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GMS Flash Alert

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Singapore – Not Ordinarily Resident Taxpayers and Exemption on Certain Pension Contributions

With a change announced in October, more Singapore "Not Ordinarily Resident" taxpayers may qualify for the tax exemption in respect of employers' contributions to overseas pensions or provident funds under the Not Ordinarily Resident (NOR) taxpayer scheme. Prior to the change, certain employees had been precluded from the tax exemption[1].

WHY THIS MATTERS

There could be refund opportunities for NOR taxpayers. Employers should determine whether they need to assist such taxpayers to obtain a refund.

Background on NOR Taxpayer Scheme

Under the law, employer contributions made in respect of an employee to any pension or provident fund constituted outside Singapore shall be deemed as income to the employee for the year in which the contributions are made.

However, under the NOR taxpayer scheme, an eligible NOR employee may apply for the tax exemption (subject to a NOR cap[2]) for the employer's contribution to a non-mandatory overseas pension or provident fund. An overseas pension or provident fund will generally be regarded as a non-mandatory fund where the contributions are not made to compulsory schemes operated, regulated and supervised by the employee's home country government while the employee is working overseas.

The Inland Revenue Authority of Singapore (IRAS) has set several conditions which must be satisfied for the NOR tax exemption concession to apply.

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One particular condition is the Singapore entity must not claim a corporate tax deduction (up to the NOR cap) for the contribution. Where the employer's contribution made on or after 1 January 2014, is borne by a foreign company and is not charged or recharged to any Singapore entity, this condition will not be satisfied and the NOR tax exemption will not be available to the employee. The condition is also not satisfied where the employer is a tax-exempt body or a representative office which is not required to file a corporate tax return.

Tax Changes

On 19 October 2018[3], the IRAS announced a change in position. The condition that the employer must not claim a corporate tax deduction (up to the NOR cap) will be considered as satisfied where:

- the contribution is borne by a foreign company and is not charged or recharged to the Singapore employer, as no corporate tax deduction on the contribution is taken by the Singapore employer; or
- the employer is a tax-exempt body or representative office that is not required to file a tax return, as no corporate tax deduction on the contribution is taken by the employer.

The change will enable more NOR taxpayers to qualify for the tax exemption concession in the future. The IRAS will also allow NOR taxpayers, who did not previously claim the concession for Years of Assessment (YA) 2017 and 2018, to submit the NOR application for the concession to IRAS for its review and re-assessment of tax, within four years from each respective YA.

KPMG NOTE

NOR taxpayers should consider whether there is a refund opportunity for YA 2017 and YA 2018 and file for re-assessment of tax within the four-year re-assessment period. Employers who bear the taxes of their employees should also review their records for any possible re-assessment to obtain the refund.

Taxpayers and employers should consult with their professional tax advisers to evaluate opportunities for filing the NOR application form for the refund.

FOOTNOTES:

1 For related coverage, see GMS *Flash Alert* 2017-094 (24 May 2017).

2 The NOR cap is computed based on Central Provident Fund (CPF) capping rules as if the employer had made a contribution to the CPF Board for a Singapore citizen as required under the CPF Act. For example, for the year 2018, the maximum employer's CPF contribution limit is S$17,340 for employees aged 55 years and below. The NOR cap is also determined based on the total employer contribution to an approved mandatory or a non-mandatory overseas contribution scheme or to both.

3 See the IRAS Web page on "Individual Income Tax" and search for the NOR Scheme. Also, see the IRAS webpage at the following path: *Individuals>Foreigners>Working out your taxes>Special tax schemes* and find the NOR Scheme.

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