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Trends and developments

Employee Benefit Trusts and International Pension Solutions

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Introduction

Employee benefit trusts and retirement solutions for globally mobile employees[1] are becoming more important and complex, as not only the number of relocated employees grew considerably over the last years, but even more the different types of assignments gained weight.

Traditionally, employees have been sent for a predetermined period to one specific host country and then returned to the home country again (which was normally the company's headquarters country). An example for this traditional model looks as follows: A multinational company with headquarters in Switzerland delegates a Swiss employee for 2 years to China. After 2 years, the expatriate returns to Switzerland and continues working in the headquarters office as a local employee.

But as multinational companies become more global, with headquarters having an increasingly smaller percentage of the total employee population, employees are now moving around globally with no clear home or host country. For example, the same multinational company (headquarters in Switzerland) transfers an Indian IT expert, employed by the Russian subsidary, to the branch office in the United States. He should help finishing an IT project in the United States (which shouldn't last longer than 1 year) and then move to the subsidiary in Brasil for a new assignment with a time frame of 2 years. This person is a real global nomade and the type of assignment for this group of employees is completely different from the first, traditional model.

Retirement benefits–traditional assignments

For traditional assignments (as described above in the first example), the 'classical' approach to dealing with expatriates normally is applicable. This is to maintain participation of those employees *within the home country retirement plan* when they are sent on assignment. To this day, a large number of multinational companies base their employee benefit policy for expatriates on this 'One-size-fits-all' approach.

For example, a US company will often use the US plan as a retirement arrangement for its international assignees (it is important to check compliance with cross-border legislation). In countries such as UK, Australia, Switzerland, Ireland, the Netherlands and the US participation for expatriates in their retirement plans is common, although it is not always tax-effective in the host country.

If a social security agreement exists between the home and host country, most employers will take this into consideration, i.e. if it is possible the employee can be maintained in the home country social security system.

If participation in a home country plan is not possible any longer (or, even if it were possible, it would not make sense to do so), the *host country pension plan* is another suitable solution. This is the

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1. Other terms used in this context are: expatriates; third country nationals; international assignees; global nomads

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second most common approach as it is a desirable option for tax reasons, particularly where the host country operates an attractive portable pension system.

But due to the above described more international expat policy of an increasing number of multinational companies (resulting in assignements like in the second example with the IT expert) both home and/or home country pension plans are either not possible any longer or definitely not in favour of the employee.

International Pension Schemes and Employee Benefit Trusts

Therefore *international retirement plans* became more and more important over the last years, and will gain even more weight in the future.

To establish one international pension plan for all kind of highly mobile employees who do not fit in one of the traditional models, can also lead to substantial cost savings. Operating only one plan is easier and less labour intensive for all parties involved (Corporate HR director, HR director of local subsidiary, employee) as it removes a duplication in processes.

It also means that pension provision continues uninterrupted when an assignee moves countries, whereas transfers from a domestic plan in one country to one in another country often is both costly and time-consuming,

Consequently, an international retirement plan makes particular sense where employees are globally mobile and may be working in a country for only a few years (like in our example). It is difficult to ensure a long-term saving goal if accrued benefits remain locked after the departure of an expatriate.

Examples of employees who can benefit from an international pension solution:

- Employees who have no obvious home country and who are not in a host country long enough to gain meaningful retirement benefits
- Local expatriate hires in locations where there is no established practice of providing local retirement benefits (for example, some countries in Africa)
- Employees who cannot maintain participation in a home country plan and whose host country has no benefit arrangement.

Such international pension plans are generally based in an offshore jurisdiction. Before an HR director rushes ahead and starts implementing an international pension scheme some issues have to be taken into consideration.

Which jurisdictions are most suitable for international retirement plans? Where the plan is located is a choice of law (trust, foundation, etc.) and regulation (security, asset protection), availability of qualified staff and professional services. But also IT capabilities (how easy is it for the expat to follow the evolution of his saving plan), name recognition and familiarity (for both the employer and employee) are important elements for this decision.

Most international pension schemes are domiciled in one of the following offshore locations: Luxembourg, Isle of Man, Bermuda, Guernsey, Cayman Islands, Liechtenstein.

Another important question to be answered is whether the international pension plan requires guarantees or whether it should be exclusively performance-orientated? In the first case the provider will be, as a general rule, an insurance company whereas performance-based plans are offered by almost the entire financial services industry.

Linked to this question the employer also has to decide whether he wants to create its own legal vehicle to accommodate the pension plan or whether he will use a master trust (or collective foundation) of another service provider.

In both cases an offshore *employee benefit trust* (EBT) can be the most attractive and flexible vehicle for both the employer and his international mobile employees. That is to say, the trust will be subject to little or no taxation if the trustees, the settlor and the beneficiaries of the trust are resident elsewhere to the jurisdiction in which the trust is held. An offshore EBT is considered as one of the most interesting tax planning solutions for expatriates.

Summary

There is a wide choice of solutions, providers and funding options available on the market for international pension solutions. This makes the situation very difficult. Therefore a thorough breakdown of the whole situation is a clear must before rushing ahead in this complex subject. Even after having chosen an international pension plan with a specific provider, the whole project requires ongoing re-evaluation.