Global Employer Services

Global Rewards Update:
Switzerland –New instructions on social security sourcing of equity income in cross-border cases

November 2013

Background

A new law harmonising the tax treatment of employee equity plans entered into force across Switzerland on 1 January 2013. In cross-border cases, this tax legislation applies the OECD's recommendations by allocating gains to Switzerland based on the part of the vesting period for which the employee was liable to Swiss taxes on employment income.

In Switzerland, social security contributions are collected by regional offices who are charged with applying federal social security legislation.

Although the change was made to the Swiss tax code, the Swiss social security law had not incorporated the cross-border allocation rules.

Some regional social security offices considered that the sourcing rules were not applicable for the calculation of social security contributions and continued to apply rules in place before 1 January 2013.

New instructions on social security sourcing of equity gains

A growing number of queries by employers regarding the approach to apply led the Swiss Federal Social Security Administration to publish guidelines regarding the sourcing position for the calculation of social security contributions.

According to new instructions published this month, social security contributions must be calculated proportionally to the vesting period, applying the same allocation rules as for direct income taxes.

This approach could lead to a double social security exposure on all or part of a gain for employees working in Switzerland for part of the vesting period where they have also worked in a country with a different method of calculating the equity gain for social security purposes.

Given that double contributions are prohibited under European regulations and international social security agreements, the Swiss authorities are currently considering the practicalities of how such double charges can be relieved.

One significant difference between these social security instructions and direct tax law is that the social security administration has included transitional provisions stating that these new rules apply even to share awards and options granted prior to 1 January 2013.

Action

Companies should review their sourcing approach for cross-border equity gains for social security purposes and consider the impact of the new guidelines. In many cases, proportional contributions in the countries worked in during the vesting period are not supported by international social security legislation.

Some companies may have received information from their regional social security office that they did not have to apply sourcing to their existing awards. For companies who received this information and who want to apply the non-sourcing position for existing awards in 2013, they will need to apply for a waiver from the social security office. Deloitte can assist in requesting a waiver.

If, as a result of the new Swiss interpretation, a double charge arises on all or part of the equity gain, it is recommended that employers submit such cases to the Swiss social security authority with proof of the risk of double contribution to receive approval to not withhold Swiss social security contributions. Deloitte can also assist with such requests.

People to contact

For assistance with this matter, or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services adviser or email us at **globalequity@deloitte.com**, and a global rewards consultant will contact you.

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