



Mobility: Tax alert

February 2021

Brexit

Future social security coordination between the UK/EU, EEA and EFTA countries

Executive summary

All EU States have now agreed to apply the 'detached/posted worker' provisions of the Trade & Cooperation Agreement (TCA) between the UK and the EU.

In the absence of specific agreements with the European Economic Area countries (Iceland, Liechtenstein & Norway) and Switzerland, old bilateral agreements and domestic legislation will apply in the interim to determine liabilities and benefit entitlements for cross-border workers. These may be more limited than the TCA and potentially mean increased costs for employers and more restricted benefit entitlements for individuals.

It may remain advantageous for eligible individuals to be within the scope of the Withdrawal Agreement (WA) equivalents for the EEA (Separation Agreement (SA)) and Switzerland (Citizens Rights Agreement (CRA)) in order to apply the old EU social security Regulations.

Background

The UK's departure from the European Union has radically changed the application of social security legislation for employees moving between the UK and the EU, and between the UK and the countries of the European Economic Area and Switzerland. Individual employees who were covered by the EU legislation prior to the end of the transition period are grandfathered to those arrangements provided that their activity continues without interruption, and certain other individuals may be covered by those old provisions if they meet certain criteria.

The European Union: Detached Worker Opt in/Opt out conclusions

The TCA has limited detached worker provisions which only permit home country coverage to continue where:

- a) an individual is posted for a period not expected to exceed 24 months; and
- b) the host country has not formally opted out of these provisions

For the month of January, each EU state was considered 'opted in' pending a formal declaration to be made to the EU by 31 January 2021.

We can now confirm that all EU states have opted in but note that any EU state can still give notice to opt out of those rules during the 15-year life cycle of the TCA.

There is no intention to extend the detached worker provisions for postings exceeding 24 months at the outset. We also expect that any decision to extend the posting made during the initial 24-month period would invalidate any certification from the date the intention changes.

European Economic Area (EEA) and Switzerland

The new TCA does not apply to the EEA or Switzerland.

This means that unless individuals fall within the provisions of the CRA or SA, the UK will revert to applying the old bilateral social security agreements with Iceland, Norway and Switzerland and will treat Liechtenstein as a 'non-agreement country'.

Switzerland

The UK has strong connections with Switzerland in terms of cross border activity but unless the CRA applies:

- ▶ Multi state workers will not be covered by the agreement, which may potentially lead to dual liabilities (added complexity will arise if a third-party EU state is involved)
- ▶ Certain provisions will not apply to Third Country Nationals
- ▶ Without special agreement between the authorities, detached workers will only be able to maintain home country coverage for assignments not expected to exceed 24 months, rather than for the five years under the existing EU rules
- ▶ EHICs will not be accepted and there will be no reciprocity around healthcare

Norway

Similarly, the UK has strong connections with Norway especially in terms of the energy sector but unless an individual is covered by the SA:

- ▶ Multi state workers will not be covered by the agreement, which may potentially lead to dual liabilities (added complexity will arise if a third-party EU state is involved)
- ▶ Without special agreement between the authorities, detached workers will only be able to maintain home country coverage for assignments not expected to exceed 36 months and only where an application for certification is made within four months of the start date
- ▶ EHICs will not be accepted, although treatment may be available on production of a UK passport
- ▶ Provisions around UK/Norwegian continental shelf operations remain in force, as do certain provisions relevant to mariners

Iceland

The situation with Iceland is similar to Norway but:

- ▶ There are multi state provisions within the agreement
- ▶ The detached worker rule is of limited benefit as it will only apply where the initial period of assignment is not expected to exceed 12 months. This can potentially be extended for a further 12 months as long as requested by the end of that initial 12-month period
- ▶ EHICs will not be accepted and there will be no reciprocity around healthcare

Importantly, from a UK perspective, as the TCA will not apply to foreign employers in the above three countries (with employees liable to pay UK NIC), there will be no liability to operate UK NIC or payroll in cases where they have no UK presence or there is no host employer obligation.

Gibraltar

Gibraltar is not covered under the new TCA. Based on a longstanding reciprocal arrangement between the UK and Gibraltar, however, the UK and Gibraltar Governments will continue to apply the principles of current EU legislation from 1 January 2021 to preserve the status quo for persons moving between both locations. As for Gibraltar's relationship with the EU/EEA and Switzerland, the social security status of persons not covered by the Withdrawal Agreement will be determined by domestic legislation unless individual arrangements are agreed with EU States.

Next steps

While the news of all EU states not opting out of the detached worker rules is to be welcomed, employers will still need to carefully consider policy around longer term assignments and the potential for increased costs and administration where host obligations now arise.

The UK Government is seeking to agree an EEA/EFTA wide reciprocal agreement in relation to social security and healthcare in 2021 and similar with Switzerland. Until the new agreements are in place, it will be important for employers to analyse whether individuals moving between the UK, EEA and Switzerland fall within the scope of the WA equivalents (CRA and SA) and can benefit from the more beneficial provisions within EC Regulation 883/04 or the current interim arrangements.

The latter could lead to increased social security costs and employer obligations as well as impacting individuals in terms of healthcare access and state benefit entitlements.

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