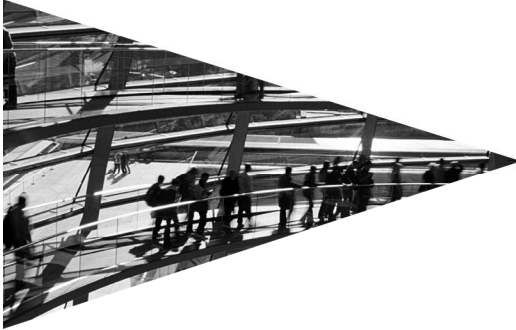


HR and tax alert



Europe

Regulation (EC) No. 883/2004, in relation to determining social security liabilities for cross-border workers is now applicable to third country nationals, effective 1 January 2011

Executive summary

Our previous HR & Tax Alerts have highlighted the challenges facing many companies following the introduction of the Regulation (EU) No. 883/2004. This Regulation became effective on 1 May 2010 in relation to determining the social security contribution and benefit position of EU nationals. As of 1 January 2011, Regulation (EU) No. 1231/2010 extends the coverage of the new social security regulation to non EU nationals (“third country nationals”) moving within the EU with the exception of the United Kingdom and Denmark.

Background

As of 1 May 2010 the social security position of cross-border workers within the EU is determined under Regulation (EU) No. 883/2004. However, the regulation was only initially applicable to EU nationals and, therefore, until the recent extension of coverage to third country nationals it was still necessary to consider the previous legislation, EEC Council Regulation No. 1408/71, when determining the position of a third country national.

As of 1 January 2011 the new regulation also now applies to cross-border workers who are third country

nationals and are legally resident in the territory of a member state. The new regulation will have a major impact on the social security position of cross-border working third country nationals as it introduces new requirements and revised application processes if such an individual is to remain in home country social security coverage.

Consideration needs to be given to the technical changes and impacts to ongoing contribution liabilities aligned with the additional new administration that is required by all employers as for nationals of EU member states.

Additionally, consideration will need to be given to specific transitional rules where individuals may remain covered under the previous legislation for a period of time unless they decide to opt into the new regulation.

Since the UK and Denmark did not adopt the extension of the new regulation to third country nationals, from a UK perspective the authorities have confirmed that they believe that the previous Regulation 1408/71 continues to be applicable in terms of third country nationals. In relation to Denmark neither the previous regulation 1408/71 nor the new

regulation 883/2004 applies to third country nationals.

Employers with assignments from or to the UK will, therefore, face the ongoing challenge of needing to consider two different regulations and following two different administrative processes depending on the nationality of the employee.

With respect to Switzerland and the three other EFTA member states Iceland, Liechtenstein and Norway, the old Regulation 1408/71 still continues to apply while they consider adopting Regulation (EU) No. 883/2004.

Next steps

It is essential that all employers with cross-border workers within Europe review and consider implications of the new regulation for third country nationals in relation to:

- ▶ Current cross-border workers in particular with respect to the application of the transitional rule
- ▶ New cross-border workers in particular from a technical and administrative perspective with respect to new legal requirements and processes
- ▶ Different legal requirements and processes for assignments from and to the UK
- ▶ Potential opportunities to reduce ongoing social security liabilities via the structuring of international assignments and application of the new regulation to third country nationals

International Social Security Services

Mike Kenyon

Tel: +44 20 7951 2583
email: mkenyon@uk.ey.com

Gary Chandler

Tel: +44 20 7951 1280
email: gchandler@uk.ey.com

Netherlands

Joost Smits

Tel: +31 40 260 2298
email: joost.c.smits@nl.ey.com

Italy

Wim Cocquyt

Tel: +39 0636096392
email: wim.cocquyt@it.ey.com

Germany

Thorsten Koch

Tel: +49 211 9352 10454
email: thorsten.koch@de.ey.com

Belgium

Jo Antoons

Tel: +32 2 774 9263
email: jo.antoons@be.ey.com

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