BENEFITS PASSPORT

Updates and Information on International Benefits

BP 2013-02
February 7, 2013

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.

FINAL FATCA REGULATIONS; PENSION LIABILITIES IN CORPORATE TRANSACTIONS

TREASURY/IRS ISSUE FINAL FATCA REGULATIONS WITH NON-U.S. PENSION FUND EXEMPTIONS

PREPARED BY DAVID POWELL, GROOM LAW GROUP, CHARTERED

On January 28, the U.S. Treasury Department and Internal Revenue Service (IRS) published **final regulations relating to information reporting by foreign financial institutions and withholding on certain payments to foreign financial institutions and other foreign entities under the Foreign Account Tax Compliance Act (FATCA) of 2010**, replacing the proposed regulations issued in February 2012.

FATCA was enacted in 2010 as part of comprehensive efforts by the U.S. government to crack down on concealed financial accounts owned by U.S. taxpayers outside the United States. Under FATCA, Foreign Financial Institutions (FFIs) are subject to U.S. reporting requirements and are subject to the imposition of a 30% tax withholding on most types of investment income for failure to comply.

The principal issue for non-U.S. retirement plans has been that the definition of FFI includes "any non-U.S. entity that holds financial assets for the account of others as a substantial portion of its business" – a definition the United States interprets to include retirement plans. As in the proposed regulations, the final FATCA regulations contain certain specific exemptions for certain types of retirement plans as well as for some retirement accounts and other types of savings accounts.

Generally, the final regulations provide a number of helpful expansions and clarifications to the retirement plan and account exemptions as originally proposed. **A new Benefits Brief summary**, prepared by David W. Powell of Groom Law Group, reviews the final exemptions, describes the important changes from the proposed regulations, and notes the remaining issues and points employer plan sponsors should consider.

CORPORATE TRANSACTIONS MAY CONTAIN HIDDEN PENSION LIABILITIES

PREPARED BY LYNN DUDLEY, SENIOR VICE PRESIDENT, RETIREMENT AND INTERNATIONAL BENEFITS POLICY

Pension liabilities are just one of the many issues to track in any corporate transaction. But a recent case decided by the Supreme Court of British Columbia, Canada is illustrative of the importance of examining pension liabilities in any corporate transaction. This is of particular importance when a company is operating globally, since the rules can vary from country to country.

The case *Kerfoot v. Weyerhaeuser Company Limited* arises out of a corporate sale that involved the transfer of employment from the seller to the buyer. The transfer of employment was treated as a termination of employment, with immediate reemployment in the same jobs with similar wages.

The plaintiffs in the case argued that they were entitled to damages – based on the difference in pension benefits provided by the seller and the buyer, for a reasonable period after notice of termination – since the seller had provided more generous retirement benefits. The decision turned on when and if reasonable notice was given and whether the memorandum provided by the seller was a definitive notice. Ultimately, the court concluded that the notice was not sufficiently definitive to establish notice of termination.

This case is further detailed in a summary issued by Osler, Hoskin & Harcourt LLP.