

GMS Flash Alert

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United Kingdom - Post-EU Referendum, What's Next for Employers with International Assignees?

On 23 June 2016, the U.K. voted to leave the European Union (EU). Prior to the referendum being held there were questions over what a possible "Brexit" may mean for employers, and in particular employers of globally mobile employees. Now the result of the referendum is known, there is a renewed focus on what this will mean.

WHY THIS MATTERS

It is still too early to fully understand the impact of the results of the referendum and the negotiations regarding the U.K.'s exit from the EU have not even begun. However, in the immediate aftermath of the result, there are some considerations from an employer perspective which should be considered and taken into account. Employers of globally mobile employees will want to bear these considerations in mind when negotiating and reviewing not only their assignment packages but also their policies and processes.

Matters to Consider

Direct Taxes

The referendum result is unlikely to have an immediate effect on U.K. tax rates and allowances. The one immediate impact is the fall in sterling against the euro and dollar in particular. This will mean that in the short term, the cost of sending people to work in the U.K. on home-based packages will be cheaper and that sending assignees out from the U.K. will cost more in comparison. How long this lasts is obviously dependent on the market.

KPMG NOTE

Although widespread changes to direct taxes are not anticipated as a result of the referendum, KPMG LLP (U.K.) will keep a running brief on whether we see changes in policy; updates will be published should that happen. In a speech today (27 June 2016) the Chancellor of the Exchequer, George Osborne, said that the U.K. remains "open for business" and it will be interesting to see if that is reflected in changes to measures previously announced.

The changes to the "non-dom" legislation have been widely publicised (see GMS [Flash Alert 2015-123](#) (12 October 2015)) and we were expecting wider consultation in the period following the referendum. We will wait to see if these proposals continue with no amendments or if they are relaxed in any way.

The Apprenticeship Levy is another area where there were suggestions that changes may be made, albeit before the referendum took place. Again, we will need to keep a watching brief over the coming months as the economic consequences of the referendum results become clearer.

Social Security

This is the area where there will be a definite impact. Companies will need to consider the impact of the EU social security rules for their internationally mobile employees.

In the immediate short term, it is important to note that for any impending employee moves within the EU, the existing EU social security regime and rules will continue to apply until any transitional arrangements are announced. As negotiations commence with the EU over the coming months, we will need to see if the U.K. becomes part of the European Economic Area, or EEA, (along with Norway, Iceland, and Liechtenstein) or if we negotiate our own route like Switzerland.

KPMG NOTE

If the U.K. does join the EEA (or similar), it may not result in significant, whole-scale change from a social security perspective as the EEA have already adopted much of the EU social security regime. Employees most likely affected if the U.K. joins the EEA are third country nationals (i.e. non-U.K. nationals) as the EU rules do not automatically extend to third country nationals. We will need to wait and see if the U.K. seeks to obtain any additional terms that would extend to these employees.

If the U.K. does not become part of the EEA, is worth noting that the U.K. does also have legacy bi-lateral Totalisation Agreements that remain in force with a number of EU member states which may provide some of the same benefits and protections for employees as the existing EU rules.

Whilst the legacy agreements will continue to provide protection for mobile employees, it is noted that these legacy agreements are not as comprehensive as the EU regulations, so they may not cover every set of employee circumstances. It is also possible that the U.K. would seek to enter into new agreements with other EU states over time.

Employers will want to identify the number of EU nationals working in the U.K. and vice versa who are insured under the social security system in their 'home' country. They may also want to quantify the impact of the social security costs if all employees become subject to social security in the 'host' country. This could be particularly expensive if employers have a significant number of assignees working in high-cost social security countries such as France and Belgium. This will need to be reviewed regularly as negotiations progress.

There are other social security-related issues to consider. The European Healthcard (EHIC) may no longer be available to U.K. citizens. The EHIC broadly allows individuals to receive health-care treatment within the EU on similar terms to local nationals. Employers may therefore wish to establish that they have adequate medical and travel insurances in place to provide cover if an employee becomes ill and/or requires cover whilst overseas.

In addition, where employees have worked in different EU states throughout their careers, the extent that any social contributions made to other EU states will be considered in determining state pension benefits across the EU and any grandfathering to contributions made pre-/post-Brexit will need to be examined on a case-by-case basis.

Immigration and Employment Law

KPMG LLP (U.K.) recently published [GMS Flash Alert 2016-070](#) (22 June 2016) on the potential consequences of leaving the EU for EU nationals working in the United Kingdom. We have developed a flow-chart¹ based on current immigration rules which is designed to show how different groups of people may be affected assuming the current rules remain in place whilst the U.K. exits the EU.

KPMG NOTE

It is important to note that as far as immigration goes, nothing changes immediately. EU citizens already in the U.K. continue to have free movement rights (until the U.K. formally leaves the EU). We would expect there to be transitional arrangements for EU citizens currently in the U.K. to confirm their permission to reside after the U.K. has formally left the EU, albeit involving some form of application.

It is expected that there will be a reform of the U.K. immigration rules to account for skilled jobs and immigration from across the EU. We will have to wait and see what the U.K. government sets out in due course, but there is already some suggestion around an Australian-style points based system for EU nationals coming to work in the United Kingdom.

Similarly, there may be changes for British citizens living in other EU countries. Ultimately, the position of British citizens in the EU will be a matter for the EU and the constituent member states and this will be a key part of the exit negotiations.

Immigration and Employment Law (cont.)

From an employment law perspective, much of the U.K.'s employment law derives from EU legislation, including legislation on areas such as anti-discrimination, equal pay, family leave, and working time. That being said, these rights are written into primary U.K. legislation and therefore would not fall away automatically on Brexit, unless they were specifically repealed.

KPMG NOTE

It is very difficult to envisage large scale repeal or amendment of these employment rights on or after Brexit, for many reasons. Despite widespread perception to the contrary, many of these rights existed in U.K. law before they were required by EU legislation. In addition, the U.K. actually goes further than is required by the EU in implementing some of these rights. By way of example, the U.K.'s family friendly laws are more generous than the EU requires.

Many other employment rights derive purely from U.K. law (even some of those which are unpopular). For example, the right not to be unfairly dismissed, redundancy rights, anti-whistle-blowing laws, and the right to the national minimum and living wage, and the soon-to-be introduced gender pay gap reporting obligations, are all purely domestic legislation.

The net result of the above leads to a prediction that there will be a slow and low impact of Brexit on employment law. What is possible would be some tweaking of U.K. legislation in time on some of the more unpopular provisions such as those relating to agency workers' rights.

FOOTNOTE

- 1 See: <https://assets.kpmg.com/content/dam/kpmg/pdf/2016/04/brexit-in-the-boardroom.pdf> .

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