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United States – New Social Security Agreement with Switzerland 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)

A new Social Security Totalization Agreement ("the Agreement") between the United States and Switzerland enters into force today.[1] The Agreement replaces the 1980 U.S.-Switzerland social security agreement and accounts for recent changes to U.S. and Swiss laws.

Why This Matters

Totalization agreements help to ensure that workers will not pay double social security taxes while on international assignment in one country or the other, which helps to mitigate international assignment costs. Agreements also provide for coordination of benefits payments for workers who have paid social security taxes in both countries during their careers.

Notable Coverage/Provisions in the Agreement

The Agreement covers chapters 2 (Tax on Self-Employment Income) and 21 (Federal Insurance Contributions Act (FICA)) of the Internal Revenue Code (the "Code"). The Agreement does not cover the Net Investment Income Tax which is not a part of FICA. However, the Agreement will apply to the 0.9-percent Additional Medicare Tax payable by certain higher-income taxpayers since this tax is part of FICA.

Employment/Detached Worker

The provisions with respect to employment are substantially similar to the 1980 agreement. A worker will be covered by the social security system of the country in which he is working. Under the "detached worker" provision, when an employee who normally works for an employer in his home country is temporarily transferred to work in the other country for the same employer (or a foreign affiliate of the employer described in Code section 3121(l)) he will continue to pay social security taxes to his home country. This rule applies only if the employer expects the transfer to last five years or less.

Under the Agreement, if the employee is first sent to work in a third country and then to the host country, the detached worker provision will still apply provided the employee's service in the third country was subject to mandatory coverage in the home country.

Self-Employment

The Agreement eliminates dual coverage where the laws of one country consider a person's work activity self-employment, but the laws of the other consider it employment. A person who is a resident of the country that considers the work self-employment will pay social security taxes only under that country's laws. If a person is not a resident of the country that considers the work self-employment, she will pay social security taxes under the laws of the other country.

Air/Ship Crew Members

The Agreement provides specific rules for crew members of aircrafts and ships.

- A member of the flight crew of an aircraft operating between the United States and Switzerland who would otherwise pay social security taxes under the laws of both countries, will pay social security taxes only under the laws of the country in which the company operating the aircraft has its headquarters. However, if the employee resides in the other country, he will pay social security taxes under the laws of that country.
- A person employed on a U.S. or Swiss ship and who is covered under the laws of both the United States and Switzerland, will be covered only under the laws of the country whose flag the vessel flies.

Footnote:

1 Donald S. Beyer, Jr., U.S. Ambassador to Switzerland, and Jürg Brechbühl, Director of the Federal Office of Social Security, signed the Agreement on December 3, 2012, in Bern. See: http://bern.usembassy.gov/event_12032012.html .

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

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