

GMS Flash Alert

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United Kingdom – Social Security Treatment for Simultaneous Employment in U.K. and Self-Employment in EU

HM Revenue and Customs (HMRC), the U.K. authority responsible for tax and social security, recently issued a written confirmation regarding the social security treatment of individuals who are engaged in both employment and self-employment activities across the United Kingdom and European Union (EU) member states. Specifically, HMRC clarified that income earned from work activities overseas should be categorised according to U.K. law and should be subject to the appropriate class of National Insurance contributions (NICs).

WHY THIS MATTERS

Determining the correct social security treatment for individuals with employments, self-employments, and directorial roles across the EU, the European Economic Area (EEA), and the U.K. can be challenging.

The complexity escalates for those appointed to the Board of Directors in various EU, EEA countries, and the United Kingdom. This is because directorships are classified differently – as either employment or self-employment – across these regions. Sometimes, even within the same country, treatment varies depending on the board position (e.g., Chair, Executive, or Non-Executive board member).

Companies often assess the social security position of their employees or board members in isolation, neglecting to consider other activities that the individuals might have in other countries. This oversight can lead to several issues, including incorrect social security treatment, individuals being subject to the social security legislation of more than one country, and compliance risks.

The recent confirmation from HMRC is most welcome as it aligns with the long-standing interpretation of social security legislation held by KPMG LLP (U.K.).

Legislative Background

The determination of social security rules applicable to workers moving within the EU and the EEA is primarily governed by Regulation (EC) No 883/2004.¹ Following the U.K.'s departure from the EU – commonly referred to as “Brexit” – movements between the U.K. and EU member states are now regulated, in most cases, by the Protocol on Social Security Coordination (“the Protocol”)² which took effect on 1 January 2021.

Both regulatory frameworks contain the same fundamental principles:

- Only one country can be competent for social security at any given time.^{3, 4}
- Social security contributions are due in the country where work is performed (“pay where you work”).^{5, 6}
- There are specific provisions for individuals who concurrently engage in employment in one country and self-employment in another. In such cases, in principle, they are subject to the legislation of the country where they pursue an employment activity^{7, 8} (note that specific provisions apply when employment activity is performed in more than one country).

To comply with the social security rules, it is therefore vital to determine the only country where social security contributions are payable by understanding whether the work activities are classified as employment or self-employment under the legislation of the country where the activity occurs.^{9, 10}

KPMG LLP (U.K.) INSIGHTS

Once this is assessed and the competent country for social security payments is identified, all work activities are considered as taking place in that country. Similarly, all income is treated as being received in that country.^{11, 12} Consequently, for the application of the social security rules in the competent country, it is irrelevant how the activity is classified in another country or whether the activity is entirely performed outside the competent country.

HMRC's View

HMRC provided the following example:

John Doe is an employee of ABC Limited U.K. and he also serves as a Non-Executive Director of XYZ SRL, a limited company based in Belgium. His role at XYZ SRL qualifies as self-employment under Belgian legislation, and all the activities he performs for XYZ SRL are conducted in Belgium.

HMRC concluded that John is liable to pay social security contributions in the U.K. as an employed person:

- John is subject to the social security legislation of one country only.
- U.K. social security legislation applies because the U.K. is where John is employed.
- As John is considered an employed earner under U.K. law,¹³ his earnings from the Belgian directorship are subject to employee NICs.
- In line with European rules,¹⁴ XYZ SRL, the Belgian limited company, must comply with U.K. social security legislation, as though it had a registered office or place of business in the United Kingdom.¹⁵ This includes obligations related to registration, withholding of employee NICs, and payment of the employer NICs.

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It is strongly recommended that businesses/employers understand the correct rules applicable to their international employees and board members. It is crucial to maintain a comprehensive overview of all activities performed by their employees and/or board members across the EU, the EEA, and the U.K. to avoid compliance risks. To achieve this, they should consider the following:

- Review their workforce, paying particular attention to the members of their boards.
- Pose the right questions to newly-hired employees or newly-appointed directors.
- Stay informed about any changes in their employees' or directors' activities, as these can potentially alter their compliance requirements as employers.

FOOTNOTES:

1 Full text: [Regulation \(EC\) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems \(Text with relevance for the EEA and for Switzerland\)](#) on the EUR-Lex website.

2 See European Commission, "[The EU-UK Trade and Cooperation Agreement](#)."

Also, for prior coverage, see the following issues of *GMS Flash Alert*: [2021-005](#) (5 January 2021), [2021-010](#) (8 January 2021), and [2021-038](#) (25 January 2021).

3 Article 11(1) of Regulation (EC) No 883/2004.

4 Article SSC 10(1) of the Protocol.

5 Article 11(3) of Regulation (EC) No 883/2004.

6 Article SSC 10(3) of the Protocol.

7 Article 13(3) of Regulation (EC) No 883/2004.

8 Article SSC 12(3) of the Protocol.

9 Article 1(a) and 1(b) of Regulation (EC) No 883/2004.

10 Article SSC 1(a) and 1(b) of the Protocol.

11 Article 13(5) of Regulation (EC) No 883/2004.

12 Article SSC 12(8) and 1(b) of the Protocol.

13 Full text: Section 2(1)(a) of the "[Social Security Contributions and Benefits Act 1992](#)" on the [legislation.gov.uk](#) website.

14 Full text: "[Regulation \(EC\) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation \(EC\) No 883/2004 on the coordination of social security systems](#)," published in the *Official Journal of the European Union*.

15 Article 21 of Regulation (EC) No 987/2009.

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