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NEWSLETTER

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Swiss pension funds, viewed from a German fiscal angle

Dear Sir or Madam,

This guest newsletter was written by a member of our Morison KSi partner, Riedlinger Partnergesellschaft in Freiburg.

In 2015 Germany's highest finance court (Bundesfinanzhof, BFH) turned on its head both the fiscal treatment of Swiss pension funds and a practice by the German financial administration that had lasted almost 10 years. This complete turnaround affects both contributions to Swiss pension funds and benefits drawn from them. Here is a short overview.

The previous practice
From 2005 onward, the German financial administration had classified Swiss pension funds along the lines of the statutory German pension insurance. 72% of a pension payment to a taxpayer entering into retirement in 2016 is liable to tax. Anyone who stops working in 2030 will draw a pension with 90% of it subject to tax. All pension beneficiaries from 2040 onwards draw a pension that is liable to tax at 100%.

Cross-border commuters still in employment can deduct contribution payments from taxes as expenses of a provident nature. The employer's contribution is tax-free salary up to half of the overall contribution. In Switzerland, employers in certain industries contribute considerably more than the mathematical half of the overall contribution (up to 80%). The difference between this and the actual half thus becomes additional salary liable to tax.

BFH decision in 2015
Ten years later the BFH has partly disagreed with this practice. Swiss pension funds and their benefits would be a quasi-hybrid between a statutory insurance and one that falls fully under private law. The allocation (of the contribution) would be subject to Swiss law (BVG). Only the compulsory part (the statutory contribution) corresponds to a statutory German pension insurance. The "part beyond the compulsory part" would be voluntary contributions and would thus be treated as payment into private endowment/ pension insurance. The separation is compulsory for cross-border commuters as of 2016 and must be submitted to the tax authority.

What are the effects?
A pension beneficiary domiciled in Germany will feel positive effects: his or her pension will be split from a fiscal point of view, he or she will only have to pay tax on the compulsory part. A 65-year-old pensioner starting retirement in 2016 will draw, let's say, a pension of EUR 10'000 which so far was tax-free up to EUR 2'800. Assuming a "compulsory part" of, for example, 50%, now all of a sudden EUR 5'500 will be tax-free after this decision!

Even more positive are the effects for one-off payments of capital benefits. (Only) the voluntary, "beyond compulsory" part of a capital benefit of EUR 100'000 (thus in our example EUR 50'000) can be either fully tax-free or only partially taxed under certain conditions. When it comes to cross-border payouts of pensions or capital benefits by Swiss pension funds, withholding tax can, where applicable, be retained in Switzerland – on request, this will subsequently be paid out. However, this (subsequent pay-out) does not apply for payments from pension funds within the public sector (i.e. for public sector employees), and Germany, based on different interpretation of the double taxation agreement, does not automatically credit the Swiss withholding tax (potentially possible on request in Baden-Württemberg).

This is inconvenient for employees currently working in Switzerland, particularly cross-border commuters, as potential deductions for expenses of a provident nature are reduced considerably (in our example only 50% of contributions, the mandatory part). Any contributions beyond this will have no fiscally beneficial effect. Besides, the additional salary liable to tax will go up as the voluntary employer's contribution (supplementary portion) has increased. For an individual, this could amount to several thousand EUR.

Tax scenarios? Imperative to call on a tax consultant?
Particularly with high capital payments from the "supplementary portion", Germany could develop into an interesting alternative (for the Swiss as well) within the framework of the bilateral pension planning if, for example, you can benefit from full tax exemption for payments of capital benefits. Even a future beneficiary of a pension can expect a higher part of his or her pension to be tax-free than previously. In view of the complexity of the issue it is recommended, for anticipatory pension planning, that one should seek advice from a tax consultant on both sides of the border.

For further questions both Ms Dagmar Kluge (dagmar.kluge@riedlinger-partner.de, Tel. +49 (0) 761 388 770) and the entire artax team will be at your disposal.

Kind regards
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