

Tax Newsletter

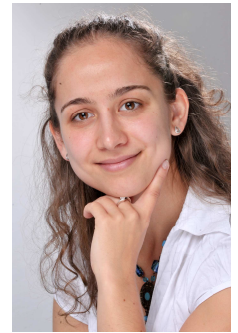
6 / 2010



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Major changes in the EU social security

On 1 May 2010 an EU regulation adopted almost 40 years ago and amended many times since was replaced by a new regulation that meets present-day requirements when Regulation 1408/71/EEC was superseded by Regulation 883/04/EC (hereinafter: the Regulation). This was necessitated by the fact that the old rules under the old regulation, designed for 6 member states, did not follow the changes that took place over the course of the almost four decades since its original adoption. In the present issue of our newsletter, we call attention to the most important changes.



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Background

The European Community of 27 member states has been faced (especially since the accession of the new, East-Central European candidate countries) with the issue of an increasing level of migration, with cross-border employment and posting for performance of work within the EU. In the new system the social security rules applicable to employees moving within the Community changed significantly; therefore it may be necessary to review internal policies concerning posting and employment in other countries.

Narrower personal scope

An important change is that the personal scope of the Regulation only includes EU citizens (i.e. citizens of the member states, stateless persons and refugees residing in a member state – who are or were subject to the laws of one or several member states – as well as family members and surviving relatives of the above). Regulation 1408/71/ECC continues to be applicable to citizens of third countries, EFTA member states (Iceland, Liechtenstein, Norway) and Switzerland.

Criteria for determining place of residence

The Regulation defines the concepts of place of residence and stay, while its implementing regulation, 987/2009/EC, lists the criteria taken into account in the determination of place of residence: the duration and continuity of presence on the territory of the member state concerned, the nature of the activity pursued, family ties, etc. If the evaluation of the above criteria does not lead to an agreement between the competent authorities of the member states, the person's intention as inferred from the reasons that led them to move is considered to be decisive for establishing the place of residence.

The length of posting to work in a foreign country

The most fundamental rules remain unchanged in the new Regulation, inasmuch that social insurance contributions must be paid in the country where the work is performed. The rules concerning persons posted to work in another country, however, have changed: under the old rules, such persons could only be subject to the social security rules of the posting country for up to one year, which could then be extended by an additional year. Under the new regulations, by contrast, employees posted to work in a foreign country remain insured in the posting country for 24 months from the initial day of the posting, for which only the consent of the competent authority of the posting country is required. In exceptional cases, the insured status can be renewed for a maximum of 60 months; however, this is subject to an agreement between the authorities of the posting and the receiving countries.

Rules pertaining to parallel work

Under the previous regulation, employees who work in a parallel way in several member states including the member state in which their place of residence is located were subject to the social security rules of the latter state. The new Regulation provides that such persons can remain subject to the social security rules of their country of residence only if they perform a significant part of their activities in that member state, i.e. on the basis of the hours worked and/or remuneration received, at least 25% of their activities can be linked to that country.

Exclusion of double payment of contribution

Individuals who are employees in one country and self-employed in another used to pay social security contributions in both member states under the old rules. The Regulation, however, excludes such cases and requires employees to pay contributions in the member state where they work as employees.

New rules concerning proof of insured status

A person's insured status will be proved in the future by way of an electronic administrative procedure (expected to be introduced in 2012), which will replace the current system using the E-101 forms. Electronic data exchange between the institutions will, for the time being, take place in a "paper format" via a server maintained by the Commission.

In case of posting commencing after 1 May 2010 (it is the actual start date of working abroad rather than the date of the application that counts), persons will be able to give proof of their insured status with use of the A1 form. E-101 forms issued earlier will remain valid until the date indicated on them and will be not replaced with an A1 form; however, they can only be renewed by way of A1 forms. Upon expiry of the E-101 forms issued before 30 April 2010 (with a validity term not exceeding 12 months), the competent authorities will already issue, provided that the term of the posting has not ended yet, an A1 form, for a period not longer than 24 months. The total length of the posting period will not restart on 1 May 2010; in other words, the length of time elapsed before 30 April 2010 also has to be counted into the 24 months.

An exception from the above will be, of course, employees who are not subject to the personal scope of the Regulation, which means that the 12-month limitation under regulation 1408/71/EEC will continue to apply in case of posting to work in Switzerland, Norway, Liechtenstein and Iceland.

Healthcare benefits

Pensioners moving the reside in another member state are entitled to full healthcare benefits in both the member state in which they reside as well as the one from which they receive their pension. A change, however, is that the EU card is always issued by the competent institution of the state concerned, even in case of pensioners who moved to settle in another country.

The regulations concerning medical treatment abroad have also changed: an application for permit to receive treatment in another member state, if the applicant does not reside in the member state concerned (e.g. a pensioner who relocated there) must be submitted to the health insurance institute in accordance with the persons place of residence, but the permit for the treatment abroad itself is issued by the competent institution. However, in case of life-saving treatments, the permit issued by the institute in accordance with the person's place of residence is sufficient.

Other structural changes

With an eye to simplification, the separate provisions concerning employees, self-employed persons, road haulage operators, air transport employees and students have been eliminated. Under the Regulation, the provisions governing regional employment (covering several member states) are applicable also to their situation (see rule concerning 25% of the activities).

In addition, the scope of the Regulation is also extended to cover paternity and pre-retirement benefits.

Transitional provisions

If, in case of a given activity that involves several member states in a parallel way, the insurance obligation was determined before 30 April 2010, it will remain continuously in effect, provided that there is no change in the material circumstances, until 30 April 2020. Form A1 serves as proof of the above after the expiry of the validity date of the E-101 form.

If the determination of the insurance obligation under the rules in effect prior to 30 April 2010 are disadvantageous for an employee or self-employed person, and it would be more favourable for them to have the insurance obligation determined under the rules of Regulation 883/04/EC, they can request that the insurance obligation be reassessed. If the relevant application is submitted by the employee between 1 May and 31 July 2010, then the start date of the insurance coverage under the rules of Regulation 883/04/EC will be 1 May 2010. In case of applications submitted after 1 August 2010, however, insurance coverage under the new rules can only be determined from the submission date of the application.

Should you have any questions in respect of any topic in our Newsletter, please feel free to contact us.

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