll-reporting purposes.

Some international business travelers to California are residents in a country with which the US maintains an income tax treaty. The tax treaty may exempt those travelers from a US federal income tax liability if they are working in the United States on a short-term basis and satisfy the conditions of the treaty. This treaty exemption is claimed on the individual's US federal nonresident income tax return. However, this exemption does not exempt the individual from a California income tax liability.

The Franchise Tax Board's solution

California allows employers to remit taxes for international business travelers via a quarterly composite payroll remittance through Form 592, Resident and Nonresident Withholding Statement (the "Form"). Through conversations with the California Franchise Tax Board, we understand that, although the Form includes a space for an employee's SSN or ITIN, the Form can be submitted, and California will accept, Form 592 without these numbers. The employee could then file a California income tax return – reporting the amount of tax remitted – and California would issue an identification number after the return is filed. The identification number can be used on future quarterly composite payroll remittances, but cannot be used to operate payroll or issue a Form W-2.

Deloitte's view

While many companies are actively tracking business travel and can identify when reporting responsibilities exist, they may not have an effective mechanism to remit those taxes. California may be a challenging location for companies with international business travelers because California does not generally allow a tax treaty exemption, even if it is permitted at the federal level. Many companies are highly motivated to operate a compliant payroll, and this lesser-known solution may be a welcome approach.

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United States: US-Brazil Totalization Agreement to take effect on October 1, 2018

Overview

As previously announced, the US and Brazilian governments signed a social security treaty (the "Totalization Agreement") in June 2015. Brazilian President Michel Temer issued a decree on June 25, 2018, ratifying Brazil's pending social security agreement (SSA) with the United States, and the US Social Security Administration has now posted an update on its website confirming the effective date of this treaty, which is scheduled to take effect on October 1, 2018.

Highlights of the Totalization Agreement

Similar to other totalization agreements, this agreement will facilitate the transfer of individuals between the two countries by eliminating the need to pay double social security taxes to both countries on the same income. Assignees from one country to the other will be exempt from the obligation to contribute to the social security system of the other country, provided the assignment does not exceed five years. For the exemption to apply, however, the individual will have to obtain a "certificate of coverage" from his or her home country.

Additionally, the agreement will allow individuals to combine (or "totalize") their periods of coverage under the programs in both countries to meet the minimum period of coverage required to qualify for social security benefits, including retirement benefits, survivor benefits, and disability insurance. This means that assignees from one country to the other generally will retain their entitlements to social security benefits in their home country when they accept assignments to work in the other country.

Deloitte's view

This agreement represents the 15th totalization agreement entered into by Brazil and the 28th totalization agreement entered into by the United States.

This represents the first treaty entered into between Brazil and the United States. The agreement is intended to expand the level of cooperation between the two countries and potentially create opportunities for new businesses. The agreement is designed to coordinate coverage under the social security regimes of both countries, eliminate dual coverage, and ease the burden on individuals and companies with dual social security obligations to facilitate job creation and growth between the two countries.

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United States:
Combat-zone contract workers may qualify for foreign-earned-income exclusion even if they have a US abode

Overview

On February 9, 2018, the government passed public law 115-123, commonly known as the Bipartisan Budget Act of 2018, allowing contractors or employees of contractors supporting the US Armed Forces in designated combat zones to qualify for the foreign-earned-income exclusion beginning in tax year 2018. Under the foreign-earned-income exclusion, taxpayers may choose to exclude foreign-earned income from US taxation up to $103,900 for 2018.

Tax home requirement

US citizens and resident aliens may only claim the foreign-earned-income exclusion if the individual meets both of the following requirements:

1. His or her tax home is in a foreign country, and
2. He or she meets either the bona fide residence test or the physical presence test.

Under prior law, only individuals who have a "tax home" abroad are allowed to claim the foreign-earned-income exclusion. For purposes of claiming the exclusion, a tax home is typically defined as the taxpayer's regular or principal place of business. If the taxpayer has no regular or principal place of business because of the nature of the business (*i.e.*, an individual who continuously travels to various business locations), then the tax home is the taxpayer's regular place of abode. An individual is not treated as having a tax home in a foreign country for any period in which his or her abode was within the United States.

The new law provides an exception to this rule clarifying that an individual working in a combat zone in support of the Armed Forces of the United States shall be considered to have a tax home abroad even if they have an abode within the United States.

Combat zone

A combat zone is any area the president of the United states designates by executive order as an area in which the US Armed Forces are engaging or have engaged in combat (IRC 112(c)(2)). Current combat zones include certain areas within the Arabian Peninsula (IRS Notice 2003-21), the Kosovo area (IRS Notice 99-30), and Afghanistan (IRS Notice 2002-17).

Qualifying tests

A contract worker in a combat zone still has to meet the standard qualifying tests in order to claim the exclusion:

- **Bona Fide Residence Test:** A US citizen must be a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire taxable year.
- **Physical Presence Test:** A citizen or resident of the US who, during any period of 12 consecutive months, is present in a foreign country or countries for at least 330 days.

Deloitte's view

Allowing contractors or employees of contractors supporting the US Armed Forces in designated combat zones to qualify for the foreign-earned-income exclusion may provide tax relief for qualifying individuals even if they maintain an abode within the United States. Contractors and employees of contractors supporting the US Armed Forces should review their individual facts and circumstances to determine if they are serving in a combat zone, if they meet the qualifying tests, and whether electing to exclude income may be beneficial for their circumstances.

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United States:
Deductibility of qualified moving expense reimbursements

Overview

As a result of tax legislation signed into law on December 22, 2017 (P.L. 115-97, the "Act"), employees must include in gross income the value of qualified moving expenses paid or reimbursed for taxable years beginning after December 31, 2017. Numerous questions have arisen regarding the application of the Act to payments or reimbursements received after December 31, 2017, for expenses resulting from employment-related moves occurring prior to January 1, 2018. The Internal Revenue Service (IRS) issued Notice 2018-75 (the "Notice") to provide further guidance regarding these payments and reimbursements.

Background

Prior to the Act, qualified moving expense reimbursements were excludable from an employee's federal gross income and from wages and compensation for employment tax purposes. Qualified moving expense reimbursements include amounts received directly or indirectly by an individual from an employer as payment (or reimbursement) of expenses that would be deductible moving expenses if paid by the individual.

The Act repealed the federal deduction for moving expenses and the exclusion for qualified moving expense reimbursements paid by an employer, with an exception for members of the armed forces on active duty. These changes are effective for taxable years beginning after December 31, 2017, and before January 1, 2026. States' positions on the taxability of moving expenses have varied, with some states following the new federal position and others continuing to allow for an exclusion from wages for qualified moving expenses.

Guidance under the notice

Stakeholders expressed concern that payments or reimbursements made in 2018 pertaining to an employment-related relocation that occurred in 2017 may be taxable due to changes made by the Act. Thus, the Notice addresses the following situations:

1. An employer payment of moving expenses to a third party after December 31, 2017, for moving expenses provided to an individual prior to January 1, 2018; and
2. A reimbursement after December 31, 2017, for expenses incurred in connection with a move by an individual prior to January 1, 2018.

The Notice provides that the change in the taxability of qualified moving expenses only applies to payments or reimbursements for employment-related moves occurring after December 31, 2017. Thus, if an individual moved in 2017 and the expenses would have been excluded under the prior law, then the payment or reimbursement received in 2018 from the employer is a qualified moving expense reimbursement. Therefore, such an amount is excludable from 2018 income as a qualified moving expense reimbursement and from wages and compensation for employment tax purposes.

Employers who have previously included such amounts in wages or compensation for purposes of federal employment taxes and have withheld and paid federal employment taxes may use the adjustment or refund claim process to correct any overpayment of federal employment taxes on these amounts.

State considerations for the taxability employer of paid moving expenses

States have responded to the change in taxability of moving expenses in a few different ways, and each state's process should be reviewed individually to determine whether it is including or excluding employer-paid qualified moving expenses in income. States may fall into one of three categories:

1. Rolling conformity: States that follow the Internal Revenue Code's definition of gross income and automatically adopt new legislative changes. These states follow the federal treatment and include qualified employer-paid moving expenses in income starting in 2018. Similarly, these states will follow the new guidance outlined in the Notice regarding moves that took place in 2017 and were paid or reimbursed in 2018.

2. Static conformity: States that follow the Internal Revenue Code as of a particular date. These states will continue to exclude employer-paid qualified moving expenses from taxable income unless they update their static conformity date to incorporate the new legislative changes.
3. Flexus conformity: States that selectively conform to parts of the Internal Revenue Code or selectively decouple from specific amended federal provisions.

While many states have been issuing guidance throughout the year on their position, some states have not issued guidance, and it is possible their current positions could change prior to the end of the year. Given that state positions sometimes change, employers should work with their tax advisers to determine whether the states they operate in are either rolling, static, or flexus conformity states.

Deloitte views

Employer-paid moving expenses for moves occurring after December 31, 2017, and before January 1, 2026, should be included in taxable income. Employers who have included 2018 payments or reimbursements for 2017 or prior employment-related moves in an individual's 2018 wages or compensation for federal employment tax purposes and withheld and paid federal employment taxes on such amounts, may need to adjust the withholding and payment of tax or claim a refund. Alternatively, an employer who has not yet paid or reimbursed an individual for an employment-related move occurring in 2017 should consider whether its payroll process is set up to exclude such amounts from federal employment tax withholding and payment.

State positions on the taxability of moving expenses present an added complexity for payroll reporting and should be reviewed individually for each state and monitored as new legislation or guidance is released. Deloitte recommends that employers review their payroll positions to ensure compliance at both a federal and state level.

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