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United Kingdom – Consultations on Foreign Employees and Employer- Related Securities Published

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Her Majesty's Revenue & Customs (HMRC) has published the results from the consultation process with respect to potential changes to the U.K. social security (NIC) treatment of employer-related securities (ERS) received by Internationally Mobile Employees (IME).¹

Legislation is expected to be introduced to enact the proposed changes, which would take effect from 6 April 2015, with detailed guidance from HMRC planned for release in advance of the law's implementation. (We discuss the proposals below.)

Why This Matters

The NIC treatment of ERS income has long been recognized as extremely complex, often with no clear answers as to the treatment of such income for NIC purposes in cross-border situations. This places employers in a difficult position with no clear guidance as to how to treat this income where an employee has not been within the U.K. social security system for the full duration of the award. This complexity was recognized by HMRC in the fact that legislation on this matter was delayed so a consultation could take place on potential changes.

The new proposals will impact any employers with IMEs working in the U.K. who will be receiving ERS income after April 2015. Such employers will need to make note of the changes and determine that they have the correct procedures in place to capture any liabilities on this income. They may also need to review assignment cost projections to ascertain that any increased liability is accrued for.

Background in Brief

Following the report issued by the Office of Tax Simplification in January 2013² on unapproved share option schemes, legislation was included in Finance Act 2014³ to enact the recommendations made in respect of Income and Corporation tax. A consultation document was then published in July 2014⁴ to gather views concerning the NIC implications of the changes.

New Proposals in Detail

The income tax changes introduced by Finance Act 2014 mean that ERS income is time apportioned over the life of the option, with income relating to U.K. duties being taxable in the United Kingdom. Previously, for unapproved stock options, there was no U.K. tax on the income arising on the exercise of the option provided that the option had been granted at a time when the IME was non-U.K. resident and the option was not granted in anticipation of U.K. duties.

However, it was recognized at the time the Finance Act 2014 came into force that to align the NIC treatment of ERS income entirely with the income tax treatment had the potential to lead to a double charge if the IME was also subject to social security in another country. Following the end of the consultation process, the government announced that legislation to be introduced will be based on the following principles:

- Where international social security agreements or domestic legislation is not relevant, the tax and NIC treatment of ERS income will be aligned. NIC will also be payable on ERS income which is subject to U.K. tax (broadly the pro-rated income related to duties performed in the U.K.);
- Where international social security agreements or domestic legislation is relevant, the income relating to a period during which U.K. NIC was not payable (i.e., for the period the IME was subject to social security contributions in the overseas location) will be excluded from a charge to U.K. NIC. This will be the case even if the income is subject to U.K. tax (for example where an individual is non-U.K. resident and performs duties in the U.K. that are not incidental to the overseas role). Income relating to the period for which the IME was subject to U.K. social security will have NIC calculated and charged.
- The apportionment for U.K. NIC will include any periods for which the 52 week continuing liability to NIC applies. These rules apply to U.K. employees going to work in a country with which the U.K. has no bilateral social security agreement;
- The measures to be introduced will not apply to “cash” earnings such as bonuses that are covered elsewhere in U.K. legislation.

The aim of the new legislation is to foster situations where an IME will be subject only to the social security legislation of one country for any given period. Broadly, if U.K. duties are performed in a period where the IME is subject to U.K. NIC, then this will apply to ERS income. If the duties are performed when the IME is covered by another social security system of a country with which the U.K. has a bilateral agreement, then U.K. NIC will not be charged.

Next Steps

As mentioned, the government has indicated its next steps will include formulating and introducing legislation to align the tax and NIC treatment of ERS income, taking into account international social security legislation. This will mean that the tax and NIC changes will take effect together. HMRC is planning on issuing detailed guidance on these new measures in advance of the implementation date.

KPMG Note

KPMG LLP (U.K.) anticipates the publication of the promised guidance which will hopefully make it clear for employers whether NIC is payable or not.

The question that remains is how much of an administrative burden these measures could prove to be for employers. Although employers may already track the whereabouts of IMEs for the purposes of determining where an income tax liability arises, that tracking does not necessarily cover where the IME was insured for social security. Adaptations will need to be made to any tracking system to enable this information to be captured so that the appropriate NIC can be applied, collected, and paid over.

Footnotes:

1 See:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/401469/Internationally_Mobile_Employees_and_Employment-Related_Securities_-_Summary_of_Responses.pdf .

2 See:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198440/ots_unapproved_employee_share_schemes_final.pdf . See our earlier report in [Flash International Executive Alert 2013-020](#) (24 January 2013).

3 See our earlier report in [Flash International Executive Alert 2014-068](#) (18 July 2014).

4 See:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336741/140724_IME_E_RS_condoc_v2.pdf .

The information contained in this newsletter was submitted by the KPMG International member firm in the United Kingdom. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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