Mobility: tax alert

December 2018

United Kingdom

Government announces Social Security approach in case of a 'No Deal' Brexit

Executive summary
The UK Government has published four draft Statutory Instruments in relation to the social security treatment of individuals in case of a 'No Deal' Brexit.

In general, the draft legislation is an attempt to maintain the current EU principles and rules on social security coordination as a result of the UK's withdrawal from the EU in the event that there is no withdrawal agreement and no future relationship agreement.

However, any lack of formal reciprocity with EU/EEA countries could lead to social security liabilities in two countries for cross border worker, in a number of circumstances.

Key features
The draft instruments make clear that the existing regulations and arrangements rely on coordination between EU member states to operate effectively and will be largely inoperable in a 'No Deal' scenario. The approach taken to amending the regulations has therefore been to focus on circumstances where the UK legislation does apply for mobile employees. For example, in cases where UK National Insurance contributions (NICs) are payable.

Impact on Mobile Employees
The draft legislation mirrors existing EU social security regulations whereby UK NICs remain payable for postings to EU member states not exceeding 24 months from exit date and UK NICs shall not be payable for postings to the UK from a member state for up to 24 months. The regulations also adopt EU regulation principles for multi-state workers.

However, as this is unilateral UK domestic legislation, there is no similar requirement or mechanism for the various EU/EEA member states to reciprocate and mirror the UK rules.

This could potentially impose the following on mobile employees and their employers:

- For UK outbound individuals there could be dual UK and host country social security arising for a UK employee seconded to work in the EU/EEA for the first 24 months from exit date;
- For inbound individuals seconded to the UK there will an exemption from UK NICs and potentially an exemption under home country legislation as well.
- Dual UK and EU social security liabilities will arise for many employees with multistate working arrangements.

There seems to be no indication that any existing bi-lateral social security agreements with the various EU member states will be considered although these would normally be expected to override any domestic UK legislation.

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Next steps
Although the proposed legislation attempts to protect the rights to UK and EU citizens regarding coordination of social security rules, without the specific required reciprocity from each of the relevant other EU/EEA member states, employers with mobile employees moving between the UK and EU/EEA should consider and plan for potential significant additional contribution and administration costs.

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EYG no. 05310-183Gbl

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