May 16, 2014
2014-056

flash International Executive Alert

A Publication for Global Mobility and Tax Professionals by KPMG's International Executive Services Practice

United States – Social Security Agreement with Slovakia Enters into Force

by KPMG LLP's Washington National Tax practice, Washington, D.C. (KPMG LLP in the United States is a KPMG International member firm)

The new Social Security Totalization Agreement ("the Agreement") between the United States and the Slovak Republic entered into force May 1, 2014.[1]

Why This Matters

The Agreement between the United States and the Slovak Republic ("Slovakia") – like many similar agreements between two countries – helps to ensure that workers will not pay double social security taxes if they are on international assignment working in the one country or the other. This can help to mitigate the costs of international assignments.

The Agreement also provides for coordination of benefit payments by the U.S. and Slovakia for individuals who have paid social security taxes in both countries during their careers.

Moreover, in a departure from several such agreements, this Agreement covers U.S. and Slovak nationals that are sent from third countries to work either in Slovakia or the United States, under certain circumstances.

Important Terms of the Agreement

The agreement with the Slovak Republic ("Slovakia") is the 25th such agreement of the United States to enter into force.

The provisions of the Agreement are similar to most other such agreements to which the United States is a party. The general rule is that a worker will be covered by the social security system of the country in which he or she is working. However, if the worker meets the requirements of the "detached worker exception," then he or she can instead remain covered by the home country social system. The detached worker exception requires that:

- the worker be sent by a home country employer to work in the other (i.e., host) country;
- the employment relationship with the home country employer continue while the worker is on assignment in the host country;
- the worker to work in the host country for a temporary period not to exceed five years;
- the employer obtain a Certificate of Coverage with regard to the worker's assignment in the host country, preferably before the assignment commences.

The Agreement allows that affiliates of a U.S. employer will be treated as the employer, so long as employment by the affiliate would also be subject to home country social security taxation. This provision accommodates employers that transfer international assignees to an affiliate before sending them on assignment.

The Agreement includes a transition rule which states that for individuals already present in the host country, whether as employees or self-employed, the five-year limit on coverage by the home country does not take into account periods in the host country prior to the date that the Agreement entered into force.

KPMG Note

For example, if a U.S. person has been working in Slovakia since July 1, 2012, and expects to be there until June 30, 2018, a period of six years, she would still qualify for a Certificate of Coverage because the period from the date that the Agreement entered into force (May 1, 2014) until the anticipated end of her assignment is less than five years in duration.

Other Notable Provisions in the Agreement

- If an assignee is sent from a third country to the host country, rather than directly from the home country to the host country, the Agreement will still apply, if the service in the third country was subject to mandatory coverage in the home country.

  KPMG Note

  For example, if a U.S. employer transfers a U.S. citizen or resident employee who is presently working in Singapore and who is subject to U.S. social security coverage while working in Singapore to work in Slovakia, the Agreement will apply because the U.S. citizen or resident employee was subject to U.S. social security tax while working for a U.S. employer in Singapore.

- Self-employed persons will be covered by their home country self-employment tax, provided the period of self-employment in the host country is not expected to exceed five years. Under most such agreements, self-employment is subject to the laws of the country where the individual is ordinarily resident.

- Under Article 7.6 of the Agreement, Slovakia will not take U.S. periods of coverage into account if the worker has fewer than 12 months of Slovak coverage and cannot establish entitlement to Slovak benefits based on coverage under Slovakia's system alone (in limited circumstances, it is possible to qualify for Slovak benefits with less than one year of coverage).

  KPMG Note

  Like the similar six quarters of coverage required for totalization by the United States under Article 6.1, this provision removes the considerable administrative burden of processing claims for very small benefits based on minimal periods of coverage. Slovakia's social security agency will credit U.S. periods of coverage totaling less than six quarters. These provisions are consistent with most agreements (e.g., Czech Republic, Poland) but do vary from agreement to agreement, and should be carefully reviewed with each agreement.

KPMG Note – Net Investment Income Tax Not Covered

The Agreement is the first to enter into force since the new 3.8-percent tax on unearned income, known as the Net Investment Income Tax or NIIT, was enacted. The NIIT is referred to in the Internal Revenue Code as the *Unearned Income Medicare Contribution*. However, the NIIT is not part of FICA and is not covered by Social Security totalization agreements that were in force at the time of its enactment.

Due to the reference to Medicare in connection with the NIIT in the Internal Revenue Code, some commentators had surmised that future agreements might encompass this tax. However, the language of the Agreement with Slovakia mirrors that in other such agreements, and does not encompass the NIIT. Thus, workers not subject to FICA due to the application of a totalization agreement may nonetheless be subject to the NIIT.

The Agreement will, however, apply to the 0.9-percent Additional Medicare Tax payable by certain higher-income taxpayers because this tax is part of FICA.[2]

Footnotes:

1 Theodore Sedgewick, the U.S. Ambassador to the Slovak Republic, and Jan Richter, Minister of Labor, Social Affairs and Family of the Slovak Republic, signed the Agreement in Bratislava on December 10, 2012.

For the text of the Agreement, please see the U.S. Social Security Administration Web site at: http://ssa.gov/international/Agreement_Texts/slovakrepublic.html .

2 The NIIT and the 0.9-percent Additional Medicare Tax, which applied starting in 2013, were introduced by the 2010 *Patient Protection and Affordable Care Act* and the *Health Care and Education Reconciliation Act of 2010*.

* * * *