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NEWSLETTER

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Dr. iur. Bernhard Madörin
Tax and trust expert
Licensed audit expert RAB
Licensed insurance intermediary FINMA

Social security law creates surprise for international employment

Dear Sir or Madam,

The writer, in conjunction with lic. Iur. Marc Borer, Swiss advisor at the tri-national consultancy organisation Infobest Palmrain, felt privileged to be able to host a seminar for the Employer's Association Basel, with the topic "Cross-Border Employment: Social Security and Tax Issues". The seminar attracted a lot of interest, and was thus held twice. This newsletter presents the aspects of social security law, part of which has been taken straight from the seminar (and at the same time serves as reference).

The principle of determination
One country, one pension system. With this principle, the social security system under international relationships has been completely overhauled. The new definition of international social security law is now about a connection under public law.

It looks completely inconspicuous. The following standards apply:
VO (EU) Nr. 883/2004 (SR 0.831.109.268.1)
VO (EU) Nr. 987/2009 (SR 0.831.109.268.11)
plus the Agreement on Free Movement of Persons CH/EU (AFMP) (SR 0.142.112.681).

The aim is coordination, not standardisation. Each country retains structure, nature and extent of its contributions and benefits. Once the relevant country has been determined, all this country's legal regulations about social security law and its system apply. This ordinance replaces existing cross-national agreements between Switzerland and the EU member states. National law is only applied under, and to the proviso of, international law, with international law taking precedence.

The systematic implementation of determination has not yet been fully asserted. Whereas for around 100 years, international agreements have been introduced and applied to avoid double taxation and to retain fiscal sovereignty, it is a completely new issue for social insurances. Major issues only then arise if, for example, a large company with several thousand employees begins to notice that about 15% of its staff (e.g. 20% of cross-border commuters with a home office) are not subject to Switzerland's, but to France's Social Security law.

Normal case "cross-border commuter"
Citizens of Switzerland or citizens of an EU member state that are only gainfully employed in one country are subject to the social security system of this very country (principle of submitting to place of employment), as previously. A classic example: a cross-border commuter living in France and working in Basel pays contributions, via his or her Swiss employer, into the Swiss social insurance system (OASI, OPA, UI, AI). The Swiss employer pays those contributions to the relevant funds and organisations. This case remains unaffected.

25%-rule
The term "place of employment" is defined as the place where activity actually takes place, "where work is actually and physically carried out." As a consequence, work that is carried out from home (home office) is carried out at the country of residence, irrespective of where the employer is domiciled or of work law resulting from the employment. This can create problems as the following examples show.

One field of controversy is multiple employment. Citizens of either Switzerland or an EU member state working simultaneously in several countries are as a principle subject to the social security systems of the country in which they are domiciled. This allocation applies to all employment relationships except where work within the country of residence is less than 25%. Thus if a French cross-border commuter is employed in Switzerland but is allowed to work from his or her home office once a week and also visits French customers on 4 days per month, then this surpasses 25%, and he or she is subject to the French social security system. As our example shows this can happen rather quickly.

Further regulations of allocation
Citizens of Switzerland or of an EU member state who carry out work under employment and on a self-employed basis at the same time in different states (Switzerland and EU) are subject to the regulations of that country in which this person is carrying out work under an employment contract.

Citizens of Switzerland or of an EU member state that are working for several employers, of which at least two are domiciled in different countries (Switzerland and the EU) outside the country of residence are subject to the social security regulations of their country of residence, even though they only carry out a negligible amount of work there.

A few practical cases:

- 80% employment in CH + 1 day per week working in country of residence, one day corresponds to 20%, thus country where employer is domiciled.
- 60% employment in CH + 1-2 day per week working in country of residence, corresponds to more than 25%, thus country of residence.
- 50% employment in CH + 50% self-employed in country of residence, employment has priority, hence country of employment.
- 20% employment in CH + 80% self-employed in country of residence, employment has priority, hence country of employment.
- 50% employment in CH + 50% in Germant, person lives in France, clarification of allocation required.
- FT employment in CH, of which 2 day per week at home office outside CH, those two days correspond to more than 25%, thus country of residence.

Confrontations and overlaps
Negligible secondary employment (below 5% of overall work, or less than two hours per week) will not be considered. However, this has been common practice, not a legal requirement, thus confrontations about allocation are possible.

Should an employer be subject to the insurance system of the country of residence, then all social contributions should not be submitted to the Swiss compensation office but to the relevant institution in the country of residence of the employee.
Attention: the social security legislation of the country of residence applies (form, amount).
Get in touch with Contact Abroad (AG).
Germany: statutory health insurance (office for corporate clients)
France: URSSAF (www.urssaf.fr)

Herein lie the difficulties of this regulation. Whereas most of the European social insurances have higher percentage margins than Switzerland, they also have an upper limit at 60-70'000 EUR; on the other hand, Swiss social insurances, in particular OASI, know no upper limit. According to Germany's social security law, a self-employed German businessman or -woman is not subject to social insurance, and thus needs to organise his or her own provisions. However, if he or she is actively involved as a member of the board in Switzerland, then he or she will be subject to social insurance in Switzerland. Although this person is considered employed at his or her own company, Germany will classify this activity as self-employment. Switzerland will adapt this classification and send an invoice for social security contributions based on gross income. This could then become a rather expensive matter.

No protection with contract specifications
Employment contracts may stipulate that employers need to register any additional work activities; however, this changes public law specifications in no way whatsoever. Thus if anybody has an 80% employment for a Swiss company, while it turns out that this employee also helps out in his brother's restaurant across the border on Saturdays and Sundays, then a conflict arises.

Conclusion
The connection between international social insurances is a rather complex process. Early and careful planning will help simplify matters considerably, and will also help to avoid unpleasant surprises.

Kind regards
artax Fide Consult AG

Member of Morison KSi

Gartenstrasse 95, Postfach, 4002 Basel
Tel: +41 61 225 66 66, Fax: +41 61 225 66 67
info@artax.ch, www.artax.ch