

International Implications of Social Security for Workers in the U.S.

TUESDAY, DECEMBER 5, 2017, 1:00-2:50 pm Eastern

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Dec. 5, 2017

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International Aspects Of U.S. Social Security Taxes

Agenda

- Introductions
- General Social Security Tax Concepts
- Statutory Liability for U.S. Social Security Contributions: “Wages and Covered Employment”
 - > American Employer
 - > Non-American Employer
 - > Partnerships
 - > Disregarded entities
 - > Double FICA and Common Paymaster
 - > Deferred Compensation and Equity Awards
 - > Government Contractors
- Totalization Agreements
- Practical Examples of Social Security Taxation Issues
- International Implications of OASDI Benefits
 - > Reduction in Benefits for Working
 - > Payments of Benefits outside the U.S.
 - > Nonresident Alien Withholding
 - > Windfall Elimination Provisions
- International Implications of Medicare
- International Implications of the Obergefell Decision

Introductions

**C. Edward “Ed” Kennedy Jr
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Ed has over 36 years of experience dealing with a variety of international tax matters. He specializes in tax consulting services to a wide variety of clients ranging from closely held companies to multi-national businesses. His expertise includes domestic and foreign income and social security tax planning, tax compliance for individuals and corporations, tax treatment of incentive compensation plans, international assignment program administration and policy design.

Prior to joining the firm, Ed was with KPMG LLP, where, in addition to providing the above services, he served as the US firm’s lead for international social security matters.

Ed’s technical skills include all aspects of international tax and social security planning, including individual and corporate tax reporting of foreign assets, including controlled foreign corporations, foreign trusts, passive foreign investment companies, and foreign bank accounts, compliance with domestic and foreign income and social security tax planning for individuals and corporations, domestic and international individual and corporate income tax compliance, and tax treatment of incentive compensation plans.

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Ms. Finch has over 20 years of experience in global mobility and international tax matters. She leads Marriott International, Inc.'s International Compensation and Benefits team managing compensation, health & welfare, international retirement plans, tax compliance, and global mobility on an international scale. Previously, she spent many years at KPMG advising companies on international tax matters, international social security planning, and served as the U.S. firm's resource on international social security issues. In her role at Marriott, she governs Marriott's global policies, programs and guidelines that frame international assignee policies and benefits. She also serves as Chair of Marriott's Global Retirement Benefits Committee.



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General Social Security Tax Concepts

But First, A Quick Question!

What were the most popular baby names in 2016?

The Answer Is....

- Each year the Commissioner of Social Security, on Mother's Day, announces the top baby names in the United States for the year
- Based on all Social Security card applications for children born last year, Noah and Emma are the most popular baby names for 2016
- You can also check any year to see which were the most popular names for that year
- <https://www.ssa.gov/OACT/babynames/>

Social Security Basics

- Legislation first enacted in 1935
- First tax: 1% up to \$3,000 of wages!
- First benefit: retirement only
- Benefits have since expanded:
 - Survivors
 - Disability
 - Medical benefits
 - Prescription drugs

There Are Two Different Social Security Taxes

- Federal Insurance Contributions Act (FICA)
 - Chapter 21 of the IRC (§§3101-3128)
- Self Employment Contributions Act (SECA)
 - Chapter 2 of the IRC (§§1401-1411)

FICA and SECA have the same two components

- Old Age, Survivors and Disability Insurance (OASDI)
- Health Insurance (HI or Medicare)

FICA Tax Rates

➤ Employee rates:

- OASDI – 6.2% on wages up to \$128,400 (for 2018; adjusted for inflation)
- Medicare – 1.45% on all wages
- Additional Medicare tax – 0.9% on income over \$250,000 MFJ (\$125,000 MFS; \$200,000 in all other cases)
 - > Withholding begins at \$200,000 of wages
- Additional Net Investment Income Tax of 3.8% on unearned income in excess of same threshold
 - > IRC section 1411
 - > Not really a social security tax and not considered further in this discussion

➤ Employer rates:

- OASDI – 6.2%
- Medicare – 1.45%

SECA Tax Rates

➤ One level of tax since no employer

- OASDI – 12.4% on net earnings from self employment up to \$128,400 (for 2018; adjusted for inflation)
- Medicare – 2.9% on all net earnings from self employment
- Additional Medicare tax – 0.9% on income over \$250,000 MFJ (\$125,000 MFS; \$200,000 in all other cases)
- Additional Net Investment Income tax of 3.8% on unearned income in excess of same threshold
 - > IRC section 1411
 - > Not really a social security tax and not considered further in this discussion
- ½ deductible for income tax purposes
- Section 1402(b) defines the term "self-employment income" to mean the "net earnings from self-employment (a term defined in §1402(a)) derived by an individual (other than a nonresident alien individual) during any taxable year."
- Totalization agreements may modify this rule

Wages And Covered Employment

Why Is It Necessary To Understand Social Security Taxes?

Concepts are similar, but not the same, as income taxes

Income taxation based on citizenship / residency

- U.S. citizens/residents taxed on worldwide income
- Nonresidents only taxed on U.S. source income

FICA taxes are imposed on “Wages” with respect to “Employment”

- “Wages” are defined as income from “employment”. IRC §3121(a).
- “Employment” is any service performed by an employee (a) within the U.S., or (b) outside the U.S. by a U.S. citizen or resident for an American employer, or (c) services designated as equivalent to employment under a totalization agreement. IRC §3121(b).

Any analysis of social security coverage must begin with an analysis of these two factors

What Else Is Considered Employment?

- “Employment” also includes services performed on or in connection with an American vessel or aircraft:
 - Under a contract of service which is entered into within the U.S. or
 - During the performance of such services and while employed on the vessel or aircraft it touches a port in the U.S., if the individual is also employed in connection with the vessel or aircraft when outside the U.S. IRC §3121(b)(A)(ii).
- Obligation to FICA can include U.S. citizens and resident aliens working in or out of the U.S. and nonresident aliens working in the U.S.

What Is An American Employer, Vessel Or Aircraft?

An “American Employer” Is defined In IRC §3121(h) as the following:

- The United States or an instrumentality thereof
- An individual who is a United States resident
- A partnership, if 2/3 or more of the partners are U.S. residents
- A trust, if all the trustees are U.S. residents
- A corporation organized under the laws of the United States or any State

IRC §3121(f) Defines An American Vessel And American Aircraft As Follows:

- “American vessel” means a vessel documented or numbered under the laws of the United States and an “American aircraft” means an aircraft registered under the laws of the United States

SECA Taxes Are Imposed Net Earnings From Self-Employment

- “Net earnings from self-employment” include gross income derived by an individual (other than a nonresident alien individual) from a trade or business, less trade or business expenses (excluding the net operating loss deduction), plus the individual’s distributive share of income or loss from a business carried on as a partnership
- In computing net earnings from self-employment, the Section 911 exclusion does not apply

Director's Fees

In the U.S., director's fees are considered self employment income

- As a result, nonresident directors attending U.S. board meetings may be subject to income tax, but not SECA tax
- This treatment is not consistent with other countries, which consider it employment income
- U.S. directors of foreign companies may be subject to withholding on director's fees from company, and subject to U.S. SE tax on same income
- Totalization agreements address this issue

Can Individuals “Opt-Out” Of Social Security Coverage?

Social Security Taxes are Non-elective

- A taxpayer may not elect to participate in the U.S. Social security system.
- One may not elect out of the U.S. Social security system if they otherwise meet the criteria for participation and no exception applies.

“Employment” Examples – American Employer

Jane, a U.S. citizen/resident, is employed by USCO, Inc., an employer incorporated in the United States

Example 1 - Jane works exclusively in the U.S. How much of Jane’s salary is subject to FICA?

- 100%, because she is a U.S. citizen/resident and her services are performed 100% in the U.S. and thus considered “employment” for FICA purposes

Example 2 - Jane spends time working in Mexico for USCO, Inc. How much of Jane’s salary attributable to services performed in Mexico is now subject to FICA?

- 100%, because as a U.S. citizen or resident working for an American employer her compensation will be considered “employment” for FICA purposes.

“Employment” Examples – American Employer

Jane, a U.S. nonresident, is employed by USCO, Inc., an employer incorporated in the United States

Example 1 - Jane works 60 days in the U.S. and 180 days outside the U.S. How much of Jane’s salary is now subject to FICA?

- 25%, because as a U.S. nonresident working for an American employer her compensation attributable to U.S. days worked will be considered “employment” for FICA purposes.

Example 2 - Jane spends time working in Mexico for USCO, Inc. How much of Jane’s salary for services rendered in Mexico is now subject to FICA?

- None. Even though Jane is working for an American employer, since she is a nonresident her compensation is not considered “employment” for FICA purposes

“Employment” Examples – Non- American Employer

Jane, a U.S. citizen/resident, is employed by HKCO, Inc., an employer incorporated in the Hong Kong

Example 1 - Jane works 60 days in the U.S. and 180 days outside the U.S. How much of Jane’s salary is now subject to FICA?

- 25%, because even though she is a citizen/resident she is not employed by an American employer and thus only services performed in the U.S. are considered “employment” for FICA purposes

Example 2 - Jane spends time working in Mexico for HKCO, Inc.. How much of Jane’s salary in Mexico is subject to FICA?

- None. Since Jane is not employed by an American employer, this compensation will not be considered wages with respect to employment for FICA purposes

“Employment” Examples – Non- American Employer

Jane, a nonresident, is employed by UKCO, Inc., an employer incorporated in the United Kingdom

Example 1 - Jane works exclusively in the U.S. How much of Jane’s salary is subject to FICA?

- 100%, because her services are performed 100% in the U.S. and thus considered “employment” for FICA purposes

Example 2 - Jane spends time working in Mexico for UKCO, Inc.. How much of Jane’s salary is subject to FICA?

- As a nonresident employed by a non-American employer, only wages attributable to her services in the U.S. will be considered wages with respect to employment for FICA purposes

“Employment” Examples – Non- American Employer / Short Term Business Traveler

Max, a U.S. nonresident, is employed in Mexico by MEXCO, Inc. an employer incorporated in Mexico

Max travels to the U.S. on business and works for 4 weeks in the current year. He is exempt from U.S. income tax under Article 15.2 of the U.S. / Mexico Income Tax Treaty. What about FICA?

- Income tax treaties do not generally cover FICA
- As a result, Max is subject to FICA on the income attributable to services performed in the U.S.

How is this income and social tax reported?

What does MEXCO and Max need to do to be compliant with U.S. tax law?

“Employment” Examples – Non- American Employer / Short Term Business Traveler – Employer’s Responsibilities

- Determine whether IRC §861(a)(3) exception applies
- Determine if visa eligible for SSN
 - If so, have employee apply for SSN
- Obtain Forms 8233, W-7 (if not eligible for SSN), and W-4 from employee before arrival to document income tax exemption
 - File these forms with IRS within 5 days after receipt from employee
 - File with the IRS at least 10 days before employee arrives in U.S.
- Withhold FICA, but not income tax, from compensation attributable to services performed in the U.S.

“Employment” Examples – Non- American Employer / Short Term Business Traveler – Employer’s Responsibilities

- File Form 940 annually to report unemployment tax
- Even if income tax exempt, file Form 941 quarterly to pay over social security tax
- File Form 1042 and 1042-S to report income exempt under treaty
- File Form W-2 and W-3 to report income subject to social security tax
 - If no SSN (likely) need to meet “safe harbor” of Treas. Reg. § 301.6724-1 to avoid penalties for not reporting SSN on W-2

“Employment” Examples – Non- American Employer / Short Term Business Traveler – Employee’s Responsibilities

- Complete Forms 8233, W-7 (if no SSN) and W-4 and provide to employer
- Receive Form 1042-S from employer at year end
- Receive W-2 from employer since social security tax withheld
- Determine if filing threshold is met (currently \$4,150 for 2018)
- If filing threshold is met file Form 1040NR claiming treaty exemption

Specific Partnership Issues

- IRC §3121(h)(3) of the Code provides that an American employer means an employer which is a partnership, if two-thirds or more of the partners are residents of the United States.
 - Note this is based on number of partners, not capital interest of partners.
 - What about situations where U.S. partner owns 99% and foreign partner owns 1%?
 - PLRs 9335062 and 9335063
 - 99% partner was U.S. resident
 - 1% partner was U.S. nonresident.
 - IRS ruled arrangement was a valid partnership, but declined to rule on whether it was a non-American employer.
 - Practical application of these PLR's?

“Employment” Examples – Partnerships

- Mark, a U.S. citizen/resident, is employed in Dubai by ABC Partnership.
- ABC Partnership was established under Dubai law and has no presence in the U.S.
- This partnership has four partners, three of whom are U.S. residents.
- Is Mark subject to U.S. social security?
 - YES. Section 3121(h) defines an American Employer as including a partnership, if 2/3 or more of the partners are U.S. residents
 - No requirement that the partnership itself be established under the laws of the U.S.
- What if one of the U.S. residents sells the interest to another Dubai resident. Does this change the result?
 - Since less than 2/3's the Dubai partners are U.S. residents, ABC Partnership is not an American employer and thus Mark is not subject to U.S. social security.

Non-American Employers

Generally, employees of foreign entities not performing services in the U.S. are not subject to FICA, except in the following limited circumstance:

- Under IRC §3121(l) an American employer may elect with respect to a 10% or more owned foreign affiliate to cover all U.S. citizens and resident aliens employed by that entity.
- The ownership interest is met if the American employer owns 10% or more of the voting stock in the case of a corporation or in the case of any other entity, a 10% or more profits interest.
 - As a result, this election can be made with respect to more than just corporations.
 - This ownership interest must be downstream; cannot be upstream
 - PLR 8834069 – U.S. branch of foreign parent not eligible.
- This election is irrevocable.
- Election is made on Form 2032 - Contract Coverage Under Title II

Disregarded Entities

Before 2009

- Employment taxes satisfied either by branch treatment or separate employer treatment at employer's discretion

As of January 1, 2009

- A foreign disregarded entity of an American employer is considered a separate entity (i.e., a non-American employer) for purposes of employment tax
- The only mechanism available under the Internal Revenue Code for extending FICA coverage to U.S. citizens and residents employed by a foreign disregarded entity is through a §3121(l) agreement

Double FICA

Employees working for more than one employer in a tax year are potentially subject to “double FICA” on the OASDI portion

- IRC §3121(a)(1) limits the wage base for the OASDI portion of FICA (currently \$128,700)
- Wages for FICA purposes are computed on an employer by employer basis
- When employees change employers (even within related corporations), FICA starts over
- Employees can receive a refund on their tax return if total wages are in excess of the OASDI wage base
- Employers cannot receive a refund of their share as the wage base is calculated for each employer

Double FICA

Solutions?

- Change employers only on January 1 of each year
- Consider “common paymaster”

Common Paymaster – IRC §3121(s)

Requirements

- Two or more related corporations
- Concurrently employ the same individual and
- Compensate such individual through a common paymaster which is one of such corporations

This will avoid “double FICA”.

Problem is with “concurrent employment”

- Must be employed simultaneously by two or more entities

Deferred Compensation And Equity Awards

When is deferred compensation is subject to FICA?

- Later of: (1) when the services are performed or (2) date on which the right to the amount is not subject to a substantial risk of forfeiture. IRC §3121(v)

Equity Income – U.S. Rules:

- Qualified (Statutory) stock options §422 – no FICA
- Non-statutory stock options – FICA taxable at exercise
- Restricted stock – FICA taxable at vest unless Section 83(b) election is made to tax at grant
- Restricted stock units – FICA taxable at vest (subject to special timing rules and exceptions under Reg. §31.3121(v)(2)-1)
- ESPP §423 – no FICA

Deferred Compensation And Equity Awards

- Sourcing of income for social tax purposes should be evaluated in terms of **income from employment**, which may be different than the factors used to source compensation for income tax purposes.
- The employment relationship may need to be evaluated to determine whether the employing/granting entity is an **American employer**.
- It is therefore critical to have a thorough review of the facts and circumstances to determine the extent to which the income is attributable to employment relating to (a) services performed in the United States or (b) outside the United States by a U.S. citizen or resident working for an **American employer**.
- Other countries may interpret the taxable event differently, possibly resulting in double taxation.
- Totalization agreements may change the result.

Deferred Compensation And Equity Awards - Examples

- Mary, a U.S. citizen, is granted stock options of USCO, Inc. when working in the U.S.
- These awards vest after three years.
- After the second year, Mary is transferred to Mexico but continues to work for USCO, Inc.
- While in Mexico the options vest at the end of the third year and Mary immediately exercises for \$100,000 of gain.
- What and where are Mary's social liabilities?
 - U.S. – services performed by a U.S. citizen for an American employer from grant to vest – 100% subject to U.S. social security tax at exercise
 - Mexico – have to confirm with Mexican counsel the taxation of these awards. There is a possibility these may be taxed in Mexico also.

Deferred Compensation And Equity Awards

- What if Mary is not a U.S. citizen or green card holder in this situation? Assume the same facts. What and where are Mary's social liabilities?
- U.S. – general rule of §3121(b) assigns FICA coverage in three situations:
 - > Individual performing services in the U.S., regardless of citizenship or residence of either
 - > U.S. citizen / resident alien working for American employer regardless of where the services are performed
 - > Totalization agreement assigns coverage to the U.S.
- Two periods to consider: residency and nonresidency period
 - > For residency period, since employed by American employer, subject to FICA regardless of where services performed
 - > For non-residency period, only subject to FICA for services performed in the U.S.
- Mexico – have to confirm with Mexican counsel the taxation of these awards. There is a possibility these may be taxed in Mexico also.

Government Contractors – Section 3121(z)

- Foreign employer with U.S. citizen or resident employees performing services under a contract between the U.S. government treated as an American employer *with respect to these services* if
 - Member of a domestically-controlled group
 - > Only 50% ownership required to be U.S. controlled
- Only applies to services performed with respect to the U.S. government contract
 - Does not apply to other U.S. citizen or resident employees performing services not related to U.S. government contract for foreign employer
- Common parent of the domestically –controlled group is jointly and severally liable for the FICA tax and any related penalties
- Does not apply in two situations
 - Services are covered by a section 3121(l) agreement
 - Employer establishes that remuneration is subject to foreign social security tax that is substantially similar to U.S. FICA tax

Totalization Agreements

Totalization Agreements

Bilateral Social Security Agreements (“Totalization Agreements”)

- Assign social security coverage to the country where the worker has the greatest attachment
- Legally binding in the U.S. in the same manner as income tax treaties

Totalization agreements have two principal purposes:

- Relief from duplicate social security tax
- Provide for coordination of benefits

Agreements may assign coverage differently than U.S. Law would

Totalization Agreements

- From the U.S perspective, application of provisions are not elective
- Controlled through length of assignment agreements and employment relationship
 - In order to maintain coverage when sent by home country employer, assignment must be less than five years to maintain home country coverage
 - Termination of home country employment relationship and establishment of host country employment relationship generally results in host country coverage

Application Of Totalization Agreements

Territoriality Rule

- An individual is subject to taxation exclusively in the country in which he or she is working

Detached Worker Exception

- Designed to minimize disruptions in coverage of workers temporarily working outside their home countries
- A person temporarily transferred to work for the same employer in another country remains covered only by the country from which he or she has been sent
- Applies to temporary assignments expected to last no more than 5 years

Application Of Totalization Agreements

Interaction With U.S. Internal Revenue Code

- Wages exempt from FICA tax to the extent they are subject exclusively to the laws applicable to the social security system of such foreign country IRC §3101(c) and §3111(c)

Certificate Of Coverage

- Documents continued coverage by the home country and thus support the claim of exemption in the host country
- Important to have in case of payroll audits
- IRS may assess U.S. FICA contributions in the case of inbound assignees where no Certificate of Coverage was obtained even if agreement assigns coverage to home country

Agreements in Force

- Australia
- Austria
- Belgium
- Canada
- Chile
- Czech Republic
- Denmark
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Japan
- Korea
- Luxemburg
- Netherlands
- Norway
- Poland
- Portugal
- Slovak Republic
- Spain
- Sweden
- Switzerland
- United Kingdom

Other Countries

Agreements signed but not in force:

- Brazil
- Mexico
- Uruguay

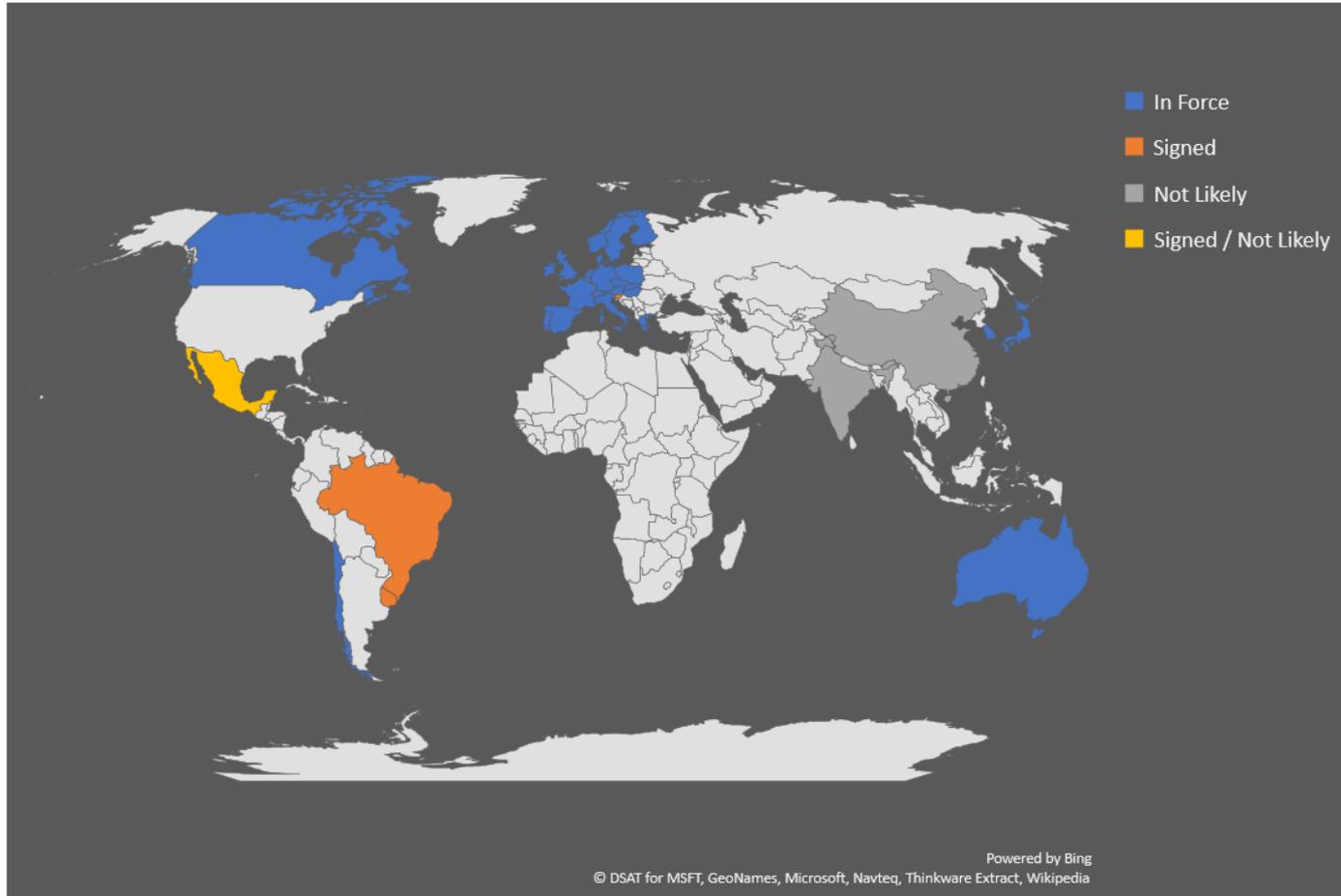
Agreements not likely:

- China
- India

Check SSA's Status Table for current list:

- <https://www.ssa.gov/international/status.html>

U.S. Totalization Agreements Status



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Extensions

- Most (but not all) agreements allow extensions of home country coverage past the initial five-year period
- The extension period is not uniform
- Some agreements provide for this in the agreement itself, others depend on practical experience with the SSA and the host country
- Best practice to apply for extension BEFORE end of original five-year period
- The following pages contain a summary of our discussions with the SSA concerning informal policies regarding extensions of certificates of coverage in various countries as well as the specific language of the agreements

Extensions

Country	Extensions of Time Allowed (practical experience)
Australia	1 year
Austria	4 years
Belgium	2-3 years
Brazil (not in force)	
Canada	4 years; 1 year automatically
Chile	no experience
Czech Republic	no experience
Denmark	no experience
Finland	4 years

Extensions

Country	Extensions of Time Allowed (practical experience)
France	up to 3 years
Germany	4 years; 1 year automatically
Greece	2 years
Hungary	None
Ireland	4 years
Italy	no time limit
Japan	4 years; 3 years automatically
Korea (South)	no experience
Luxembourg	none

Extensions

Country	Extensions of Time Allowed (practical experience)
Netherlands	3-4 years
Norway	2-3 years
Poland	no experience
Portugal	1 year
Slovakia	no experience
Spain	1 year; 3-4 years with compelling reason
Sweden	2-3 years
Switzerland	1 1/2 years
United Kingdom	4 years; 1 year automatically
United States	Up to 4 years

Practical Examples (except for one)

Totalization Agreements and Director's Fees – In General

- In situations where totalization country considers director's fees as income from employment, totalization agreement generally assigns coverage to country of residence
- Example – U.S./U.K. agreement Article 4.4:
 - Where a person is employed under the laws on coverage of one Party and self-employed under the laws on coverage of the other party for the same activity, he shall be subject only to the laws on coverage of the Party in whose territory he ordinarily resides.
- In this situation it is necessary to obtain a U.S. certificate of coverage to exempt director from foreign country's social tax withholding

Social Security Issues for Directors

Complexities

- Definitions of Directors (for U.S. purposes)
 - Executive Director
 - > Individual is employee of company and serves on its board of directors
 - > Does not receive specific remuneration for role as director
 - Non-Executive Director
 - > Individual is not an employee of company
 - > Receives specific remuneration for role as director
 - > Generally considered self-employed
- May regularly work in a country in which they are non-resident for tax
- Human Resources may not have any contact with these individuals
- May hold positions with unconnected companies in several countries
- Unconnected companies may not be aware of how the income from each role is being treated

Directors

What Happens When Individuals Serve As Non-Executive Directors In Multiple Jurisdictions?

- Canada: treated as employment income; if non-resident of Canada rendering services partly in and partly outside Canada, Canada Pension Plan contributions do not apply; Employment Insurance premiums do not apply, unless also a “regular” employee
- U.K.: treated as employment income, although slightly different computation. Liability to social security contributions in the UK will depend on residency and if they also work in other countries
- U.S.: Treated as self employment income. Nonresidents are not subject to self-employment tax; however U.S. citizens and residents are subject to this tax regardless of where the services are performed

Directors

Impact Of Totalization Agreements

- Canada: If tax resident of Canada, considered employment income and subject to Canadian tax as such; if not, determine whether considered employment or self-employment in other country and look to agreement for guidance
- U.K.: Similar position as for Canada, except consider whether the EU social security regulations apply and if so what is the impact. Consider employment vs. self-employment and where they live/work
- U.S.: If residing in the U.S., considered self-employment and subject to U.S. self-employment contributions; if not, determine whether considered employment or self-employment in other country and look to agreement for guidance

Directors – Case Study

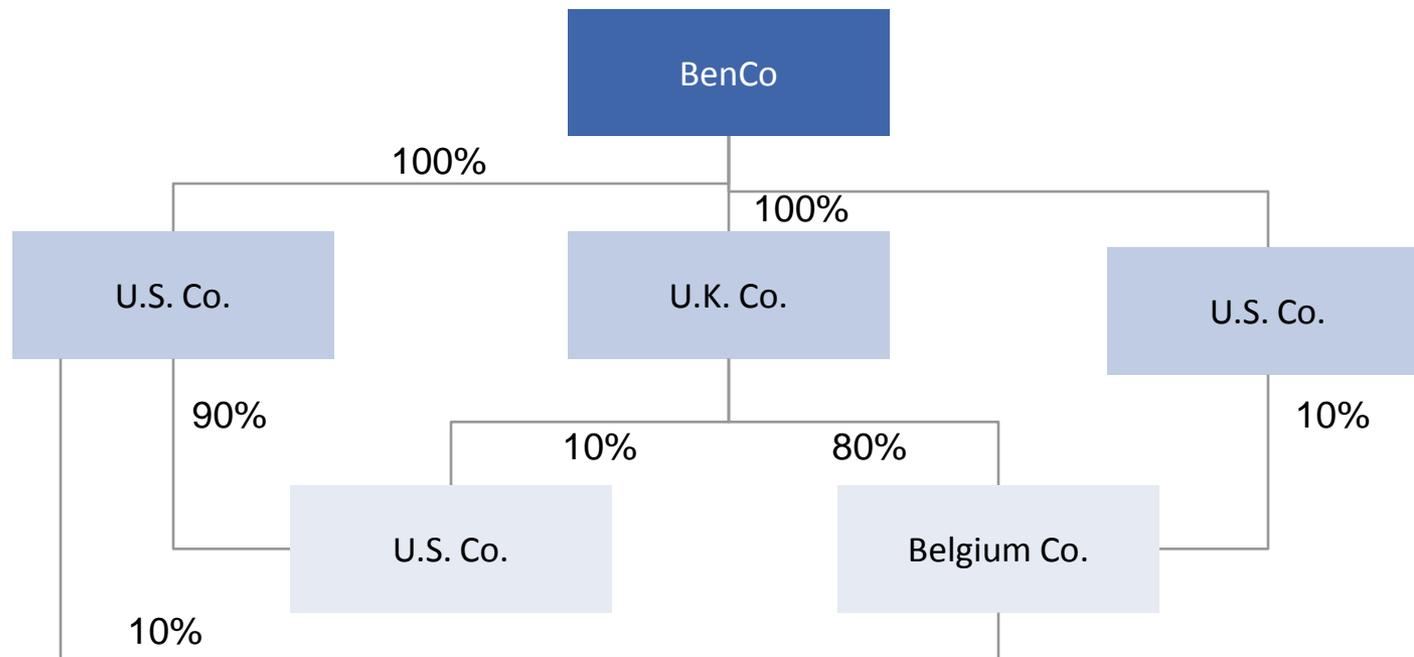
- Elizabeth Birmingham, a U.S. citizen, serves on the board of directors for a Canadian, U.K. and U.S. companies
- She lives in London, Illinois.
 - Where does she pay social tax?
- What if Elizabeth moves to Windsor, Ontario?

Directors – Solution To Case Study

- Elizabeth Birmingham, a U.S. citizen, serves on the board of directors for a Canadian, U.K. and U.S. companies
- She lives in Chicago, Illinois
 - Where does she pay social tax?
- Her director's fees are considered self-employment income for U.S. purposes, and employment income for both Canadian and U.K. purposes
 - Since she resides in the U.S., under both Agreements she will be subject to U.S. self-employment tax
- What if Elizabeth moves to Windsor, Ontario?
 - U.S. Board of Directors fees: Since she is resident of Canada, under U.S. / Canada agreement subject to Canadian coverage as employment income
 - Canadian Board of Directors fees: Again, since she resides in Canada, treated as employment income
 - U.K. Board of Directors fees:
 - > U.S. / U.K. Agreement – not specifically addressed as she does not ordinarily reside in either territory
 - Potential double taxation!
 - > However, U.S. / Canada agreement would assign coverage to jurisdiction where she resides - Canada
 - > But under Canada /U.K. Agreement , employment is in the U.K. so U.K. coverage applies, with potential relief under certain circumstances
- Takeaway: make sure you have full knowledge of director's resident status and how the director's fees are considered under each jurisdiction's laws!

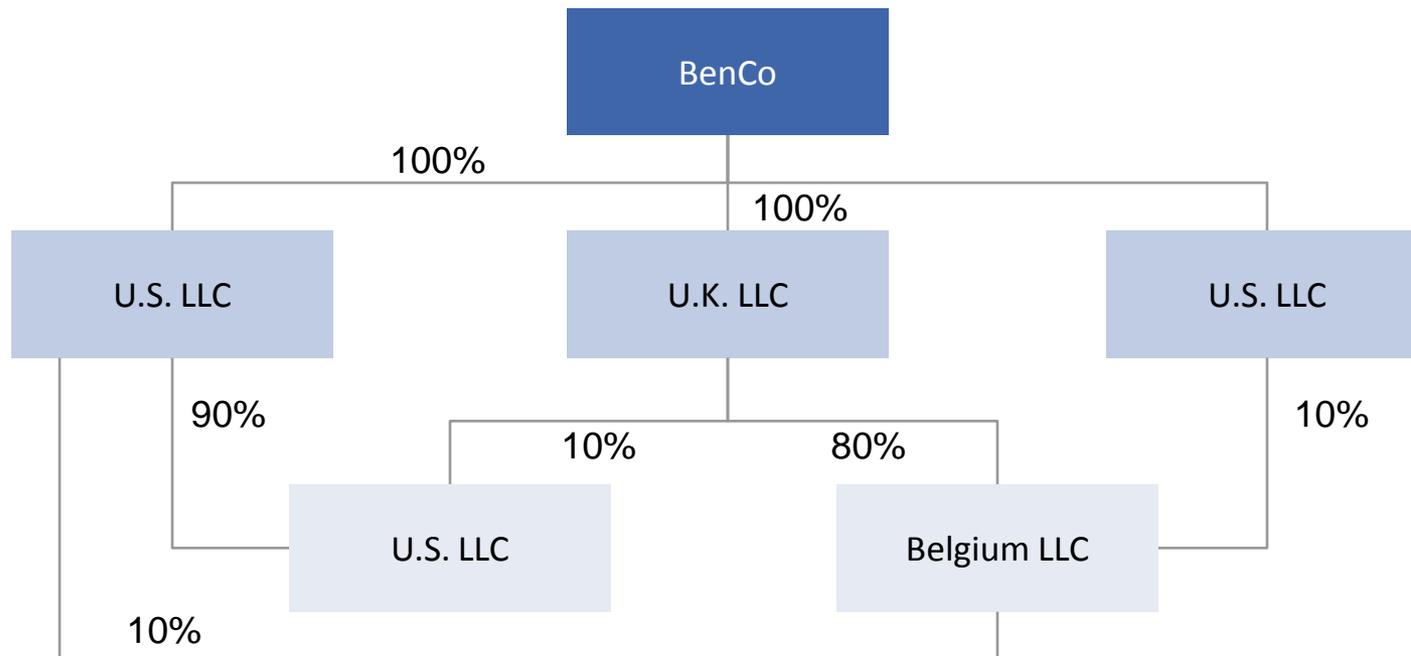
Partnerships and Disregarded Entities – Case Study

- Benco operates in the U.S., U.K. and Belgium through separate legal entities (C corporations).
- On the advice of counsel it decided to simplify its corporate structure so that all income and losses would flow through to the U.S. Parent.
- Prior to the reorganization, the structure was this:



Partnerships and Disregarded Entities – Case Study (Continued)

After the reorganization, the structure is this:

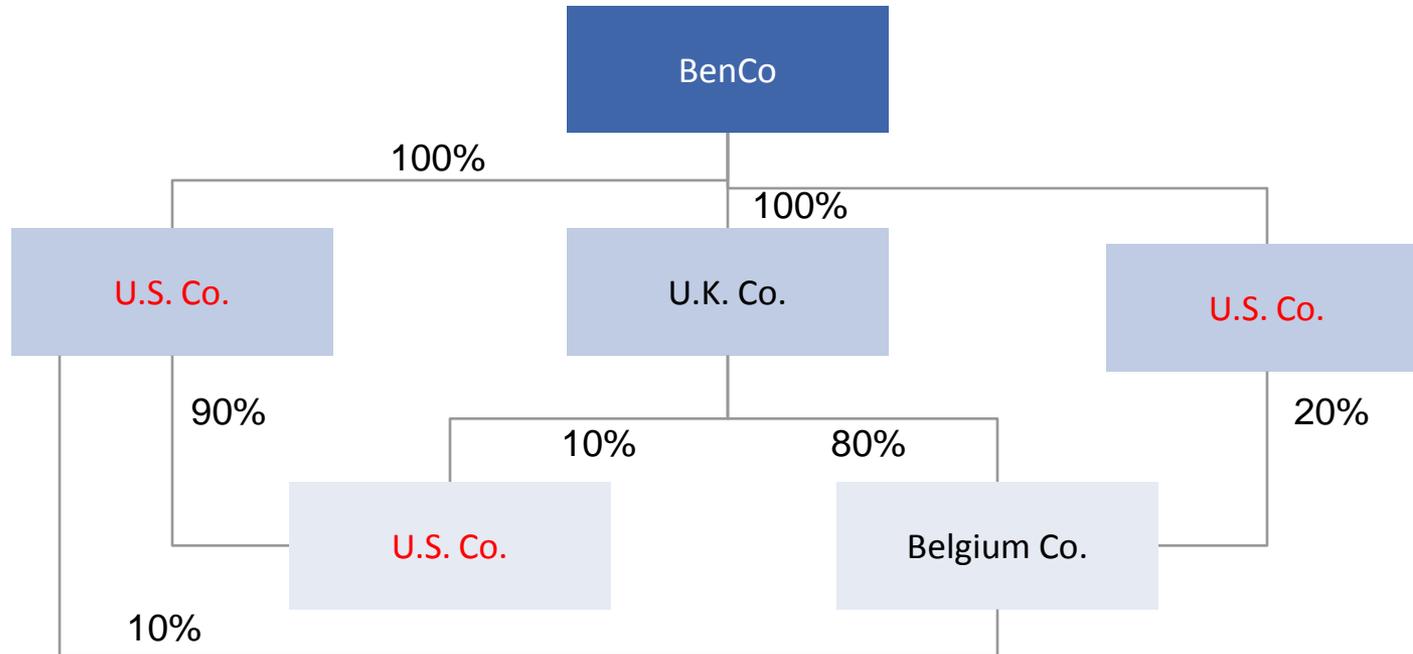


Partnerships and Disregarded Entities – Case Study (Continued)

- Which entities are American employers before and after the reorganization??
- If Benco wants to maintain the status quo what does it need to do?

Partnerships and Disregarded Entities – Case Study (Continued)

Before reorganization:

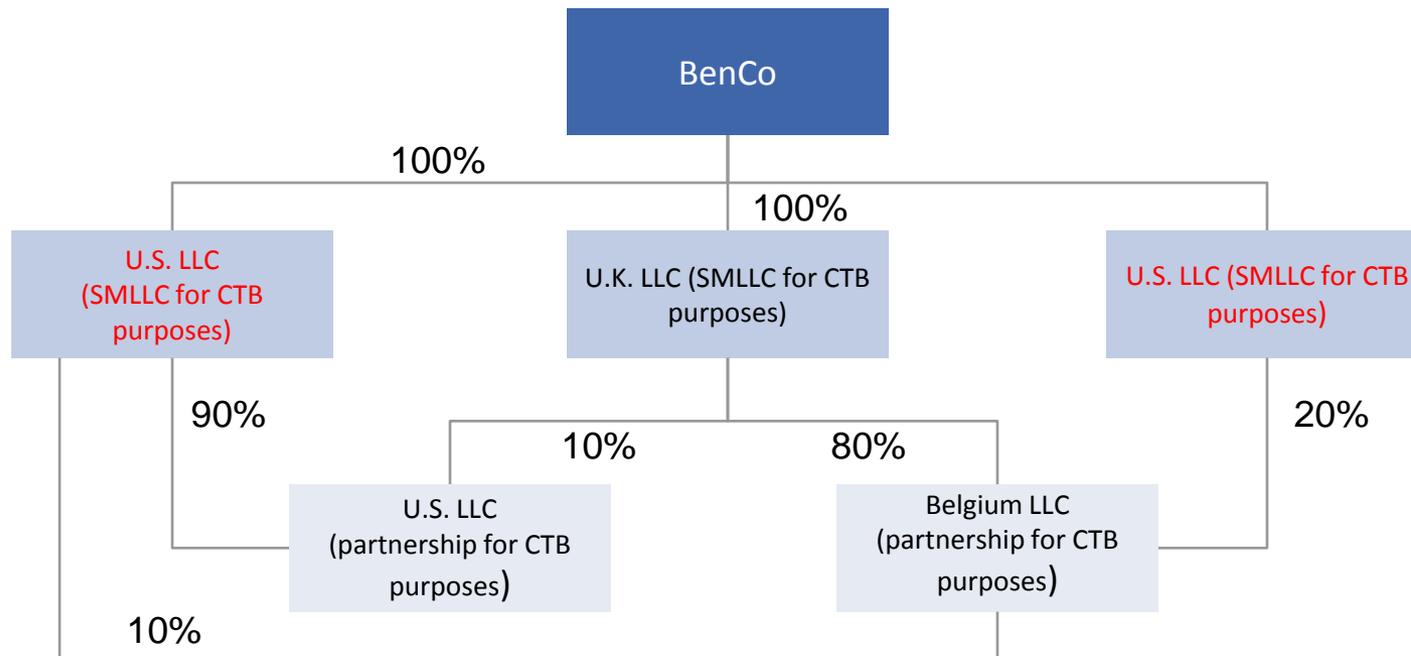


American employer

Non-American employer

Partnerships and Disregarded Entities – Case Study (Continued)

After Reorganization:



American employer

Non-American employer

Social Security and Students

Rahini send the following question to your client's tax director, who then emails it to you:

- I joined company X on 12th Aug 2013 and I have received 2 paychecks since then that has no SSN and Medicare deductions. Although I am on a F1 visa status, I am a resident alien for tax purposes and need to pay OASDI and Medicare. Kindly make sure these taxes are deducted henceforth and deduct OASDI, Medicare for last 2 paychecks from the next one. Let me know if more details are required.
- Please refer the instructions below that will help clear the matter. My husband is a resident alien for tax purposes and so am I. In this case we need to pay FICA. Please read areas highlighted in red carefully. I will be sending you my previous W2 by EOD. Hope this helps. Please get back to me if you have any doubts or concerns.

Here's What's Wrong:

- Students are generally exempt individuals and their days are not counted for purposes of the substantial presence test until they have been here for any part of more than 5 calendar years. Under IRC §7701(b)(3) and §7701(b)(5)(e) days present in the U.S. Under an F visa don't count for purposes of the substantial presence test; thus she can't be a resident under the substantial presence test.
- The only other possibility is for her to have made a section 6013(g) election to file a joint return with her husband, and the election under section 6013(g) only applies for chapter 1 and chapter 24 of the code; not chapter 21 of the code (FICA). I don't know her husband's residency status; thus I can't comment on whether this option is even available, as he needs to be a citizen or resident alien of the U.S. at year-end.
- Note the section 6013(h) election is inapplicable also. Thus there is no way for her to be subject to the FICA.
- Also, there is no reason for her to want to pay FICA unless she plans to reside in the U.S. for more than 40 quarters as there is no totalization agreement with India and will not be unless U.S. law is changed or India changes its system, so the prospect of even receiving a retirement benefit is limited.

Ships and Aircraft

Employment

- Employment includes any service performed “outside the united states by a citizen or resident of the united states as an employee for an “american employer” (section 3121(b))

American-flagged

- Also may include services on American-flagged vessels outside the U.S. (Section 3121(b)) and non-American-flagged vessels if there is an American employer (section 3121(b)(4))

American employer

- American employer includes U.S. Corporations and partnerships if more than 2/3 of its partners are U.S. Residents (section 3121(h))

Aircraft Case Study

- Irish airline (incorporated in Ireland) flies between the U.S. (New York) and Dublin, Ireland
- Pilot is an Irish national, the co-pilot is a U.S. citizen, and the flight attendants are Irish and U.K. Nationals
- Who is subject to FICA?

Aircraft Case Study

- Irish airline (incorporated in Ireland) flies between the U.S. (New York) and Dublin, Ireland
- Pilot is an Irish national, the co-pilot is a U.S. citizen, and the flight attendants are Irish and U.K. Nationals
- Who is subject to FICA?
 - Nobody – aircraft is not an American aircraft and there is no American employer
 - Also, in the case of duplicate coverage totalization agreements may assign coverage, but this is rare
 - Irish agreement is silent

Now For a Bizarre Rule - §31.3121(b)(4)-1(e)

- Services performed outside the United States on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, by a citizen of the United States as an employee for an American employer are not excepted from employment under Section 3121(b)(4) irrespective of whether the employee is employed on and in connection with such vessel or aircraft when outside the united states.

So, to whom does this rule potentially apply?

- (Answer on next page)

Now For a Bizarre Rule - §31.3121(b)(4)-1(e)

- U.S. citizens working on an unflagged ship for an American pirate corporation!



Another Case Study, This One Combining Partnerships and Ships

- Anne Bonney, is an Irish national and a Legal Permanent Resident of the United States who resides in the U.S.
- She signs on as first mate aboard the sloop Revenge sailing under Bahaman registration
- The Revenge terrorizes the U.S. and Bahamanian coasts for decades
- The partnership which employs her while on the Revenge is as follows:
 - > Jack "Calico Jack" Rackham, a U.S. resident (5%)
 - > Stacy "Madwoman" Finch, a U.S. resident (5%)
 - > Ed "The Real Pirate" Kennedy, a U.S. resident (5%)
 - > Anders "The Angry Swede" Larsson, Swedish citizen (85%)
- Are Anne's wages subject to U.S. Social Security?
- What if Captain Jack were not a U.S. resident?

Another Case Study

- Anne Bonney, is an Irish national and a Legal Permanent Resident of the United States.
- She signs on as first mate aboard the sloop Revenge sailing under Bahaman registration
- The Revenge terrorizes the U.S. and Bahamanian coasts for decades
- The partnership which employs her while on the Revenge is as follows:
 - Jack "Calico Jack" Rackham, a US resident (5%)
 - Stacy "Madwoman" Finch, a U.S. resident (5%)
 - Ed "The Real Pirate" Kennedy, a U.S. resident (5%)
 - Anders "The Angry Swede" Larsson, Swedish citizen (85%)
- Are Anne's wages subject to U.S. Social Security?
 - **Yes**, Because the Anne is employed by an American employer (more than 2/3 of the partners are U.S. citizen/residents) her wages will be subject to US Social Security even when serving on a non U.S. Flagged Vessel.
- What if Captain Jack were a U.K. Citizen?
 - **No**, the requirements for an American employer would no longer be met since only 50% of the partners are U.S. residents. Anne would only be subject to Social Security if the Revenge were U.S. flagged.

Multiple Assignments

Individuals On Multiple Assignments Can Generally Maintain Coverage Through All Assignments

- Individuals transferring from one totalization country to another can maintain coverage provided they were subject U.S. social taxes on previous assignment

Example: Individual on assignment in U.K. for no more than 5 years who is transferred to France for another 5 years and who continues to work for same American employer is able to continue U.S. coverage during French assignment

- Individuals transferring from non-totalization country can also maintain coverage provided they were covered while on previous assignment

Not all agreements specify this but in practice Social Security Administration will allow regardless

Non-Permanent Residents Transferred Abroad

Individual Is Present In U.S. With Valid Visa And Is Assigned To Belgium
(Totalization country)

- “Employment” is any service performed by an employee (a) within the U.S., a or (b) outside the U.S. by a U.S. citizen or resident for an American employer, or (c) services designated as equivalent to employment under a totalization agreement. IRC §3121(b).
- SSA has what it calls the “rule of thumb” which allows nonresidents to continue to participate in U.S. social security provided the following is met:
 - Individual had 6 months of covered employment prior to assignment
 - Individual intends to return to U.S.
- Employer must obtain certificate of coverage and issue “FICA Only”
W-2

Deferred Compensation And Equity Awards - Examples

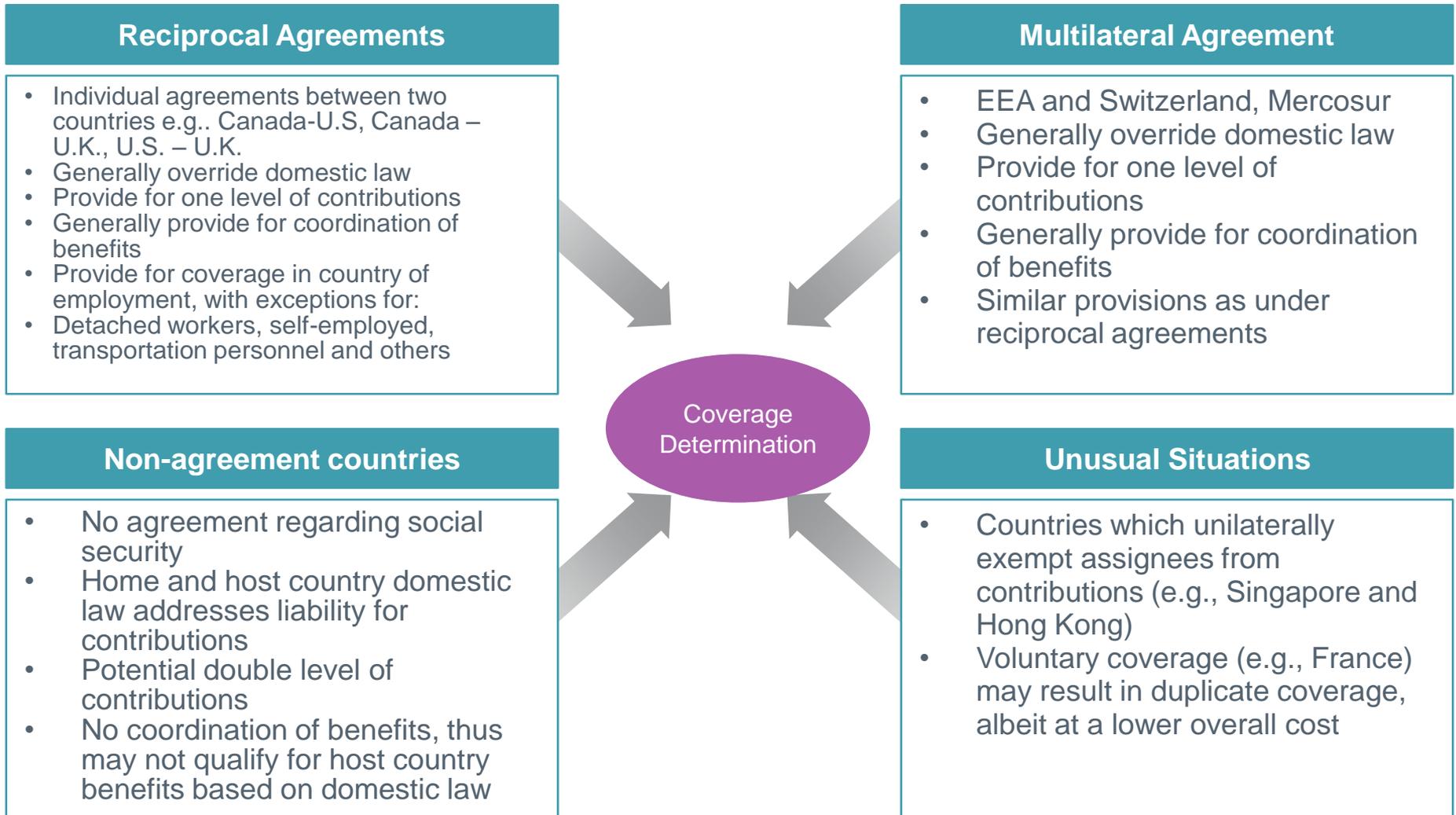
- Mary, a U.S. citizen, is granted stock options of USCO, Inc. when working in the U.S.
- These awards vest after three years.
- After the second year, Mary is transferred to the U.K. for no more than 5 years and remains employed by USCO.
- While in the U.K. the options vest and Mary immediately exercises for \$100,000 of gain.
- What and where are Mary's social liabilities?
 - U.S. – during the entire period from grant to vest the totalization agreement assigned coverage to the U.S. Thus, all of the income is subject to U.S. FICA
 - U.K. – all coverage assigned to U.S.; thus no U.K. NIC

Deferred Compensation And Equity Awards

- What if Mary is not a U.S. citizen or green card holder in this situation? Assume the same facts except Mary's employment changes to UKCO and becomes subject to U.K. NIC. What and where are Mary's social liabilities now?
 - During the period of time employed by USCO and U.S. resident - subject to U.S. FICA
 - When employment changes and she is employed in U.K. by a U.K. employer, coverage shifts to U.K.

Social Security Summary

Principles for Determining Social Security Coverage



Social Security and SECA Liability (absent Totalization Agreement)

Employment consisting of...	Performed by U.S. Citizen/Resident Alien	Performed by Nonresident Alien
Services in U.S. for American employer	Subject to the FICA	Subject to the FICA
Services in U.S. for non-American employer	Subject to the FICA	Subject to the FICA
Services outside the U.S. for American employer	Subject to the FICA	Not subject to the FICA
Services outside the U.S. for non-American employer	Not subject to the FICA	Not subject to the FICA
Services on or in connection with American vessel or aircraft	Subject to the FICA	Subject to the FICA
Services on or in connection with non-American vessel or aircraft	Not subject to the FICA	Not subject to the FICA
Self-Employment consisting of...	Performed by U.S. Citizen/Resident Alien	Performed by Nonresident Alien
Services in the U.S.	Subject to the SECA	Not subject to the SECA
Services outside the U.S.	Subject to the SECA	Not subject to the SECA

Social Security and SECA Liability Under Totalization Agreement

Employment consisting of...	Performed by U.S. Citizen/Resident Alien	Performed by Nonresident Alien
Services designated as employment or recognized as equivalent to employment under Totalization Agreement	Subject to FICA	Subject to FICA
Services neither designated as employment nor recognized as equivalent to employment under Totalization Agreement	Not subject to FICA	Not subject to FICA
Self-Employment consisting of...	Performed by U.S. Citizen/Resident Alien	Performed by Nonresident Alien
Services recognized as self-employment under a Totalization Agreement	Subject to SECA	Subject to SECA
Services not recognized as self-employment under a Totalization Agreement	Not subject to SECA	Not subject to SECA

Note: “Employment” and “Self-Employment” are terms defined in Sections 1401(b) and 3121(b). When a totalization agreement applies, the agreement assigns coverage based on the specific rules of the agreement. As a result, services performed in the U.S. and services performed outside the U.S. by a U.S. citizen or green card holder, may, or may not, constitute “employment” or “self-employment” depending upon whether the agreement assigns coverage to the U.S.

Form 8938 / FinCENReporting

Form 8938 / FinCEN Reporting– Social Tax Issues

- Interest in foreign pension is reportable
 - Funded vs. unfunded
 - Vested vs. unvested
 - Treaty provisions regarding “corresponding” plans will not exempt foreign plan from reporting requirements

- Specific exception for social security, social insurance or similar program of a foreign government
 - Does social security program provide for plans to be managed outside the government?
 - Example: Swiss Pillar 3 is established with a financial institution so it is reportable provided individual meets the Form 8938 or FinCEN threshold
 - When in doubt, report

Form 8938 / FinCEN Reporting– Social Tax Issues

Canadian RRSPs:

- For taxable years through 2014, Canadian RRSP reported on Form 8891 but taken into account for threshold purposes and box checked on form 8938
- No reporting is now required

Form 8938 / FinCEN Reporting– Social Tax Issues

Key Takeaway Is The Plan Has To Be Provided By A Foreign Government To Be Exempt From Reporting

- Outside of a “plain vanilla” social security plan, always check to see if it should be reported on either or both of these forms

More about this in a upcoming presentation!

Creditability Of Foreign Social Security Taxes

Creditability Of Foreign Social Security Taxes

Generally, Under Treas. Reg. §1.901-2(a)(2)(ii)(c) the Employee's Portion Of Most Social Security Taxes Are Creditable Against Individual's Income Tax

- Tax must be compulsory, not voluntary
- Cannot be for a specific economic benefit
- Employer portion of social security taxes are not creditable as they are an excise tax imposed on the employer, not the employee

OASDI Benefits

U.S. Social Security Retirement Benefits

Old-age (Retirement Benefits)

- 40 quarters of qualifying coverage
- \$1,320 of earnings = one qualifying quarter (2014)
 - Limited to four qualifying quarters per year
 - \$5,280 Of Earnings Provides 4 Quarters Of Coverage

Benefit Calculation Based on Top 35 AIME

- “Average Indexed Monthly Earnings”
- Calculation capped at OASDI ceiling
- No additional benefit from paying additional Medicare tax due to assignment allowances

Participation In Years When Not Technically Eligible to Contribute to the FICA (Ineligible Years) Does Not Result In Additional Quarters Of Coverage or Impact AIME

Calculation Of Social Security Retirement Benefit

Determine The “Average Indexed Monthly Earnings (AIME)”

- This is a formula to convert the individual’s lifetime earnings into constant dollars at a time close to retirement age
- Determine the Primary Insurance Amount (PIA) based on the individual’s AIME in the year the individual is first eligible to retire (age 62). For individuals reaching age 62 in 2018, the formula is as follows:
 - The first \$895 is multiplied by 90%
 - The amount between \$896 and \$5,397 is multiplied by 32%
 - The amount over \$5,397 is multiplied by 15%

Calculation Of Social Security Retirement Benefit

- A person who had maximum-taxable earnings in each year since age 22, and who retires at age 62 in 2018, would have an AIME equal to \$9,936.
- Based on this AIME amount and the bend points \$895 and \$5,397, the PIA would equal \$2,788.
- This person would receive a reduced benefit of \$2,158.

<https://www.ssa.gov/OACT/COLA/examplemax.html>

Calculation Of Social Security Retirement Benefit

Windfall Elimination Provisions (WEP) May Also Affect The PIA Calculation

- Found in 20 CFR § 404.213
- Designed to reduce a double benefit for workers who received pensions from more than one government's system
 - Only applies where benefit from one system is NOT due to totalization agreement
 - > 20 CFR § 404.213(e)(7)
- Adjusts the 90% factor depending upon the length of time not covered by social security
- Reduction can be no more than ½ of total social security pension
- Current maximum reduction is \$448 monthly
- Phases out between 20-30 years of "substantial employment"

<https://www.ssa.gov/planners/retire/wep-chart.html>

WEP Example

	Calculation assuming all employment was in US	Calculation assuming 20 years worked in US, 15 years in other country; same rates; no WEP		Calculation assuming 20 years worked in US, 15 years in other country; same rates; WEP	
Annual Earnings	\$96,000.00	\$96,000.00	\$96,000.00	\$96,000.00	\$96,000.00
Monthly Earnings	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00
Years worked	35	35	35	35	35
Years worked in U.S.	35	20		20	
Years worked outside U.S.			15		15
Average indexed monthly earnings	\$8,000.00	\$4,571.43	\$3,428.57	\$4,571.43	\$3,428.57
Benefit calculation:					
First \$896 @ 90%	\$806.40	\$806.40	\$806.40	\$448.00	\$806.40
Between \$897 and \$5,399@32%	\$1,440.64	\$1,175.82	\$810.10	\$1,175.82	\$810.10
Balance @ 15%	\$390.15	\$0.00	\$0.00	\$0.00	\$0.00
Benefit	\$2,637.19	\$1,982.22	\$1,616.50	\$1,623.82	\$1,616.50
Combined Benefit	\$2,573.17	\$3,598.72		\$3,240.32	
Additional Benefit		\$1,025.55		\$667.15	

C EDWARD KENNEDY JR PC



Social Security Benefits And Working At The Same Time

- Individuals can continue to work and still receive Social Security retirement benefits.
- Earnings in (and after) the month individuals reach full retirement age will not affect Social Security benefits. However, benefits will be reduced if earnings exceed certain limits for the months before individuals reach full retirement age. (The full retirement age is 66 for people born in 1943-1954 and will gradually increase to 67 for people born in 1960 or later.)
 - For individuals who are younger than full retirement age, \$1 in benefits will be deducted for each \$2 in earnings above the annual limit (\$17,040 in 2018).
 - In the year individuals reach full retirement age, the benefits will be reduced \$1 for every \$3 earned over a different limit (\$45,360 in 2018) until the month the individual reaches full retirement age. Once an individual reaches full retirement age earnings do not reduce benefits..
- If benefits are withheld because earnings are more than \$17,040, there is some good news. Upon reaching full retirement age, the retirement benefits will be increased to take into account those months in which the benefits were reduced.

<https://www.ssa.gov/planners/retire/whileworking.html>

Social Security Benefits And Working At The Same Time Outside the United States

- The SSA withholds benefits for every month individuals under full retirement age work more than 45 hours outside the United States in employment or self-employment (not subject to U.S. Social Security taxes).
- It doesn't matter how much the individual earned or how many hours worked each day. Individuals will be considered to be working on any day they:
 - Work as an employee or self-employed person;
 - Have an agreement to work even if they do not actually work because of sickness, vacation, etc.; or
 - Are the owner or part owner of a trade or business even if they do not actually work in the trade or business or receive any income from it.
- Generally, if benefits are withheld, this impacts the ability of anyone receiving benefits on that person's record to receive benefits as well.
- In the case of work covered by U.S. social security, the same rules discussed for individuals working in the U.S. also apply and the above rules do not apply.

<https://www.ssa.gov/hlp/isba/10/hlp-isba044b-earnwg2-for.htm>

Social Security Benefits And Working At The Same Time - Example

Retirement age	62	63	64	65	66
Monthly Benefit	\$2,102.00	\$2,270.16	\$2,451.77	\$2,647.91	\$2,859.75
Annual Benefit	\$25,224.00	\$27,241.92	\$29,421.27	\$31,774.98	\$34,316.97
Threshold	\$17,040.00	\$17,040.00	\$17,040.00	\$17,040.00	\$45,360.00
2X social security benefit	\$50,448.00	\$54,483.84	\$58,842.55	\$63,549.95	
3X social security benefit					\$102,950.92
Maximum before benefit is reduced to zero	\$67,488.00	\$71,523.84	\$75,882.55	\$80,589.95	\$148,310.92
You earn	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$75,000.00
Threshold	\$17,040.00	\$17,040.00	\$17,040.00	\$17,040.00	\$45,360.00
Amount over threshold	\$12,960.00	\$12,960.00	\$12,960.00	\$12,960.00	\$29,640.00
1/2 or 1/3 of this amount	\$6,480.00	\$6,480.00	\$6,480.00	\$6,480.00	\$9,880.00
Reduced SS benefit	\$18,744.00	\$20,761.92	\$22,941.27	\$25,294.98	\$24,436.97

Some Compensation Elements Do Not Reduce Benefits

- Wages count toward the earnings limit when they are earned, not when they are paid.
- Income earned in one year, but the payment was deferred to a following year, will not be counted for the year of receipt.
- Some examples of deferred income include accumulated sick or vacation pay, bonuses, stock options, and other deferred compensation.
- One other one particularly applicable in the international context include equalization payments and tax payments relating to prior years.
- Employers can proactively notify SSA of special wage payments which will not result in a benefit reductions by providing SSA-131 prior to making payments
- If the taxpayer receives a notice that benefits are being reduced due to these types of payments, we can write letter to SSA explaining situation and requesting these amounts not be considered in this calculation.

Payment Of Benefits Outside The U.S.

- “Outside the United States” means not present in one of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands or American Samoa.
- Once individuals have been out of the United States for at least 30 days in a row, they are considered to be outside the country until they return and stay in the United States for at least 30 days in a row.
- Individuals who are not U.S. citizens, may also have to prove they were lawfully present in the United States for that 30-day period.
- The rules are complicated, but the SSA has an online tool to assist in the determination as to whether this applies:
 - https://www.ssa.gov/international/payments_outsideUS.html
- Whenever a question arises, this tool should be used to determine eligibility

Payment Of Benefits Outside The U.S. - Case Study

- Alejandro, a citizen of Argentina and a U.S. green card holder, worked in the U.S. from December 2005 to December 2014.
- During this time he earned the 40 quarters of coverage in the U.S. Social Security System.
- Each year he earned the maximum allowed for OASDI purposes.
- In December 2014 Alejandro reached retirement age. He relinquished his U.S. green card and retired in Chile.
- Alejandro has been in Chile for all of 2015. As of June 2015 he is considered outside of the U.S. for more than six consecutive months and is a non resident for U.S. purposes.
- Is Alejandro entitled to receive U.S. social security benefits as a non-U.S. resident alien?

Social Security Payments Outside The U.S. Case Study

- Use the SSA's Payments Abroad Screening Tool to determine whether Alejandro is eligible to receive benefits in Chile:

http://www.socialsecurity.gov/international/payments_outsideUS.html

- What does the tool conclude?

Since you are a resident of one of the countries with which the United States has a Social Security (Totalization) Agreement, your payments will continue as long as you are a resident of an International Social Security (Totalization) Agreement Country.

- Next, are these payments subject to withholding?

Withholding On Social Security Payments Outside The U.S. Case Study

- Taxable social security benefits payments to nonresident aliens are subject to a 30% withholding tax (or lower treaty rate)
- Currently, 85% of retirement, survivors and disability social security monthly payments are considered taxable benefits
- Use the SSA's Nonresident Alien Tax Screening Tool to determine whether Alejandro is subject to income tax withholding:

<http://www.socialsecurity.gov/international/AlienTax.html>

- Using this tool, you learn that the SSA will withhold a flat tax of 30% from 85% of Alejandro's Title II, Retirement, Survivors or disability, monthly benefits. This results in a withholding of 25.5% on the total benefit.

Additional Fact:

- Alejandro receives a \$600/month pension from Argentina.
- Does this impact his social security benefit?
- Windfall Elimination Provisions (WEP) may also affect the PIA calculation
 - Found in 42 USC § 415(a)(7)(A).
 - Designed to reduce a double benefit for workers who received pensions from more than one government's system
 - Only applies where benefit from one system is NOT due to totalization agreement
 - 42 USC § 415(a)(7)(E).
 - Adjusts the 90% factor depending upon the length of time not covered by social security
 - Reduction can be no more than $\frac{1}{2}$ of total social security pension
 - Current maximum reduction is \$428 monthly
 - Phases out between 20-30 years of "substantial employment"

How Does The WEP Impact Alejandro?

Go to the SSA's Windfall Elimination Screening Tool:

http://www.socialsecurity.gov/international/wep_disclaimer.html

Alejandro will receive a reduced monthly benefit of \$1,107

What if Alejandro only worked in the U.S. for 8 years?

WEP would not apply, because it does not apply to totalized benefits.

International Implications Of Medicare

What Is Medicare?

Persons age 65 and over who otherwise qualify for an old-age pension upon retirement are eligible to participate in Medicare.

Medicare Has Four Components:

- Hospital insurance (Part A)
- Medical insurance (Part B)
- Medicare Advantage (Part C) plans are available in many areas. People with Medicare Parts A and B can choose to receive all of their health care services through one of these provider organizations under Part C.
- Prescription drug coverage (Part D)

Medicare Part A Eligibility Requirements

Eligibility Requirements:

- age 65 or older,
- a resident of the U.S., and
- a U.S. citizen, or lawfully admitted alien (green card holder) who has lived in the U.S. continuously for the five year period immediately preceding the month of enrollment.
- Employees will generally need 40 quarters of coverage to benefit from Medicare's **free** hospital insurance.
- Remember, 40 quarters of qualifying coverage is:
 - \$1,320 of earnings = one qualifying quarter (2018)
 - Limited to four qualifying quarters per year
 - \$5,280 of earnings provides 4 quarters of coverage

Medicare: The 40 QC conundrum

- Hospital insurance is available for qualifying individuals with less than 40 quarters of coverage; however, this coverage is not free.
- For individuals having 30-39 quarters of Medicare covered employment the monthly premium is \$232.
- For individuals with less than 30 quarters of coverage the monthly premium is \$422 per month.
- Individuals also have to enroll in Supplemental Medical Insurance (Medicare Part B)
 - The Part B premium is means tested and based on earnings in second prior year (for 2018 that is 2016)
 - This is called the Income-Related Monthly Adjustment Amount (IRMAA)
- For the current premium check out this website:
<https://www.medicare.gov/your-medicare-costs/costs-at-a-glance/costs-at-a-glance.html>

Medicare Part B premiums

- The standard part B premium amount in 2018 is \$134.
- Individuals who pay their part B premium through their monthly social security benefit pay less (\$130 on average).
- Individuals pay the standard premium amount (or higher) if:
 - They enroll in part B for the first time in 2018.
 - They don't receive social security benefits.
 - Individuals who are directly billed for their Part B premiums.
 - Individuals receiving Medicare and Medicaid, and Medicaid pays the premiums. (In this case the state will pay the standard premium amount of \$134.)
 - Their modified adjusted gross income as reported on their tax return from 2 years ago is above a certain amount. If so, they pay the standard premium amount and an income related monthly adjustment amount (IRMAA).

2018 Medicare Part B Premium

2016 income			2018 Premium
File individual tax return	File joint tax return	File Married Filing Separate Return	
\$85,000 or less	\$170,000 or less	\$85,000 or less	\$134.00
above \$85,000 up to \$107,000	above \$170,000 up to \$214,000	Not applicable	\$187.50
above \$107,000 up to \$133,500	above \$214,000 up to \$267,000	Not applicable	\$267.90
above \$133,500 up to \$160,000	above \$267,000 up to \$320,000	Not applicable	\$348.30
above \$160,000	above \$320,000	above \$85,000	\$428.60

Medicare – International Implications

Legal Permanent Residents (Green Card Holders)

- Even if the green card holder is otherwise eligible for Medicare, if the residency requirements are not met the individual is not eligible for Medicare benefits
- In discussing Medicare with clients, be sure to understand the client's facts to determine whether Medicare is indeed an option.

Workers transferred to U.S. who participate in U.S. social security coverage

- Eligible for totalized benefit with respect to Social Security retirement, disability and survivors insurance benefits
- Does **not** cover Medicare benefits – still need 40 quarters of coverage for free Part A coverage in addition to meeting the residency requirements discussed above

International Aspects of the Obergefell Decision

- On June 26, 2015, the U.S. Supreme Court issued a decision in Obergefell v. Hodges, holding that same-sex couples have a constitutional right to marry in all states and have their marriage recognized by other states.
- The Social Security Act authorizes the SSA to consider the claimant to be the number holder (NH)'s spouse for benefit purposes when the state of the NH's domicile would allow the claimant to inherit a spouse's share of the NH's personal property should the NH died without leaving a will. Under these circumstances, the SSA treats the couple's NMLR as a marital relationship for Title II and Medicare benefit purposes. [Click here for a current list of qualifying relationships.](#)

International Aspects of the Obergefell Decision

- In POMS [GN 00210.006](#) the SSA issued guidelines regarding the recognition of same-sex marriages and non-marital legal relationships (NMLRs) established in foreign jurisdictions.
- In the case of a ceremonial marriage (i.e., a marriage where a marriage certificate is officially recorded) and a copy of this document can be obtained, then in most cases the marriage will be recognized for SSA benefits purposes
- If not, then the SSA needs to determine if a precedential opinion has been issued by the SSA with respect to the specific non-ceremonial marriage type. [Click here for a current list of SSA opinions.](#)

International Aspects of the Obergefell Decision

- If no opinion has been issued, then the SSA field office must request an opinion as to whether the non-ceremonial marriage, deemed marriage, or NMLR was permitted in the foreign jurisdiction and recognized by the state of the NH's domicile (or the District of Columbia if domicile is in a foreign jurisdiction) to convey spousal inheritance rights.
- One important factor the SSA considers is whether the relationship provides the claimant the same status as a spouse of the NH under local country's intestacy law. If so, the SSA can deem the claimant and the NH as married on this basis and the SSA should find that the claimant is entitled to spouse's benefits on the NH's record.