United Kingdom: Social security implications of 'No Deal' Brexit – what's next?

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In brief

As the prospect of a 'No Deal' Brexit moves closer, increased focus on 'No Deal' planning has become inevitable. If the Government secures a deal, it should trigger the transitional rules in the Withdrawal Agreement. In practice, that would mean status quo for social security coordination rules remain in place until December 31, 2020.

However, a 'No Deal' Brexit will remove the current EU coordination rules on social security and they will be replaced by a country-by-country approach for any moves into or out of the UK.

In detail

Latest developments – HMRC letter to all UK employees holding an A1

The UK social security authority (HMRC) issued a letter last week to all holders of UK A1 certificates that has caused widespread concern among employers and employees. The main messages in the letter are the following:

- UK social security contributions (NIC) will continue to be due until the end date on any A1 (even if this date falls after October 31, 2019); and
- Social security contributions also could become payable in the host country after October 31, 2019 and individuals are advised to check with the respective country social security authority, with the potential for dual contributions.

This message also is being communicated in all new A1 certificates issued by HMRC and it has brought confusion as employers struggle to understand how each EU country will deal with a 'No Deal' Brexit.

How does the EU27 approach 'No Deal' Brexit?

The UK (in the capacity of the Department for Work and Pension and HMRC) have made their intentions in case of a 'No Deal' relatively clear. The intention is to implement a unilateral application of the European coordination rules on social security in order to ensure status quo from a social security perspective.

Unfortunately, the UK's intention is only half the story, as it is paramount to understand how the EU27 will approach a 'No Deal.' The letter from HMRC suggests reaching out to the social security authority in the host country in order to understand the 'No Deal' approach in that particular Member State.

Assuming an individual can identify which authority to contact in an EU27 country, any correspondence may be both lengthy and possibly unsuccessful due to the nature of the circumstances surrounding a potential 'No Deal' Brexit and the fact that many countries have yet to officially comment on their intended approach.

EU27 – different ways of approaching 'No Deal' Brexit

PwC is continuously in contact with EU27 authorities to understand how the social security implications of 'No Deal' Brexit evolve. Based on the current reality, at least four different approaches are taken:

1. **Reciprocation countries**

   The ideal position would be if all the EU27 Member States would reciprocate the UK's intention to unilaterally implement the current EU rules on social security. On a very positive note, this approach is currently intended to be reciprocated by EU27 Member States including Spain, Italy, and Belgium, which effectively means status quo can continue for a period of time.

2. **Bilateral agreement countries**

   There has been a lot of discussion with regard to the old bilateral social security agreements and whether these would come back into force. Ireland and Switzerland have accommodated these discussions in the most positive way, negotiating new agreements to ensure a status quo to a large extent in the event of a 'No Deal' Brexit. However, there are a number of countries that have stated that the old agreements cannot be used in the event of a 'No Deal' (e.g., France and Netherlands). Additionally, the UK does not have old agreements to fall back on for a large number of the EU27 countries.

3. **Countries that are yet to release a position**

   A number of countries have yet to publish an official approach when it comes to the coordination of social security liability after a 'No Deal.' This group of countries includes the Scandinavian countries, Austria, and Finland. For most of the time, these countries still operate business as usual and there is a hope that these countries at least will accept A1 certificates for the duration for which they have been issued.

4. **Countries adopting a strict approach**

   The most challenging group of EU27 countries from a social security perspective are the strict Member States. These appear to be countries like Germany, France, Luxembourg, Poland, and the Netherlands where the authorities in those Member States have confirmed that they will not acknowledge A1 certificates past October 31, 2019 in the event of a 'No Deal.'

   This could mean that domestic social security law in those Member States would have to be considered, leaving a real risk of dual social security liabilities.

For more detail, please see our previously released Mobility Insights from April 18, 2019, November 16, 2018, and May 1, 2018.

The takeaway

Risk of dual liability – may not be all bad news

One thing is certain, domestic law implications will complicate a seamless and smooth management of any mobile population; however, this opens up a number of opportunities.

First, a number of the EU27 countries offer the possibility of domestic exemptions for individuals coming from nonagreement countries that could help employers avoid a dual liability. Companies will need to consider if they can leverage these exemptions for both existing expatriates and future moves if there is no agreement that can be used.

Second, even where host social security becomes due, there may be opportunities to mitigate dual liabilities by reviewing whether UK compulsory social security should continue to be paid or whether there are steps companies could take to mitigate costs and switch UK expatriates to cheaper Class 2 NIC.

Evaluate proactive actions now

Companies should consider taking as many of the following actions as soon as possible:

1. Understand your current population and who will be impacted by a 'No Deal' Brexit
2. Make sure that you have A1s in place for all current assignments and business travellers
3. Review your population to determine into which of the above groups above they fall. Be prepared to apply for new certificates for the reciprocal agreement countries, review all cases for strict countries to determine whether exemptions exist, and/or prepare for double social security costs. Continue to monitor the situation
4. Prepare to brief your business stakeholders, and inform them that possible changes are arising, including possible increased costs
5. Communicate to your employees, tell them how you intend to support them through Brexit
6. Start discussing how you can plan for the future to mitigate dual liabilities.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your regular Global Mobility Services engagement team or the following team members:

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