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GES NewsFlash

United States — Year-end considerations for U.S. assignees

December 6, 2012

Several changes to U.S. tax law will take effect starting in 2013, and several others may take effect, depending on whether legislation is approved before the end of the year. As a result, it is likely that many U.S. taxpayers will face an increase in tax liabilities beginning January 1, 2013. In addition, as discussed below, these changes could impact U.S. assignees, particularly as it affects the calculation of their hypothetical tax liabilities arising under their employer’s tax equalization programs.

The following is a summary of some of the specific provisions that will or could change.

Affordable care act

As a result of the health care legislation that was passed by Congress in 2010, new taxes will take effect beginning January 1, 2013. These include a net investment income tax and an additional Medicare tax. Both of these will affect U.S. taxpayers who have income above certain threshold amounts.

Net investment income tax

A 3.8 percent tax will apply on net unearned investment income (e.g., interest, dividends, annuities) for individuals with modified adjusted gross income (MAGI) above certain thresholds. These thresholds are $250,000 for a married couple filing a joint tax return, $125,000 for a married couple filing separate tax returns, or $200,000 in any other case. This tax will be assessed on the tax return of U.S. citizens and U.S. residents, but it will not apply to nonresident aliens of the United States.

Additional Medicare tax

A 0.9 percent tax will be assessed on earned income in excess of the thresholds mentioned above. Employers will have an obligation to withhold this additional tax for any employee whose wages exceed $200,000, regardless of the filing status of that individual. The tax will then be reconciled on the actual tax return to determine if the individual met or exceeded the applicable threshold, based on the actual filing status. If too much tax was withheld, the excess will be refunded. If too little was withheld, an additional payment will be required.

Unlike the current Medicare liability, this tax will only apply to the employee, not to the employer. However, as noted, the employer will have an obligation to withhold this tax. This tax will apply for any employee who is otherwise subject to U.S. Federal Insurance Contributions Act (FICA) obligations, including nonresident aliens covered by the U.S. social security program. Employees on assignment in the United States who are exempt from U.S. social security tax due to a totalization agreement between the United States and their home country will also be exempt from this additional Medicare tax.

Deloitte's view

These taxes have already been enacted and will take effect on January 1, 2013. Employees will need to consider the potential increase in tax burden related to both of these taxes, and employers will need to determine that their payroll processes are in place to implement the additional Medicare tax withholding.

Employers should also consider the potential tax equalization effect of these taxes on their overall costs. An employee who would not be above the MAGI thresholds based on stay-at-home pay would not be subject to these additional taxes for hypothetical tax purposes, but as a result of global mobility allowances, may exceed the applicable threshold and be subject to these taxes for actual purposes. Under a typical tax equalization policy, where the employer is responsible for actual taxes in exchange for the employee paying a hypothetical tax, the employer would be responsible for these additional taxes. Employers should plan for how they will budget for these costs.

The effect of the "fiscal cliff" and other tax matters

Change to ordinary and capital gains tax rates

Under current law, tax rates in the United States are due to expire on December 31, 2012, if no action is taken by Congress and the President by then. For 2012, tax rates range from 10 percent to 35 percent for all taxpayers, depending on taxable income levels and filing status. In addition, the current maximum tax rate on long-term capital gains and qualified dividends is 15 percent.

If these rates do expire, current law provides that tax rates will increase to a range of 15% to 39.6 percent for ordinary income, and to 20 percent for long-term capital gains. In addition, qualified dividends will again be taxed as ordinary income with no preferential tax rate.

Payroll tax holiday

For 2011 and 2012, a payroll tax holiday was enacted which lowered the social security portion of U.S. FICA taxes from 6.2 percent to 4.2 percent on all income up to the social security threshold amount ($106,800 in 2011, $110,100 in 2012). This provision is set to expire on December 31, 2012, absent further legislation to extend it. Accordingly, all employees should be prepared for a potential increase of 2 percent in their social security taxes beginning in 2013.

Alternative minimum tax

In prior years, Congress has continued to increase the alternative minimum tax (AMT) exemption amount to protect middle-income taxpayers from being subject to the AMT. For 2011, the AMT exemption amount was $48,450 for single taxpayers and $74,450 for married taxpayers filing jointly. If Congress does not act by December 31, 2012, the AMT exemption amount will decrease to $33,750 for single and $45,000 for married filing jointly, retroactive to January 1, 2012.

If this lower exemption applies, it is anticipated that more than 28 million additional taxpayers will be subject to the AMT and, therefore, will incur an increased tax liability. Accordingly, all taxpayers will need to be vigilant about calculating their tax under both the regular and AMT approach when they prepare their 2012 U.S. returns.

Deloitte's view

The changes described above will only occur if Congress and the President do not reach agreement on these matters. Many news reports have detailed the "fiscal cliff" that is facing our country, and significant negotiations are ongoing in Congress to address these concerns. At this point in time, no one is certain what the outcome of these negotiations will be, so all taxpayers should prepare themselves for these possibilities.

In addition, all of these changes could affect the hypothetical tax liabilities of international assignees. As a result, employers should carefully review the hypothetical tax withholding calculations for their assignees to determine that sufficient taxes are being withheld in 2013 and consider projecting 2012 liabilities in the event there are additional AMT liabilities that will be due with the tax equalization settlement.

People to contact

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