HR and tax alert

India

Social Security Agreement signed between India and Japan

Executive summary
The Social Security Totalization Agreement (the Agreement) between India and Japan was signed on 16 November 2012. Although not yet officially confirmed the agreement is expected to come into force in 2013.

Key features of the Agreement between India and Japan

1. **Benefits covered**
The Agreement applies to the following:
   - **India** – Employee’s Provident Funds Scheme, 1952 (Provident Funds Scheme); Employee’s Pension Scheme, 1995 (Pension Scheme); and Employee’s Deposit-Linked Insurance Scheme, 1976.
   - **Japan** – the National Pension (except the National Pension Fund); the Employee's Pension Insurance (except the Employee's Pension Fund); the Mutual Aid Pension for National Public Officials; the Mutual Aid Pension for Local Public Officials and Personnel of Similar Status (except the pension system for members of local assemblies); and the Mutual Aid Pension for Private School Personnel.

2. **Certificates of Coverage**
   Once the agreement comes into force, subject to certain conditions, assigned employees will be able to obtain a Certificate of Coverage valid for a period of up to five years. This coverage may be extended for more than five years with the mutual consent of the competent authorities of both countries.

Japanese employees assigned to India with a Certificate of Coverage will not be required to make social security contributions (Provident Fund contributions) under Indian law, provided they continue to make social security contributions in Japan.

Indian employees assigned to Japan with a Certificate of Coverage, will be exempt from Japanese social security contributions.

3. **Export of benefits**
   - Any legislation of either country (India / Japan) which restricts entitlement to benefits solely because the individual ordinarily resides outside of that country shall not be applicable if that individual ordinarily resides in the other country. For example, any provision in the Japanese social security legislation which restricts payment of benefits solely because the individual lives outside Japan will not apply to an Indian employee who has contributed to Japanese social security and is living in India when he becomes entitled to the Japanese benefits.
   - Benefits under the legislation of one country shall be paid to nationals of the other country who ordinarily reside in the territory of a third country, under the same conditions as if they were nationals of the first country. For example, benefits applicable under the Japanese social security legislation shall be paid to Indian nationals who reside in a third country under the same conditions as if they are Japanese nationals.
Payments of benefits under the Agreement to beneficiaries who reside in the territory of the other country will be made in freely convertible currencies. If provisions for restricting the exchange of currencies or remittances are introduced by either country, the Governments of both countries shall immediately consult on the measures necessary to ensure that benefits are paid.

4. Totalization of periods of coverage
The period of contribution in one country (India / Japan) will be added to the period of contribution in the other country for determining the eligibility of benefits.

5. Payment of lump-sum benefits in India:

- An individual is entitled to withdraw the full amount of their credit under the Provident Funds Scheme on completion of assignment with an Indian entity. This will include individuals that have ended their assignment prior to the Agreement becoming active and so, based on current guidance from the Indian Ministry, it is imperative that companies keep track of all employees coming into India.
- An individual is entitled to a withdrawal benefit under the Pension Scheme if they do not meet the requirement of eligible services for a monthly members pension. The totalization benefit as provided in the Agreement is included in this requirement of eligible services. For example, if an employee’s aggregate service in India and Japan is less than 10 years (eligible service for entitlement to annuity benefit under the Pension Scheme), the employee will be entitled to a lump-sum benefit under the Pension Scheme.

Next steps
Companies who have employees seconded between India and Japan should review how the Agreement will affect future liabilities and employment costs. It is essential that all employers review their assignment structures to be able to maximise benefits under the Agreement.

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