

## Change in Tax Treatment - NOR Exemption of Employer's Contribution to Overseas Pension or Provident Fund



### Why this matters

Certain employees are precluded from the tax exemption of employer's contributions to overseas pension or provident fund under the Not Ordinarily Resident (NOR) taxpayer scheme due to the change. For tax-equalised employees, the higher tax burden will be borne by the employer.

### Background

Under the law, where in any year contributions have been made by an employer in respect of an employee to any pension or provident fund constituted outside Singapore, employer contributions made to the fund shall be deemed to be income to the employee for the year in which the contributions are paid.

However, under the Not Ordinarily Resident (NOR) taxpayer scheme, an eligible NOR employee may apply for the concession of exemption from tax for the employer's contribution to a non-mandatory overseas pension or provident fund. An overseas pension or provident fund will generally be regarded as a non-mandatory fund where the contributions are not made to compulsory schemes operated, regulated and supervised by the employee's home country government while the employee is working outside his home country.

The contribution exempt from tax is capped<sup>1</sup>, and the following requirements must be satisfied for the NOR concession:

- The employee is an NOR individual;
- The employee is neither a citizen nor a permanent resident of Singapore at the time such contribution is made;
- His employment income is at least S\$160,000 for the year; and
- The employer must not claim a corporate tax deduction (up to the NOR cap) for the contribution.

In addition, employees of an investment holding company, a tax-exempt body, a representative office or a foreign company not registered in Singapore, will not be able to enjoy the NOR concession on or after 1 January 2014. Employees of a service company which adopts the "cost plus mark-up" basis of tax assessment will also not be able to enjoy the NOR concession after Year of Assessment (YA) 2015 (i.e. for the company's accounting period ending in 2014).

<sup>1</sup> The NOR cap is computed based on Central Provident Fund (CPF) capping rules as if the employer had made contribution to the CPF Board for a Singapore citizen as required under the CPF Act. For example, for the year 2016, the maximum employer's CPF contribution limit is S\$17,340 for employees age 55 years and below. The NOR cap is also determined based on the total employer contribution to an approved mandatory or a non-mandatory overseas contribution scheme or to both.



## Tax changes

The Inland Revenue Authority of Singapore (IRAS) has now changed the tax treatment to further exclude employees from the NOR concession where the employer's contribution is not charged or recharged to any Singapore entity<sup>2</sup>. The change applies retroactively from 1 January 2014.

According to the IRAS, the rationale for allowing an employee to claim a tax concession under the NOR taxpayer scheme is that the employer is effectively bearing the tax on behalf of the employees by foregoing a corporate tax deduction for the contribution to the overseas pension/provident fund. Therefore, where the expense for the employer's contribution is not borne by the Singapore entity, the employee would not be eligible for the NOR tax concession because there is no actual shift in incidence of taxation from the employee to the employer, notwithstanding no deduction is claimed by the Singapore entity.

## Our comments

Employers in Singapore may wish to consider accepting contribution costs from their overseas parent and/or related companies in order for their NOR employees to qualify for the concession. KPMG has approached the IRAS to re-consider the retroactive application of the change to 2014. The IRAS has advised for the prior YA 2015 and 2016 (i.e. calendar tax years 2014 and 2015 respectively) where the NOR concession has been previously granted, it is prepared to waive the requirement for the employers to file amended tax forms; and thus, no adjustment to the prior years' assessments of the employee is required.

## How we can help

As a committed tax advisor to our clients, we welcome any opportunity to discuss the relevance of the above matters to your business.

<sup>2</sup> <https://www.iras.gov.sg/IRASHome/Quick-Links/Tax-Agents/News-and-Updates/Individual-Income-Tax/>

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