Benefits and Brexit

Complexity and confusion at the 11th hour

The European Commission (EC) recently published guidance which suggests that (in the event of no-deal Brexit) A1 certificates for UK in- and outbounds may become invalid at 31 December 2020, even for arrangements straddling this date and where a certificate has been granted. What could this mean for employers?

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At a glance…

This could have an effect on your short-term assignees posted to/from the UK (including remote workers) – with implications including potential double costs if host country social security becomes due, or gaps in home country coverage if they are deemed to fall out of mandatory coverage in that system.

Additionally, there may be wider occupational benefits implications where these are linked to the social security position.

Further, although we are not aware of any specific guidance with respect to multistate workers, the apparent positioning of the guidance could indicate a hard-line being taken by the EC warranting further review by employers as we reach the end of the transition period with no deal yet agreed.

It isn't yet clear what impact the guidance will have in real terms, as several Member States (plus the UK) have voiced disagreement with the guidance, but given the complexities we are suggesting employers re-review their position and make contingency plans.

Next steps

We recommend employers:

1. Engage with their tax advisors to keep up to date with developments in relation to postings/assignments and multistate workers;
2. Review A1 certificate* inventories and assess the potential impact from a social security standpoint
3. Consider the further impact on state and occupational pensions, benefits and wellbeing programmes.

Read on for more details or click here to email us.

***A1 certificate:** A certificate of coverage issued by the social security authorities in an EU Member State (or a country that follows the EC regulations on social security coordination) confirming which country's social security system applies to an individual. The EC regulations preclude multiple coverages in different systems which apply the regulations.

In detail: What's changed?

Under the terms of the Withdrawal Agreement, it had been generally understood that:

- EU social security coordination rules for cross-border working patterns (whether postings or simultaneous working in different EU Member States, known as "multistate" working) would remain in force for at least the period to 31 December 2020, regardless of whether a deal was reached; and
- In the absence of a deal, postings or multistate work patterns commencing by 31 December 2020 would be grandfathered so that A1 certificates would remain valid as long as the posting or multistate work pattern continued without interruption.

It had also been understood that national laws would apply to postings/multistate work patterns commencing from 1 January 2021 in the event of no deal, unless a pre-existing or new bilateral reciprocal agreement became active.

Although the UK has previously stated an intention to continue to apply EU principles unilaterally, there are many Member States with whom the UK does not (yet) have a reciprocal agreement, and some other Member States are resisting the notion of reviving old agreements, which would lead to a confusing and complex set of scenarios across the continent.

Recent developments

The European Commission recently published a notice regarding the posting of workers in the context of Brexit. Our lay reading of paragraph 2.3 on Social Security Rights suggests that for **postings commencing by 31 December 2020 EU law on social security coordination will no longer apply as at 1 January 2021.**

If Member States follow this guidance, there is a significant impact in respect of employees posted to or from the UK straddling this latter date. (An exception is made for postings not linked to the provision of services, such as trips for training/conferences.)

It means there is a risk that A1 certificates spanning the end of the transition period could become invalid at the end of this year, leaving employers/employees open to host country social security liabilities and invalidating home country coverage. This is particularly concerning as many member states are yet to finalise their position under national laws or bilateral agreements with respect to UK nationals.

What should I do?

The position is far from clear, and we understand several key Member States have stated their disagreement with the guidance. However, given the complexities and potential for additional cost as well as risk of gaps in valid social security coverage for organisations' UK-touching mobile employee population, we are recommending that employers take the following steps:

- Engage with their tax and social security advisors to ensure they are kept up to date with the latest developments, including reactions from the authorities in individual Member States where there are current/imminent postings to/from the UK;
- Where relevant, also seek a view from tax and social security advisors as to the potential impact on any multistate arrangements (which are not explicitly mentioned in the notice but are likely to raise complexities in the event of no deal);
- Review A1 certificate inventories and assess the likelihood of certificates becoming invalid, and the impact if this is the case from a social security standpoint; and
- Consider the further impact on employee pensions, benefits and wellbeing programmes in the event of a change to the social security position.

Although the first three bullet points are largely related to tax compliance, we at Aon are urging our clients to look carefully at the implications of the final bullet point above, as there is a risk that eligibility for state and occupational pensions/benefits (including state healthcare) could be affected where there is a link to a social security record.

Talk to us

If you would like to discuss your next steps further, please click here to email us or speak to your usual Aon consultant.

Note: Aon is not a tax or legal advisor and this summary is our interpretation of the current situation for informational purposes only. It should not be relied on or treated as a substitute for specific advice. Companies should take tax and legal advice as necessary before taking, or refraining from taking, any action in this area.

Tomm Adams
Senior Consultant
+44 207 086 1572
tomm.adams@aon.com

Helen Hatt
Associate Partner
+44 207 086 9130
helen.hatt@aon.com

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