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Deloitte: Companies Should Be Wary Of FATCA Backlash for Expatriate Employees

Expatriate workers on international assignments are experiencing a backlash from the Foreign Account Tax Compliance Act and other overseas financial reporting requirements, and their employers need to handle the situation with care, Deloitte Tax LLP practitioners said.

''We're starting to see that individuals are feeling a personal impact from FATCA,'' Lauren Steinke, a senior manager with Deloitte, said during an Aug. 21 webcast. Many foreign banks won't allow American workers to open accounts and in some cases are forcing out U.S. workers, leading to difficulties in cases where assets are significant, Steinke said.

Aside from the ''obvious inconvenience,'' Steinke said, transferring these assets or selling assets can lead to unwelcome tax consequences. ''Companies who are sponsoring these expatriates and sending them to work around the world are now getting questions about 'How will you assist me?' and 'Can you help me pay my taxes?' ''

Enacted in 2010, FATCA requires foreign financial institutions to report their U.S.-owned accounts to the Internal Revenue Service or face, in some cases, a 30 percent withholding tax on their U.S.-source income.

Steinke said FATCA will add a new dimension to the government's knowledge of taxpayers' overseas financial dealings, in a world where taxpayers already are required to report these accounts and assets directly. Taxpayers now must submit Form 8938, Statement of Specified Foreign Financial Assets, and the Report of Foreign Bank and Financial Accounts (FBAR), also known as the Financial Crimes Enforcement Network (FinCEN) 114.

Coordinated Reporting Key. ''Now that the IRS and the U.S. government will have details about what's in these accounts under FATCA, it's important that both of those forms are accurate and coordinated,'' Steinke said.

Other countries, such as Canada, Italy, Japan and the U.K., also have increased their reporting requirements, leading to still more problems for expatriate workers, she said. ''We are seeing a shift around the world toward global asset reporting,'' Steinke said. ''The mobile workforce is really starting to see the burden of reporting in multiple locations.''

She said the increased reporting requirements under FATCA also have led to the growth of phishing scams intended to illegally get financial information from unsuspecting employees.

FATCA has stricter requirements that financial institutions obtain Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals), and Form W-9, Request for Taxpayer Identification Number (TIN) and Certification.

Steinke explained that fraudulent e-mails sent ''on behalf of the IRS'' are asking for employees' names, addresses and Social Security numbers. It is important for companies to ensure their workers know that the IRS doesn't send e-mails or faxes to taxpayers, she said.

Communication Important. She said communication is key for companies to help their workers cope with all the difficulties that have arisen from FATCA, including:

- explaining the law and its impact to expatriate employees,
- providing a list of non-U.S. banks and financial institutions that are FATCA-compliant and accepting U.S. accounts, and
- raising awareness of phishing scams.

Companies may also want to consider hiring a professional tax service provider to help with FBAR and Form 8938 filings as part of a tax service for expatriate employees, Steinke said. They should also provide guidance on how to complete Forms W-8BEN and W-9.

Other practitioners on the webcast explained how FATCA impacts benefit and retirement plans that companies may have for their workers outside the U.S.

Jerry Karlin, a Deloitte director, said companies have to carefully consider whether their plans would be considered foreign financial entities subject to FATCA, whether they are subject to one of six detailed exemptions or whether the plan is in a country that has signed an intergovernmental agreement (IGA) to share information on U.S.-owned accounts between taxing authorities.

Impact on Retirement Plans. He said that between the exemptions and more than 90 IGAs, companies ''may not necessarily have to register a bunch of plans.'' But they still have to be able to certify whether they qualify for an exemption, Karlin emphasized.

Also on the webcast, Christine Furie, a senior manager with Deloitte, cautioned that ''there is a renewed focus by the IRS on anything to do with deferred compensation and a lot of IRS audit focus on international pension plans.'' She said companies need to keep a close eye on the taxation of foreign pension plan balances.

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