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A1 FORM GUIDE UNDERSTANDING SOCIAL SECURITY COORDINATION WHEN TRAVELING BETWEEN THE UK AND THE EU

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SECTION 1:

OVERVIEW OF SOCIAL SECURITY COORDINATION

Whilst the UK was a member of the European Union, we were subject to multiple European laws including those that governed the coordination of social security payments. The regulations that established the rules on social security coordination are found in Regulation 883/2004 and Regulation 987/2009.

If an individual is employed in the UK, they will have an NI number and pay UK NICs. This is very similar in Europe where EU employees will pay their equivalent of NICs however, it is known as social security.

The social security rules governed the coordination of social security and not the rates of payment in individual member states. Each member state can set the amount of social security that is payable and by whom the payments were due.

Therefore, it is the coordination across Europe that is governed by these rules. They are applicable to employees of an EU employer who travel to other member states for temporary work on behalf of their employer. These are usually short-term work assignments for clients of their employer or projects in collaboration with other companies within the same corporate group.

SECTION 2:

EXPLANATION OF THE RULES IN REGULATIONS 883/2004 AND 987/2009

Articles 12 and 13 of Regulation 883/2004 should be read in conjunction with Article 14 of Regulation 987/2009 in order to determine the applicable social security rules according to an individual's activity and time spent in EU member states.

Regulation 883/2004 provides that if an employee normally works in one EU member state and is then temporarily posted by their employer to work in a different EU member state then they can continue to be subject to the social security legislation of the EU member state where they normally work and reside.

This is providing that the duration of their work in the second member state, does not exceed 24 months and that they are not sent to replace a worker of the same assignment. This replacement of workers is also known as 'chain posting'.

Social security coordinations rules take effect from the first day an employee works in another member state until 24 months. This effectively means that any employee who temporarily performs work in another country will be subject to social security rules even if it is for only one day.

The key provision within the social security rules is that an employee only pays social security in one country at one time. This is also known as the 'pay once rule'.

This is to allow employees who usually pay their social security in their country of residence, to avoid paying social security twice when they are posted for temporary work in another member state.

This exemption from paying social security in each member state an employee travels to is only applicable if the employee can prove they already pay their social security in their country of residence.

2.1. Single state workers

Single state workers are those who spend their working time in only one EU member state at a time. There are detailed rules contained within Regulation 987/2009 to determine how much time a worker spends in one member state in order to qualify as a single state worker. A worker is deemed to be single state if he spends more than 75% of their time in one EU member state or they earn at least 75% of their remuneration (total earnings that include allowances and bonuses) in that member state. For example, the country where the worker resides and his employer is based.

This means the majority of UK employees employed by a UK employer will qualify as a Single State worker if they are sent to work temporarily in one member state of the EU for a period of 3 months or less in any 12 month rolling period.

2.2. Multi-state workers

Employees who spend more than 25% of their time or earn more than 25% of their remuneration in two or more member states will qualify as multi-state workers. The 25% of time must be spent in one member state of the EU, and aggregated between a number of different member states of the EU that the worker may be visiting.

Instead of only being subject to social security payments in their country of residence, they have a choice as to where they wish to pay their social security contributions.

They can choose to continue to pay their contributions in their home member state for the time they are working in another country up to 24 months or alternatively, they can pay their social security contribution in the other member state where they work for more than 25% of the time.

For those who spend more than 25% of their time, or receive more than 25% of their total remuneration outside the country where they normally reside, may find that they are deemed employed in that other member state.

2.3. Marginal and substantial activities

When determining if an employee is either a Single State or Multi-State worker, it is not only their time spent or remuneration earned in another member state that must be considered. The type of activity that the employee pursues will also determine their status.

Article 14 of Regulation 987/2009 provides that marginal activity should not be taken into account in assessing whether 25% or more of an employee's time is spent in a member state. Marginal activity is activity that whilst permanent is insignificant in terms of time or economic return. Travelling time or time spent on administrative functions for example will not count towards the 25% rule.

In contrast, substantial activities are those that are economically important and may generate revenue for the employer. This could include for example directly servicing clients, sales or business development.

SECTION 3:

THE UK/EU TRADE AND COOPERATION AGREEMENT

In principle, the EU rules in Regulations 883/2004 and 987/2009 would no longer apply to UK workers when we left the EU. This would mean that automatically, any UK employee that temporarily worked in an EU member state would be subject to the local social security payments of that country they visited.

However, within the UK/EU Trade and Cooperation agreement (TCA), the previous EU rules in Regulations 883/2004 and 987/2009 have been, in effect, carried over and are found within the 'Detached Worker' rules of the TCA.

Unlike before, when the UK was a member state, the social security rules bound all EU member states. Now, in the Detached Worker rules, EU member states can 'opt in' or out of social security coordination but with UK employees only (as opposed to employees residing in EU member states).

At present, all EU member states have 'opted-in' to the Detached worker rules but may at some point, opt-out if they wish.

Therefore, under the Detached Worker rules within the UK/EU TCA, UK employees who travel to work temporarily will continue to be governed by EU law, Regulations 883/2004 and 987/2009.

To qualify as a Detached Worker under the UK/EU TCA, a similar definition under Regulation 883/2004 has been used:

"a person who pursues an activity as an employed person in a State for an employer which normally carries out its activities there and who is sent by that employer to another State to perform work on that employer's behalf shall continue to be subject to the legislation of the first State, provided that:

- (ii) the duration of such work does not exceed 24 months; and
- (iii) that person is not sent to replace another detached worker."

In theory, all UK employees would meet the definition of a Detached Worker provided that they reside in the same country as their employer.

SECTION 4: PROOF OF EXISTING SOCIAL SECURITY PAYMENTS

If a UK employee meets the definition of a Detached Worker found within the TCA, then they are eligible for the pay-once rule found in Regulation 883/2004.

In order to prove that a UK employee pays UK NICs, a certificate must be obtained from HMRC. Colloquially, this is known as an A1 form however, there are many different types of social security certificates available from HMRC and it is vital that UK employers and UK employees alike understand which certificate they need.

To obtain any A1 form from HRMC, all applications must be by users with a Government gateway portal account. Both employers and individual employees can apply for individual certificates.

4.1. Form CA3821

A UK employer or company will need to complete Form CA3821 if they have never applied for A1 certificates before or, have never notified HMRC that as an employer, they have sent their employees to the EU or EEA for temporary work assignments.

It is not a certificate that proves an employee's payment of UK NICs, but is a mandatory notification form that informs HMRC that as an employer, they will be sending their employees to the EU/EEA. Once Form CA3821 has been completed, then the UK employer is registered at HMRC on the social security notification system.

4.2 Form CA3822

Once a UK employer has completed form CA3821, their employees can then complete form CA3822. This is to be completed by Single State workers only. Therefore, employees who spend 75% or more of their time in the UK and receive 75% or more of their total remuneration in the UK would need to complete form CA3822.

Form CA3822 must be completed for each trip an employee takes to the EU or EEA. Employer and employee information must be provided as well as the country of destination and the dates of entry and exit of that country.

Employees may visit more than one member state in a single trip and would therefore, need to list the separate dates that they would enter and and exit the second country as well.

It is important that the employee inputs the correct information on form CA3822 as the dates of entry and exit for the member state(s) of destination stated on the certificate need to be exact. These dates need to match exactly the dates of entry and exit to the EU's Schengen area (the EU's visa-free travel area for UK nationals), as UK nationals days spent in the Schengen area are subject to strict time limitations.

FURTHER SUPPORT

For more support with the new rules for employees visiting and working overseas our team can support you with telephone and consultancy support covering:

- Individual Member State requirements
- Rules on professional qualifications
- Social security and employment rules
- Completing the necessary paperwork and seeking the right authorisation

Contact **Nicola Kibble** to discuss your requirements

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