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Switzerland – New Social Security Guidelines Require Sourcing for Equity Compensation
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The Swiss Federal Social Security Administration (*Bundesamt für Sozialversicherungen*) published guidance[1] (*Wegleitung über den massgebenden Lohn*) on 13 November 2013, regarding its interpretation of the amount of equity compensation that should be subject to Swiss social security for individuals who change their social security country of coverage between the dates of grant and the taxable event.

The guidelines clarify that equity compensation should be subjected to Swiss social security on the same basis as for Swiss income tax, by reference to an individual's location during the relevant vesting period. The guidelines align the Swiss social security calculation requirements with Swiss income tax legislation[2] which came into force as of 1 January 2013.

Sourcing of Equity Compensation

It is noted that the sourcing approach – in contrast to the "cash-basis" approach, where the gain is subject to social security wherever the employee is subject to social security at the taxable event – will typically impact employees transferred from one country to another as a local employee, or assignees whose certificate of coverage has expired. Assignees coming to Switzerland that remain covered in their home country social security system throughout their assignment will not be impacted.

For example, an individual who is granted a share option while in Switzerland, that vests over three years, and who moves to another country as a local employee after one year, remaining there until he or she exercises the share option, should be subject to Swiss social security on one-third (1/3) of the gain (i.e., from the date of grant until he or she leaves Switzerland).

KPMG Note

■ A number of companies, and regional social security authorities, previously considered Swiss social security to apply on the cash-basis. In the above example, this would have led to no Swiss social security obligations arising.

■ The sourcing approach taken by Switzerland could also potentially lead to double social security contributions if the other country requires a cash-basis approach to be taken.

■ The content of the guidelines is not surprising to the KPMG International member firm in Switzerland (hereinafter, KPMG in Switzerland). The issue is that this necessarily involves other countries and unlike income tax for which clear guidance is generally available (and converging on OECD recommendations), the guidance available with respect to social security in the cross-border context is severely lacking. This lack of clarity has resulted in different approaches being applied, even between countries signed up to the European Union (EU) Social Security Regulations.

KPMG Note (cont'd)

Impact on Companies with Cross-Border Transferees Involving Switzerland

In the global context, until such time that there is a consistent approach taken by the majority of the authorities, the administrative burden placed upon companies is expected to increase due to the inconsistent treatment that may result.

Below we note some helpful steps that may assist with appropriate consideration of the important issues arising from this development in Switzerland:

- Employers may wish to review how their company has historically determined social security contributions to be due with respect to equity compensation.
- If the employer has previously applied a sourcing methodology, the guidance should not have an impact.
- If the employer has applied a cash-basis method, it should review the impacted population and determine the potential impact of the new guidance.

It should be noted that the guidance outlines the federal authorities' interpretation of Swiss social security law that is binding on regional offices which are responsible for collection of contributions. Nevertheless, considering the practicalities of operating in a global context, KPMG in Switzerland believes that there is potential to agree a different approach with a taxpayer's particular regional office.

Employer Reporting Obligations

The guidance requires employers to report all information the authorities deem relevant to the regional social security offices. Similar information that is required to be reported for income tax purposes will now also need to be provided to the social security authorities, including the date of grant, details of the vesting period, value of shares at vest, etc.

Interaction with EU Regulation 883/2004

No clear guidance has been published by the EU on this topic. The practicalities of the approach mandated in the Swiss guidance are still under consideration by the social security authorities.

Transitional Rules

Previous guidelines[3] for 2013 stated that the equity taxation rules should *not* be applied for social security purposes in international situations. The same guidelines contained transitional rules with regard to social security, confirming that this position should apply to all equity compensation granted on or after 1 January 2013, and equity compensation granted prior to 1 January 2013, but with a taxable event on or after 1 January 2013.

The new guidelines state that they are applicable for 2014. However, these guidelines also contain the same transitional rules as the prior guidelines, suggesting that the sourcing approach could apply retrospectively to taxable events on or after 1 January 2013.

KPMG Note

The lack of clarity regarding practicalities of how to apply the new guidance, and seemingly contradictory provisions compared to prior guidance regarding transitional rules, could lead to further confusion for companies trying to determine how to best foster compliance with the authorities' requirements.

The interpretation of KPMG in Switzerland is that the new guidance should be applicable from 1 January 2014, and we suggest companies review and determine how they will treat equity compensation from this date with their regional social security office.

Footnotes:

1 See: http://www.bsv.admin.ch/vollzug/storage/documents/361/361_9_de.pdf.

2 See *Flash International Executive Alert* 2012-136, 17 July 2012.

3 See: http://www.bsv.admin.ch/vollzug/storage/documents/361/361_8_de.pdf.

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