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NEWSLETTER

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International Social Security Law

Dear Sir or Madam

In 1948 Switzerland introduced the Old Age and Survivors' Insurance (AHV) to cover the basic level of subsistence, once earned income has come to an end, due to either retirement or the passing away of the provider. At the time the rate of contribution, for both employer and employee, was set at 2% of salary earned, and as the sole social security contribution.

Today's social security contribution system is a complex matter, and it is continually growing. For a long time the Swiss social security law was isolated and stood alone, double indemnities on an international level hardly existed. However, once the bilateral agreement had been introduced, the situation changed. The aim is an employer's unitary registration in one country. Conflict rules assign sovereignty to one country. The distinctive features of the Swiss social security system, however, have led to considerable issues due to competition with foreign systems. The focus of this newsletter will be on compulsory social security contributions.

Social security law abroad

When it comes to solidarity and compulsion, social security systems abroad have an upper salary limit of around EUR 60'000-80'000. Up to this level compulsory social security insurances exist, but not beyond it. As a consequence, with regard to simple cases, very often only one country is responsible, and when it comes to higher incomes with international connections conflicts and possible double indemnities are limited to moderate amounts of income. On top of that the sometimes rather high percentage rates are limited in a similar manner.

The second distinctive feature is the fact that being self-employed is differently defined economically in many countries: The sole shareholder

and simultaneously only wage earner of a corporation will be registered as self-employed. In this category no social security contributions are paid, and it is up to the owner/earner to take care of insurances and pension plans.

Unlimited social security insurance in Switzerland

In contrast to this economic perspective the definition in Switzerland, on the one hand, stipulates a formalised connection: The status of someone who is self-employed is not defined economically and as a consequence he or she is subject to compulsory AHV contributions. On the other hand, an unlimited basis of assessment for social security contributions exists.

As far as AHV is concerned the maximum pension contribution is CHF 84'240, anything above this does not lead to a higher pension, and has thus to be regarded as pure tax.

When it comes to unemployment insurance the benefit building income is CHF 126'000. Any income above that does not lead to higher benefits and can thus be regarded as pure tax as well. Additionally, an owner of an SME who is both a member of the board of directors and an employee is excluded from benefitting from unemployment insurance, as according to practice of the Unemployment Insurance Act his or her position is defined as "characteristic of that of an employer with significant influence on decisions regarding the business", which also means that from an economical perspective he or she is defined as being self-employed. Thus premiums are paid without being entitled to benefits.

Anyone who receives a salary from his own corporation is an employee. For a long time salaries had been limited by the tax authorities in a manner that it led to a intended double taxation of company and shareholder, with an economic perspective as justification: A salary cannot be too high, and a company has to make a profit. As a result of privileged taxation of dividends, introduced by the Business Tax Reform Act II, it has become increasingly attractive to have profits distributed instead of having salaries paid out. The economic perspective of the tax authorities means that a company's profit is not allowed to be too high, and the company has to pay a minimum salary to the owner. With an annual salary of CHF 300'000 and a legally compulsory social security contribution of around 14% (regardless of Occupational Pensions Act, OPA), only 5% is actually an insurance premium, the rest is a solidarity contribution, or, to put it more simply, tax.

International conflict rules

While sovereignty in matters of tax law has been divided and hence different countries having the right to taxation, when it comes to social security law a unitary solution at state level is desired. Thus if ever possible one state should be the sole social security agency. As a consequence the primacy of the principle that Swiss employers are Swiss

social security providers has ceased to exist. The most important conflict rules are illustrated here:

Employment on Payroll

In case of paid employment in just one country, the principle of place of work is applied, i.e. an employee is insured in the country where he works.

However, once employees work in several countries, the principle of main place of residence comes into effect. This stipulates that employees are subject to the social security system of their country of residence, should they also work there.

Specific regulations apply where only an insignificant part of paid employment is performed in the country of residence.

Self-employment

The principle of place of employment is applied for work performed by someone self-employed. Should place of residence and place of work be identical, the regulations of the place of residence come into effect.

In cases where several similar jobs are performed, the principle of place of residence is applied if an essential part of this gainful occupation by someone self-employed is performed at the place of residence. Where only an insignificant part is performed at the place of residence, the principle of place of work applies.

Special rules apply if several different jobs are performed, i.e. if someone works both as an employee and does work on a self-employed basis.

Issues arising from conflict rules

A German lawyer, who is self-employed in Germany, has been elected as member of the board of directors of a Swiss company. His entire income is now, without restrictions, subject to Swiss sovereignty in matters of social security, as the gainful employment (outside self-employment) takes precedence and the principle of place of work applies.

A German business owner has been elected as member of the board of directors of a Swiss company. His entire income is now, without restrictions, subject to Swiss sovereignty in matters of social security, as he is considered an employee in Switzerland. Although an employee of his own companies, he pays contributions as someone self-employed according to German law. Switzerland assumes this qualification and applies its social security system on his entire income.

An employee living in France works in Switzerland. This cross-border commuter takes on a holiday job in France, and his French employer issues a salary certificate for over EUR 200. As the principle of place of

residence is then applied, his entire salary has now become subject to French social security contributions, and his Swiss employer has to take steps accordingly.

Conclusion

Employers in Switzerland need to introduce control mechanisms and to review international social security system connections as they could be facing challenges in the form of serious alterations lying ahead of them.

artax Fide Consult AG is part of an international network of partners, and we also support our clients when they face problems arising out of international social security issues.

Best regards

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