Brexit: Deal or No Deal?
A snapshot of the social security implications

At the special EU summit on the 25 November 2018, Theresa May reached a final agreement with European Union 27 member states (EU27). Whilst this is a significant step in the journey towards agreeing a 'deal' setting out Britain's future relationship with the EU, she continues to face strong challenges, and there is no guarantee that this will be passed through the UK Parliament next month. As the possibility of a 'no deal' outcome increases, now is the time for HR and Mobility leaders to consider the potential social security consequences for their internationally mobile population working in the EEA, and what that could mean after 29 March 2019.

Certainty with a deal

The deal includes provisions that would ensure continued co-ordination of social security principles for internationally mobile individuals working between the UK and the EU27 for an agreed transition period. Effectively the existing EC Social Security Regulations would continue to apply for mobile employees working under arrangements which started before 31 December 2020.

This means that for the short and medium term there would be **no change** to the current social security landscape between the UK and the EU27 as a result of the withdrawal agreement, and employers could continue to obtain A1 certificates of coverage during this period.

The transition period would allow more time for further negotiations to take place, and an agreement to be reached on what the UK's relationship with the EEA could look like from a social security perspective post 31 December 2020.

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Uncertainty with no deal

In the event of a no deal the UK would no longer be party to existing EC Social Security Regulations.

This would lead to a period of significant uncertainty for employers and their mobile employees as it is not yet clear what social security rules would apply. It is possible that existing bilateral Social Security Agreements between the UK and certain EEA countries may came back into force to determine the social security liability and access to benefits. However, these Agreements are dated, very limited in scope and coverage, and generally not fit for purpose in today's business environment.

For example, the existing UK/ France Social Security Agreement only provides coverage for UK and French nationals who are going on an assignment for a period of up to six months. Given the very high level of French social security contributions it could be very costly for employers to send individuals from the UK to France.

Alternatively, where there is no existing bilateral Social Security Agreement in place (which is the case for several Central and Eastern European countries), the social security liability would likely be determined based on domestic legislation in each country. This could lead to dual social security liabilities for all or part of an assignment period in some cases.

For example, in the case of an assignee moving from the UK to Poland there would be an ongoing UK liability for the first year of their assignment, as well as a Polish social security liability. Depending on how long the individual is working in the UK and Poland they may or may not accrue an entitlement to receive a UK and/or Polish state pension upon retirement - this is dependent on local minimum contribution requirements.

In summary, there are two main areas employers should be considering

- **Additional costs**: either directly through additional social security contributions being due, or through the need to compensate staff for reduced access to state benefits like retirement pension, welfare, and healthcare; and

- **Additional employer reporting and compliance obligations**: primarily because of social security contributions being due in a country outside of the country of employment. This can lead to increased employer administration and complexities in ensuring social security compliance, and operating payroll correctly.

Next steps for employers

Employers may want to consider taking some or all of the following actions now in order to start preparing for the social security consequences of a 'no deal' scenario:

- Undertaking a **current state assessment** review to understand employee volumes, key locations, level of seniority, compensation levels and types of moves on which to focus scenario planning;

- Understanding the **current policy approach** to social security contributions, state benefits, and healthcare coverage for mobile workers;

- Identifying scenarios where potential **dual social security contribution costs** arise in respect of mobile employees;

- **Forward planning** around increased layers of healthcare and pension protection employers are likely to become responsible for UK assignees working in the EEA and vice versa; and

- Preparation of **employee communications**, and/ or **FAQs**, to address potential personal impact for mobile employees.

Deloitte's recommendation

If the UK Government secures a deal and passes it through Parliament in the coming weeks, there will be some certainty around the social security landscape, at least until the end of an agreed transition period.

If the Brexit deal is not agreed, then there are a number of significant potential impacts in this area for employers and their mobile employees. We recommend at this stage that you plan for a scenario of maximum change and we are happy to help you think through this in more detail.