

GMS Flash Alert



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Poland - Personal Income Tax and Social Security Consequences of Brexit

Until now, U.K. nationals in the Republic of Poland have been entitled to rights as European Union (EU) citizens.¹ On 1 January 2021, however, U.K. tax residents will no longer be considered as EU tax residents. When the Brexit transition period ends 31 December 2020, the United Kingdom will no longer be treated as a member state of the EU and its citizens will become subject to personal income tax and social security provisions relevant to third countries.

This may mean that social security contributions will be due in both countries and that double payments may be unavoidable.

WHY THIS MATTERS

During the Brexit transition period ending 31 December 2020,² the United Kingdom was treated as if it were still part of the EU for the purposes of Polish Personal Income Tax Act (PIT Act), and for social security obligations. U.K. tax residents working in Poland have still been entitled to enjoy the same favourable tax treatment provided by the PIT Act to EU tax residents; and for social security purposes, they were fully covered by the EU regulations on social security coordination.

From a social security perspective, if no agreement on the future relationship between the U.K. and the EU is entered into by the end of this year, then from 1 January 2021, the EU coordination regulations will **only apply** to those EU and U.K. citizens who were part of a certain cross-border relationship between the U.K. and the EU before 1 January 2021, and will only apply during the period of this relationship without any interruption or change. Employers that post their workers to Poland after 1 January 2021, should be aware that there is no bilateral social security agreement with the United Kingdom.

General Information

Beginning 1 January 2021, obligations related to settling tax on income earned in the U.K. by Poles will be determined by tax residence regulations and relevant provisions of the Convention between the Republic of Poland and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains (DTT).

Individuals with unlimited tax liability in Poland (Polish tax residents) must declare their worldwide income, including income taxed in the U.K. According to the unlimited tax liability principle, Polish tax residents are taxed in their country of residence (Poland) on their total income, regardless of whether it was earned in Poland or abroad.

Under the PIT Act, a resident of the Republic of Poland is a natural person who:

- has his or her centre of personal or economic interest (centre of interest) in the territory of the Republic of Poland or
- stays in the territory of the Republic of Poland for over 183 days in a given tax year.

Meeting at least one of these conditions means that the individual is legally recognised as a Polish resident and thus subject to unlimited tax liability in Poland. In turn, failure to meet the above conditions means that the individual is legally recognised as being subject to limited tax liability in Poland (classified as a tax nonresident). Under limited tax liability, stemming from the source principle of taxation, personal income tax is due only for income earned in the territory of the Republic of Poland. In summary, a Polish tax nonresident is not subject to income tax on income earned in the territory of the United Kingdom. It should be emphasized that determining the tax status of an individual posted or working abroad is important for establishing their tax obligations, which means that each case must be analysed separately.

Income from Work Performed in U.K.

For income earned under employment contracts where the employee is a Polish tax resident, the DTT provides for a solution referred to as 'exemption with progression' (Article 14 in relation to Article 22(2) of DTT), under which, income earned outside the country of the taxpayer's place of residence or seat is excluded from the tax base in the taxpayer's country of residence, but taken into account when calculating the rate of tax on the remaining income earned by the taxpayer. This meant that such income was not taxed in Poland; however, it influenced the amount of tax due on the income earned in Poland.

MLI and Tax Settlements in U.K.

The multilateral convention to implement tax treaty-related measures to prevent base erosion and profit shifting (MLI) was signed on 7 June 2017, by over 100 countries. For Poland, it provides for the use of the proportional deduction (tax credit) method instead of exemption with progression applied in double tax treaties signed by Poland. On 1 July 2018, the provisions of the Convention became applicable in five countries, including Poland.

On 1 January 2020, under MLI, the content of Article 22(2)(a) of DTT was amended to introduce the principle under which Polish tax residents' income earned in the U.K. shall be taxed in line with the proportional deduction method. In principle, this means that the income earned abroad shall be taxed in Poland, but the tax due will be deducted from tax settled in the other country. In other words, the tax on income earned in the U.K. can be proportionally deducted from the Polish tax liability.

Because of the shift from exemption with progression to proportional deduction method, Polish tax residents earning income taxable only in the U.K. will be obliged to submit annual tax returns. However, it will not influence the amount of tax due on income earned in 2020. This is because taxpayers may apply the "abolition relief" provided under Article 27g

of the PIT Act, which allows taxpayers to deduct from the income tax the amount of the difference between the tax calculated with the use of the proportional deduction method and the tax calculated based on the exemption with progression method for the given tax year. The intention behind introduction of the abolition relief was to level the status of taxpayers using the proportional deduction methods with those applying the exemption with progression method.

However, in light of the anticipated PIT Act amendments, abolition relief application may become limited. For income earned on or after 1 January 2021, the deduction under abolition relief may not exceed the tax-reducing amount, PLN 1,360. Limiting the deductibility of the abolition relief will therefore increase the level of tax liabilities due in Poland from Polish tax residents who earn taxable income in the United Kingdom.

It should be noted, however, that pursuant to the DTT, upon meeting certain conditions, taxpayers may be taxed only in the territory of the Republic of Poland. Such conditions include:

- The taxpayer's work abroad does not exceed a period or periods aggregating 183 days in any 12-month period commencing or ending in the tax year concerned,
- The taxpayer's remuneration is paid by or on the behalf of the employer outside of the place of residence or seat in the U.K.,
- The taxpayer's remuneration is not paid by a permanent establishment which the employer has in the United Kingdom.

Tax Settlements in Poland

As of 1 January 2021, the U.K. will no longer be treated as a member state of the European Union, meaning that its citizens will become subject to personal income tax provisions relevant to third countries.³ This will impact:

- **Joint taxation of spouses in Poland** - Upon meeting certain conditions, joint taxation may also be applied to spouses with fiscal domicile in the EU, European Economic Area (EEA) or Switzerland, or if one spouse is subject to unlimited tax liability in Poland and the other is domiciled for tax purposes in a member state of EU/EEA other than Poland, or Switzerland;
- **Preferential taxation of single parents in Poland** - Upon meeting certain conditions, preferential taxation of single parents may be also applied to a taxpayer domiciled for tax purposes in a member state of EU/EEA other than Poland, or Switzerland;
- **Charity donations** - There will be no deductions for donations made to U.K. public benefit organizations;
- **Housing tax relief** - This will not be applicable to real estate located in the U.K.;
- **Deduction of social security and health insurance contributions** - Social security and health contributions remitted in the U.K. will not be deductible for PIT.

Brexit and Social Security

Pursuant to the Polish Act on the Social Insurance System, the insurance obligation covers, inter alia, individuals employed by Polish employers under the provisions of Polish labour law, regardless of whether the work is performed in Poland or abroad. A Polish citizen, employed by a Polish entity under a Polish employment contract and posted under this contract to a non-EU country, will be subject to mandatory social insurance in Poland, with contributions paid on similar terms as for other employees employed and working in Poland. Given that Poland has no social security

agreement with the U.K., the obligation to pay contributions in Poland does not release the remitter from any obligations imposed by the country of work performance, i.e., the United Kingdom. This may mean that social security contributions will be due in both countries and double payments cannot be effectively avoided.

On the other hand, individuals posted to Poland from a country not covered by the EU rules on coordination of social security systems or from a country with no social security agreements signed with Poland, as a rule, are not required to pay social security contributions in Poland. Note that beginning 2021, the list of such countries will include the United Kingdom.

FOOTNOTES:

1 See guidance from the U.K. Foreign & Commonwealth Office “Living in Poland” at: <https://www.gov.uk/guidance/living-in-poland> .

2 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 2019/C 384 I/01, *OJ C 384I*, 12 November 2019, pp. 1-177. For related coverage of Brexit and the Withdrawal Agreement and immigration matters for U.K. nationals, see our other Brexit reports in *GMS Flash Alert*, at: <https://home.kpmg/xx/en/home/insights/2015/09/flash-alert-brexit.html>

3 For more information, see “Withdrawal agreement and transition period” (at: <https://udsc.gov.pl/en/cudzoziemcy/brexit/rules-of-stay-of-british-citizens-in-poland-after-brexit/withdrawal-agreement-and-transition-period/>) and “Rules of stay of British citizens in Poland after Brexit” (at: <https://udsc.gov.pl/en/cudzoziemcy/brexit/rules-of-stay-of-british-citizens-in-poland-after-brexit/>) and “Brexit – pobyt obywateli Wielkiej Brytanii po okresie przejściowym” (in Polish, at: <https://udsc.gov.pl/brexit-pobyt-obywateli-wielkiej-brytanii-po-okresie-przejsciowym/>) on the website of The Office for Foreigners (Urząd do Spraw Cudzoziemców).

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in Poland:



Andrzej Marczak
Partner and GMS Country Leader
Tel. + 48 22 528 11 76
amarczak@kpmg.pl



Mateusz Kobylinski
Partner
Tel. + 48 22 528 11 91
mkobylinski@kpmg.pl



Grzegorz Grochowina
Senior manager, Tax
Tel. + 48 12 424 94 90
ggrochowina@kpmg.pl

The information contained in this newsletter was submitted by the KPMG International member firm in Poland.

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