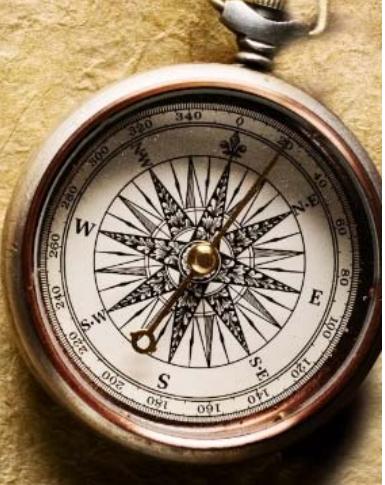


Impact of 'hard Brexit' on social security for internationally mobile employees



Since the UK's vote to leave the EU on 23 June 2016, one of the key areas for employers with internationally mobile workers has been immigration. Another area which may also have a significant impact on employers with a globally mobile workforce are the EU social security regulations.

Current EU social security regulations

Under current EU regulations, where an employee meets the conditions to be a 'posted' (or 'seconded') worker or is a 'multi state' worker, it is often possible for the employee to remain in their home country social security system for up to five years and in the case of multi state workers, indefinitely, whilst the fact pattern remains.

This often benefits the employee, as it means their social security record in the home country is unbroken, there are no gaps in future state benefits, such as state pension, family/child or unemployment benefits, and benefits continue to accrue in the country where the employee ultimately intends to return.

With employer National Insurance contributions ("NIC") of 13.8% and up to 12% for employees, the UK has one of the lowest rates of social security in the EU. Certainly compared to countries such as France and Belgium, where social contributions are in excess of 30%, this can result in a significant saving for UK employers posting employees to work temporarily in other European countries.

What is the impact of Brexit?

The EU social security regulations were originally established as a direct consequence of one of the four freedoms of the EU – Freedom of Movement for Workers.

Immediately following the vote to leave the EU, there was perhaps an expectation that the UK would remain in the EEA and as a result, there would be limited impact on these existing regulations. This is because the wider EEA (and Switzerland) have already signed up to and adopted much of the EU legislation. Even if the UK was unable (or unwilling) to remain in EEA, we could always follow the Swiss and use the same regulations via a Bi-lateral Agreement instead. No need for any panic.

Fast forward 9 months to March 2017 and with increasing talk of a "hard Brexit" from the EU and the triggering of Article 50, this is starting to look less likely.

Certainly, commentary from leading figures within the EU has been consistent – the UK will not be able to 'pick and choose' free trade but not accept free movement.

Whilst this remains subject to negotiation over the next two years, there is certainly the possibility that the established world of EU social security as we know it will change.

I would certainly hope that the UK can reach some form of EU-wide Totalisation Agreement which affords much of the same protection for both contributions and benefits as the existing EU/EEA regulations, but we will have to wait and see if this materialises.

So if no EU social security agreement – what then?

Well, whilst we should not rule out the possibility of a separate UK-EU Totalisation Agreement at this stage, if this weren't to happen, the UK does still have a number of bilateral social security agreements in place with a number of, but not all, EU countries which pre-date the EU Agreement.

However, when we start to look at the detail of these agreements, it is clear that these do not afford anywhere near the same coverage as the current EU legislation and are very limited in application. This makes sense, if we consider that the first EU regulations were enacted in 1971, when employee mobility was much more limited. Certainly, it was rare for employees to commute between countries on a regular basis, business travel was not a pre-requisite for most senior roles and there was no Eurostar or low cost airlines that make it easier to get from London to Paris than London to Edinburgh.

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Illustrative example – UK/France Agreement

By way of an example, the UK/France Social Security Agreement dated in 1970, states that it is possible for an employee to remain in their home country social security system for a period of up to six months. Contrast this to the five years under the EU legislation.

Where the terms of the Agreement are not met, it would appear that employers would default to the general principle of 'pay where you work'.

Therefore an employee 'seconded' to France for a period of two years may end up paying social security in France rather than the UK as they would no longer meet the conditions to remain in the UK NIC system. This is likely to result in significant additional costs for an employer due to high French social tax rates. Agreements with other EU countries are similarly restrictive however it is worth noting the flip side. Where EU nationals are seconded to work in the UK, if they similarly do not qualify to stay in their home country regime, this could result in a saving for the employer.

Comparative costs across the EU

Take one employee, earning £100,000 per annum, the total UK social costs are approximately £18,000.

The table below shows the comparative costs across several of EU countries, along with an extrapolation of total increased costs based upon 10 assignees, when compared to the UK position. It is clear that the costs increase very quickly. It only takes 18 assignees paying into the French social security system rather than the UK regime for additional costs to exceed £1m.

Comparison social security costs across the EU

| Country | Employee | Employer | Total (based upon 10 employees) per annum | Increased costs compared to UK |
|-----------|---------------|----------------|-------------------------------------------|--------------------------------|
| Belgium | £13,290 | £33,050 | £46,340 | £283,280 |
| Denmark | £130 | £1,450 | £1,580 | £(164,320) |
| France | £24,780 | £49,560 | £74,340 | £563,330 |
| Germany | £11,400 | £10,800 | £22,200 | £41,900 |
| Romania | £15,600 | £21,700 | £37,300 | £192,900 |
| UK | £5,330 | £12,680 | £18,010 | |

Transitional rules?

One would hope that for employees already covered by the EU social security regulations that there will be some form of grandfathering protection or transitional period, however what this will look like, the periods of time it will cover, are currently unknown.

We do know that for the next two years as the UK negotiates its exit from the EU that the existing social security regime will continue to apply, which at least provides some short term certainty.

Looking further ahead, many employers are now starting to plan for a 3-5 year period and therefore may need to budget on a worst case basis for the potential increased costs for new assignments.

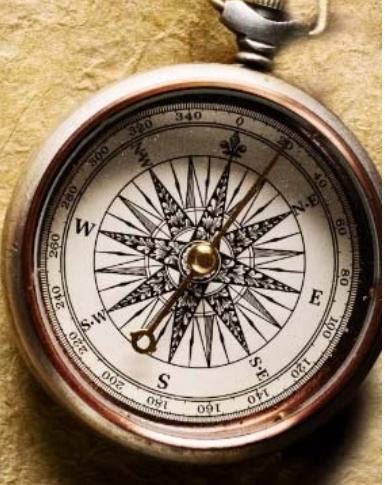
Impact on employees

So, all of the above may be interesting, but so what? Who really cares about social security? Well... employees generally do.

Unlike tax, there is an expectation that an employee will get something back for their social security contributions, for example, in the form of future state pension or maternity/paternity benefits. We are certainly seeing increased questions from employees wanting to understand the impact of Brexit on their contributions and whether their contributions made in one EU country continue to be taken into account if they are living/working in another EU country.



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Employers – word of warning

Employers need to be careful at this stage of overpromising on what is simply unknown at the current time. Now is the time to start reviewing standard terminology in assignment policies and secondment letters to ensure employers aren't leaving themselves open to a potential claim in future.

It is also worth noting that whilst this article has focussed primarily on contributions, the impact will be on employee's benefits. Not just the State pension and unemployment, but also wider, including potential medical coverage currently available via the EU healthcard. Where there is a loss of coverage, employers may also need to compensate or provide alternative private coverage.

The future

In the longer term, if the UK does have a "hard Brexit", it would seem likely that the UK will seek to update existing social security agreements across the EU if these are not renegotiated on a wholescale basis as part of the EU exit negotiations.

However, similar to Double Tax Treaties, these take time to negotiate and ratify, which could leave us with a period of time where all we have left to rely on is the 'old' pre-EU legislation unless we can agree some form of grandfathering or transitional period.

Unfortunately, it may be optimistic to expect social security rights for what may be perceived as highly paid expatriates to be too high up the 'To Do' list of the EU or UK Government in the short term. That may mean we are left to work with the unwieldy and out of date legislation for longer than we expect.

Contact us

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