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INSIGHTS

Dubai International Financial Centre ("DIFC") the End to End of Service Gratuity

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Hot on the heels of recent updates to the DIFC employment law, ***DIFC Employment Law No. 2 of 2019***, the DIFC has announced proposals to bring about the end of the current End of Service Gratuity ("**EoSG**") regime and replace the same with the DIFC Employee Workplace Savings Scheme ("**DEWS**").

At the date of this alert, the law/regulations governing the DEWS have yet to be finalised. As such, this alert should be read accordingly and is subject to revision once the law/regulations have been passed.

What's the new on DEWS?

DEWS will offer a low-cost investment platform that will replace the existing EoSG regime. As of 1 January 2020, all employers in the DIFC will be required to pay (on a monthly basis, so as to ensure that the DEWS for each employee is fully funded) contributions on behalf of its employees into the DEWS, whilst employees may (at their discretion) also make their own contributions into such scheme. Failures by employers to comply with their obligations will likely be liable to fine and other potential sanctions. It is anticipated that outside of the DEWS, employers will be able to establish their own qualifying schemes, the rules of which are yet to be fully announced.

The DIFC has recently announced that Equiom has been selected as a master trustee of the DEWS plan, with Zurich Middle East acting as the scheme administrator. The DEWS will be based in the DIFC.

Show Me The Money?

The employer contribution rates will broadly follow EoSG contribution rates, i.e. approximately 5.75% (i.e. 21 days / 365) of basic yearly salary for employees with under five years of service and 8.22% (i.e. 30 days / 365) for those employees with five years or more service.

Importantly, employees will also be permitted (but not obliged) to make their own payments into DEWS, up to 100% of their salary. Such payments will be made via payroll. Whilst an employee is employed by their employer in the DIFC they will be unable to withdraw from the DEWS, it is only when they change employer or leave the employment of a DIFC based entity, that the ability to withdraw becomes available.

It is anticipated that employers and employees (where they are making their own contributions) will be able to set a risk profile for their investments with the DEWS scheme administrator.

Termination Blues?

The current EoSG model means that employees who leave the employment of the DIFC employer inside their first 12 months of employment have no entitlement to EoSG.

Importantly, the DEWS makes no such exceptions. Contributions are earnt from the first day of employment and are not limited or otherwise varied by the reason for termination.

Our current understanding is that where monies are owed to an employer (e.g. under a housing loan or other advances) the same will not be able to be automatically offset against monies accrued for that employee under the DEWS, save if agreement with the scheme administrator can be obtained. As such, consideration for other mechanisms for the recovery of such advances will need to be given by employers.

There is no deadline by which funds from the DEWS need to be withdrawn. That said, after employment has ended no further employee contributions can be made and any funds that are left in the DEWS will continue to be subject to a scheme management fee.

Notably, it is anticipated that any withdrawal of funds from the DEWS could be made to a bank account anywhere in the world, which would alleviate any issues with an individual not holding residency in the UAE from withdrawing their funds.

It is currently planned that the existing EoSG regime shall cease on 31 December 2019 and the following two options exist, presumably at the election of the employer in conjunction with the consent of each employee- albeit this is to be confirmed:

1. EoSG accrued up until 31 December 2019 will stop and be paid out at termination of an employee’s employment, taking into account any increases in base salary at the date of termination. Accordingly, if Employee A has been employed since 1 January 2015, their EoSG will cease to accrue as at 31 December 2019, but if their employment then terminates on 1 April 2023, their EoSG will be calculated against their base salary as at that date and revised accordingly. In the above circumstances, as of 1 January 2020, the employee will start to receive contributions (pursuant to the DEWS) from their employer (which will need to be made in cash into DEWS each month) and may, at their own discretion, make their own contributions; or

2. As an alternative to the above, employees may agree with their employers to transfer their EoSG, calculated as of 31 December 2019, into a DEWS plan. This option would completely extinguish an employer’s liability from an EoSG perspective, such that it would not be re-calculated against the employee’s revised base salary at the time of termination of their employment. Again in the foregoing circumstances, as of 1 January 2020, the employee will start to receive contributions (pursuant to the DEWS) from their employer (which again will need be made in cash into DEWS each month) and may, at their own discretion, make their own contributions.

Can An Alternative Plan Be Established?
The DIFC envisages that employers in the DIFC will be permitted to establish their own alternative savings scheme to the DEWS. The criteria for the same will be announced in due course.

What's Next?
In readiness for the introduction of DEWS it is important that employers in the DIFC:

- communicate the changes with its employees;
- look at options for establishing an alternative plan, subject to the DIFC's yet to be published guidelines;
- consider any changes to contracts of employment and employment handbooks;
- consider payroll/accounting changes; and
- consider the effect of how seconded employees are dealt with, and any issues that might arise between DIFC employed employees and mainland Dubai employed employees.

These are significant changes, with a small window until implementation. As such actions should be taken now to best understand the DEWS and the impact the same will have on businesses in the DIFC.