

U.S. PENSION PLANNING FOR INTERNATIONAL ASSIGNEES

INTERNATIONAL WEALTH PLANNERS - CUSCO CONFERENCE
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Global Mobility Issues

- ▶ Rapid globalization of business
- ▶ Retirement savings important issue
- ▶ Home & host country eligibility



Concerns for International Assignees

- ▶ Reduced benefits at retirement
- ▶ Loss of social security coverage
- ▶ Risk of double taxation
- ▶ Portability of pension funds
- ▶ Minimize income tax liability



Human Resource Challenges

- ▶ Attract / retain global talent
- ▶ Retirement solutions demanded
- ▶ Minimize tax reimbursement costs
- ▶ Ensure international compliance



International Tax Issues

- ▶ U.S. taxation of foreign pension plan
- ▶ Foreign taxation of U.S. pension plan
- ▶ Income and social security taxes
- ▶ Taxation of distributions



U.S. Pension Plans

- ▶ Defined contribution plans
- ▶ Defined benefit plans
- ▶ Individual retirement plans
- ▶ “Qualified” employer plans
- ▶ Non-qualified employer plans



U.S. Pension Plans

- ▶ IRA \$5,500/\$6,500
- ▶ Roth IRA \$5,500/\$6,500 (if eligible)
- ▶ Employer 401(k) contributory plans \$17,500/\$23,000
- ▶ Self-employed plan \$52,000 (2014)
- ▶ Maximum salary for contributions \$260,000
- ▶ Defined benefit plans



U.S. Pension Plans

- ▶ Early distribution penalty 10% before 59 $\frac{1}{2}$ years
- ▶ Exceptions for hardship/medical/home purchase
- ▶ Required distributions at 70 $\frac{1}{2}$ years
- ▶ Tax-free roll-overs within U.S. plans allowed
- ▶ Cannot be transferred to foreign plan



Foreign Pension Plans

- ▶ Generally not a “qualified” plan
- ▶ Employer contributions taxable
- ▶ Employee contributions not deductible
- ▶ Annual earnings subject to U.S. tax
- ▶ Fund reportable (FBAR, 3520, 8938)



CANADA	CAD	0.9512	0.8883
CHINA	CNY	7.3169	6.0910
EURO	EUR	0.6644	0.6100
JAPAN	JPY	109.00	102.00
SINGAPORE	SGD	1.3712	1.2630
HONG KONG	HKD	7.0043	6.4072
NEW ZEALAND	NZD	1.1646	1.0675
MALAYSIA	MYR	3.2536	2.7818

U.S. Taxation of Foreign Pension Plans

- ▶ IRC sec. 402(b) applies to non-qualified funded plans
- ▶ Contributions taxable under IRC sec. 83
- ▶ Highly compensated employees - contributions and earnings taxable
- ▶ IRC sec. 409A
- ▶ Rev. Rul. 2007-48



U.S. Taxation of Foreign Pension Plans

- ▶ Earnings may be taxable
- ▶ Contributions to foreign plan not deductible
- ▶ Employer contributions may be taxable
- ▶ U.S. grantor trust rules applicable



Social Security Issues

- ▶ Contributions to home & host country systems required
- ▶ U.S. FICA applicable to foreign nationals
- ▶ Privatized social security (ex., Mexico - Afore)
- ▶ Totalization agreements



U.S. Pension & Benefit Plans

- ▶ U.S. employees seconded (“loaned”) to foreign affiliate
- ▶ Disqualification of U.S. plan
- ▶ Transfer to foreign affiliate not considered termination



Foreign Taxation of U.S. Pension Plans

- ▶ Employee contributions not deductible
- ▶ U.S. employer plans generally not subject to foreign tax
- ▶ U.S. retirement savings plans (IRA) may be taxable



Taxation of Distributions

- ▶ Roll-over from foreign pension plan to U.S. plan not permitted
- ▶ Roll-over of foreign plan may be taxable
- ▶ United Kingdom - “QROPS” distribution/roll-over
- ▶ Treaty exceptions



Tax Treaty Exceptions

- ▶ Contributions to pension plans may be deductible
- ▶ Tax deferral of earnings
- ▶ Home country participation requirements must be met
- ▶ Distributions may be taxable only in resident country



Tax Treaty Exceptions

- ▶ Totalization agreement may provide exemption and allow benefits
- ▶ Canada - RRSPs tax deferral election
- ▶ United Kingdom - Deductibility of contributions & qualified treatment
- ▶ Australian Superannuation Funds - No treaty exception



Pension and Tax Planning Considerations

- ▶ Review current pension plan participation
- ▶ Consider International Assignee tax policy
- ▶ Evaluate deferred compensation and other incentive plans



Pension and Tax Planning Considerations

- ▶ Continued home country participation may be preferable
- ▶ Freeze participation until repatriation
- ▶ Replaced benefits may be considered taxable wages



U.S. Tax Compliance Issues

Action Plan

- ▶ Determine if any contributions have been made to the plan
- ▶ Is the taxpayer fully vested in the plan?
- ▶ Is the plan mandated under foreign social security rules?
- ▶ Agreements or any documentation governing a foreign retirement or deferred compensation plan should be reviewed.



U.S. Reporting Requirements

- ▶ FBAR - Financial interest in contributory plans must be reported
- ▶ Form 8938 - Foreign pension plans are reportable foreign financial asset
- ▶ Form 8891 - Canadian RRSP
- ▶ Form 3520 & 3520A - Required for foreign private pension plan
- ▶ Form W8-BEN - Required for foreign recipient of U.S. pension distribution
- ▶ Form 1042-S - Required for foreign recipient of U.S. pension distribution

TD F 90-22.1		REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS	
<small>(Rev. October 2008) Department of the Treasury Do not use previous editions of this form after December 31, 2008.</small>		<small>Do NOT file with your Federal Tax Return</small>	
Part I Filer Information			
2 Type of Filer			
a <input type="checkbox"/> Individual b <input type="checkbox"/> Partnership c <input type="checkbox"/> Corporation d <input type="checkbox"/> Consolidated e <input type="checkbox"/> Fiduciary or Other			
3 U.S. Taxpayer Identification Number		4 Foreign Identification (Complete only if item 3 is not applicable.)	
If filer has no U.S. Identification Number complete item 4.		a Type: <input type="checkbox"/> Passport <input type="checkbox"/> Other	
6 Last Name or Organization Name		b Number	c Country of Issue
		7 First Name	
9 Address (Number, Street, and Apt. or Suite No.)			
10 City		11 State	12 Zip/Postal Code

Case Study #1

A UK company is planning to transfer 5 UK employees to the US subsidiary located in New York. Maintaining UK benefits for the assignees is preferred. How can the assignment be structured to maintain UK benefits? What are the tax implications for the assignees?

- ▶ Loan (second) UK employees to US subsidiary
- ▶ Maintain UK pension and benefits due to continued UK employment
- ▶ Maintain UK social security coverage (NIC) US FICA exemption under totalization agreement
- ▶ Tax Treaty -employee contributions deductible up to 401(k) limit
- ▶ Form 8938 may be required to report foreign retirement funds

Case Study #2

A Brazilian company is planning to transfer 5 US employees to a U.S. subsidiary located in New York. What are the tax implications for the assignees?

- ▶ Localize or employ Brazilian assignees with U.S. subsidiary
- ▶ US pensions participation may be chosen
- ▶ US social security coverage is required
- ▶ Freeze Brazilian pension / social security contributions
- ▶ Earnings in Brazilian pension plan taxable
- ▶ Brazilian pension plan reportable (IRS Forms 8938/FBAR/3520)



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