

April 2010

International Social Security Developments

– Impact for Irish Employers

Human Resource Services contacts

Francis Farrell

Tel: +353 (0)1 792 6677
francis.farrell@ie.pwc.com

Ken O'Brien

Tel: +353 (0)1 792 6818
ken.obrien@ie.pwc.com

Please also feel free to liaise with your usual PwC contact



Overview of Developments

With effect from 1 May 2010 the Social Security position for internationally mobile workers within the European Union, which for almost 40 years has largely been determined by a 1971 Regulation, is being overhauled.

In a separate departure we expect to see the Ireland/Japan Social Security Agreement coming into force during 2010.

EU Changes

The social security contribution position of internationally mobile workers within the 27 countries of the European Union (EU), together with Norway, Iceland, Liechtenstein and Switzerland is currently determined by EC Regulation 1408/71 ("the old Regulation"). In addition, this regulation determines eligibility to State benefits entitlement for such individuals and their families.

With effect from 1 May 2010 EC Regulation 1408/71 will be replaced by EU Social Security Regulation 883/2004 ('the new Regulation').

Who Will The Changes Apply To?

The changes will apply in respect of most internationally mobile workers within the EU who fall within the scope

of the new Regulation. However, the old Regulation will continue to apply to the EEA countries of Norway, Iceland and Liechtenstein, as well as Switzerland, for the foreseeable future as the new Regulation is yet to be formally adopted by these countries. Therefore different considerations may apply in relation to mobile workers to or from these countries.

While the new Regulation will come into force on 1 May 2010, it does however allow for "grandfathering" provisions allowing the old Regulation to continue to apply for a 10 year period for individuals who are currently availing of them, provided their circumstances remain unchanged in that period.

Administration

The main purpose of the new Regulation is to modernise, simplify and clarify existing rules. The new Regulations are supported by an Administration Decision A2, which will mean significant changes to the way which Ireland administers the new Regulations.

A new electronic administrative process that will ultimately replace the existing paper based system of E101 certificates will be introduced. As an interim measure, the paper based E101 will be replaced by paper based A1 certificates.

Technical Changes

Multi-State Workers:

Under the old Regulation such workers are insured in the social security scheme of the member state in which they are regarded as *habitually resident*, provided they perform regular employment duties there. The new Regulation introduces a requirement for *substantial* employment duties in the home country if they are to remain insured under that country's system. *Substantial* is defined as being no less than 25% of time and/or remuneration, or turnover.

For example, people who work one day per week in Ireland and four days in the UK are currently insured under the Irish social security system. In future and subject to certain transition rules, such persons will have to carry out *substantial* employment duties in Ireland if they are to remain within the Irish system.

Posted Workers:

Individuals posted by their employer to another EU member state for a period not exceeding 24 months will continue to remain insured in their home social security scheme provided they are not replacing another worker. Currently this only applies for periods up to 12 months.

Posted Worker Extended Period:

As is the case currently, it is expected that posted workers may remain insured in their home country social security scheme for up to 5 years (depending on the practice of the countries involved). This is provided that both the home and host authorities agree.

Third Country Nationals:

The new Regulation do not apply to non-EEA (so called "third country") nationals working cross-border. While there is a current proposal under discussion to address this issue, in the interim the current E101 arrangements will continue to apply to such individuals. Accordingly, a parallel system will exist ie:

- E101's issuing to non-EEA national
- A1's issuing to EEA nationals.

Unity of Applicable Legislation:

The new Regulation has strengthened this principle, meaning that there should be no exceptions that would allow an individual to be insured in more than

one member state at the same time. In particular, this change may affect individuals who are simultaneously employed in one EU member state and self-employed in another EU member state.

Cross Border Enforcement:

EU member states will have the power for the first time to enforce social security liabilities and debts against individuals and employers in other EU member states.

Administrative Changes

Some of the more significant changes include:

Minimum Contribution Period: One of the key requirements that must be met before an A1 certificate can be issued is that the employee must be contributing to a country's Social Security system prior to being posted. Historically, the Irish authorities generally required individuals to be contributing to the Irish PRSI system for up to 3 months before an E101 would be issued. This period is to be standardised across the EU at 4 weeks. There are however provisions allowing for shorter periods in exceptional circumstances.

Back to Back Assignments:

Historically, the Irish authorities took the view that the 5 year limit on retention within the Irish social security system applied to the "aggregate" period of assignments where individuals undertook a subsequent assignment without returning to work in Ireland. Now each assignment to a separate country will be viewed as a new assignment. For example, an Irish person spending 4 years on assignment in the UK followed by 5 years on assignment in France could remain within the Irish system from the full duration of both assignments giving rise to potentially large savings and simplification of employees' social security position.

Assignment Breaks: There are specific time limits as to how long a person can work in a country, and remain within their home country social security system. Up to now there has been a question as to what constitutes a break in an assignment/posting. Under the new Regulation a temporary interruption of the assignment/posting of less than two months will not be considered as a break in an assignment/posting.

Ireland/Japan Agreement

It is expected that this treaty, which was signed in October 2009 and was recently approved by the Dail, will come into force in late 2010.

Under the terms of this agreement, internationally mobile employees who are posted between Ireland and Japan for a period of up to five years will be exempt from host country social security, eliminating the double costs which had arisen previously.

The Bottom Line

Employers need to review their workforce in Europe to determine whether these changes will result in Social Security savings or additional costs and whether they will be compliant with the new rules. For example

- How will the changes impact international assignment and mobile worker arrangements and how might such arrangements be redesigned to benefit from reduced liabilities?
- How the changes will impact on current and future international assignee populations in terms of contributions and benefits?
- Whether any modifications to employer compliance and tracking procedures are required?
- Whether the grandfathering provisions can and should be availed of?

How PwC Can Help

Our services assist employers in minimising risk, in spotlighting process improvements and cost control opportunities, in resolving potentially hazardous compliance issues and in protect solid "good corporate citizen" reputations.

Please contact your usual PwC advisor or either of our specialist Employment Tax and Social Security team listed above for assistance with:

- International Social Security structuring to ensure compliance and cost control;
- E101/A1 applications and related advice;
- Reviews of employee benefit entitlements;
- PAYE/PRSI process and risk management reviews;
- Cross border workforce population reviews.