Canada-U.S.A. Cross-Border Transfers – Taxation and Coverage Issues

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Canada – U.S. Treaty Changes

- amended in 2007
- changes effective January 1, 2009
- remove barriers to the flow of personal services
- address short-term assignments and commuters
- U.S. citizens participating in Canadian plans

Taxation of Pension Payments

- “pension” includes RRSPs, RRIFs, IRAs
- does not include income-averaging annuity contracts or social security benefits
- now includes Roth IRAs (US)

Taxation of Benefit Accruals

- before amendment, could elect to defer tax on income but not contributions or accrued benefits

Taxation of Benefit Accruals

- accrued benefits under tax-exempt plan of one country will not be taxed in the other country
- Protocol clarifies that an election to defer taxation is not dependent on specific rules in the resident country
- beware additional contributions made to Roth IRA while resident in Canada

Deduction of Pension Contributions

- prior to amendments, an employee working in one country could not deduct contributions made to a plan in the other country

Deduction of Pension Contributions

- Short-term assignments:
  - Protocol now permits deduction of home country plan contributions during a short-term assignment
  - e.g. U.S. employee sent to Canada for 2 year project continues to participate in U.S. qualified plan

Deduction of Pension Contributions

- short-term assignment is no more than 60 of the previous 120 months
- services in host country must be for same employer
- contributions and benefits must be attributable to services performed in the host country, and made and accrued during that period
- no double dipping (i.e. accruing benefits in host country while also accruing benefits in home country)

Deduction of Pension Contributions

- Commuters
  - employee who lives in one country but works in the other and participates in the other's plan
  - e.g. lives in Windsor but works in Detroit and participates in U.S. 401(k)
  - now employee can deduct contributions to 401(k) from Canadian tax
  - subject to tax limits of country of residence

Deduction of Pension Contributions

- U.S. Citizens resident and employed in Canada
  - contributions to a Canadian qualifying retirement plan will be deductible in computing U.S. taxes
  - limits ability to contribute to an IRA

Deduction of Pension Contributions

- employers may also be able to deduct contributions made to plan

Planning Issues

- considerations depend on:
  - length of transfer/nature of assignment
  - who is the employer
  - residence of employee
  - nature of retirement plan
  - citizenship
- also, social security and health coverage

Excluded Plans

- new treatment only applies to a "qualifying retirement plan"
- IRAs, individual RRSPs, RCAs are excluded

Included Plans

- RPPs, Group RRSPs, DPSPs, and RRSPs and RRIFs funded with a rollover from one of the foregoing

Included Plans

- qualified plans under 401(a) (including 401(k) plans)
- individual plans that are part of a simplified employee pension plan under 408(k)
- 408(p) simple retirement plan accounts
- 403(a) qualified annuity plans
- 403(b) plans
- 457(g) trusts providing benefits under 457(b)
- Thrift Savings Fund under 7701(j)
- IRAs funded with a rollover from the above

Stock Options

- sourcing rule
  - option granted in one country, exercised while working in the other
- prior to Protocol, no apportionment rule
  - double taxation possible
- Protocol permits income from exercising option to be apportioned between the countries
  - proportionate based on days of employment

Treaty Issues

- cross-border work problems
  - e.g. sports, entertainment and construction industries
  - contributions
  - regulatory differences e.g. vesting
  - dual qualified plans
  - unfunded/top-up plans
  - annuity purchases

Treaty Issues

- non-qualified plans vs. qualified plans – definition issues
- IRAs
- election forms – timing
- withholding taxes and foreign tax credits