BENEFITS PASSPORT

Updates and Information on International Benefits

BP 2012-06
November 8, 2012

Prepared by *Lynn Dudley, Senior Vice President, Policy*

AMERICAN BENEFITS COUNCIL

AMERICAN BENEFITS INSTITUTE

The American Benefits Institute is the education and research affiliate of the American Benefits Council. The Institute conducts research on both domestic and international employee benefits policy matters to enable public policy officials and other stakeholders make informed decisions. The Institute also serves as a conduit for global companies to share information about retirement, health and compensation plan issues.

FATCA IMPLEMENTATION, TRANSACTIONAL TAX IN EUROPEAN UNION

FATCA IMPLEMENTATION TIMELINES EXTENDED

The IRS has issued Announcement 2012-42, extending several important implementation dates for FATCA.

Previous guidance had established a July 1, 2013, deadline for foreign financial institutions (FFIs, a term that is broad enough to include non-U.S. pension plans) wishing to apply to the IRS for "participating" FFI status – essentially, an agreement to implement internal FATCA procedures in exchange for an exemption from FATCA's 30 percent withholding – to do so. That has now been extended six months to January 1, 2014.

Furthermore, "gross proceeds" withholding on payments subject to FATCA (generally, payments on sales or dispositions of property that produce interest or dividends) has been delayed two years - from January 1, 2015 to January 1, 2017. Withholding on fixed or determinable annual or periodic income (FDAP, *e.g.*, interest and dividends) is still slated to become effective in 2014.

In countries with FATCA Intergovernmental Agreements (IGAs), those FFIs will have additional time to consider whether to comply with the IGA or to seek participating FFI approval. The first IGA with the UK contained fairly broad exemptions for tax-favored employer and individual pension arrangements in the UK. Each country that enters into an IGA will have country-specific pension exemptions negotiated by its government.

For non-US pension plans, particularly those in countries without IGAs, it will be important to continue to monitor the development of the various pension exemptions included in the proposed FATCA regulations issued in February of this year. The final regulations under FATCA are expected to be issued by the end of 2012.

SOME EU COUNTRIES TAKE A STEP CLOSER TO A FINANCIAL TRANSACTIONS TAX

On October 23, 2012, the European Commission ("the Commission") announced that at least eleven member states are moving forward with an initiative to impose a financial transaction tax.

Earlier this year in June, it had been concluded that the European member states would not be able to unanimously agree within a reasonable period on a proposal by the Commission to impose a financial transaction tax, which – as proposed – would be 0.1% on shares and bonds and 0.01% on derivatives.

Subsequently, however, ten Member States, since increased to 11, have formally requested that they be permitted to proceed through a process known as "enhanced cooperation." Enhanced cooperation is when a group of at least nine member states decide that they will move ahead with an initiative proposed by the Commission when it proves impossible to reach unanimous agreement on it. This procedure aims to overcome the situation whereby some Member States are prevented from advancing with a common approach due to the non-agreement of others.

At the present time, the moving States include Italy, Spain, Slovakia, Estonia, France, Germany, Austria, Belgium, Greece, Portugal and Slovenia. The multi-step process that is to follow the signal to move forward will include agreement on design and determination of many questions regarding applicability.

The proposal is expected to be substantially based on the one already put forward by the Commission in September 2011, although the Commission may decide to adjust some elements to reflect the fact that the tax will be implemented by fewer than 27 Member States. The group of Member States taking part in the enhanced cooperation procedure must agree on the proposal unanimously or, with agreement, by a qualified majority (majority vote that includes an element reflecting the size of each country's population). The process would permit states not joining the initiative – expected to include the UK – to not impose the tax.