

United Kingdom: National Insurance Contribution (NIC) easement due to COVID-19 for employees not covered by a social security agreement

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In brief

In April 2020, Her Majesty's Revenue and Customs (HMRC) issued guidance to employers about social security withholding obligations in the event employees temporarily returned to work in the UK from the EU, EEA or Switzerland.

They now have followed this up with guidance on cases where employees returned to the UK from a country where the UK does not have a social security agreement.

In detail

Where a UK employee is working in a non-agreement country, they and their employer may remain liable for Class 1 Primary and Secondary NIC for the first 52 weeks of their work abroad if they meet the following conditions:

- They continue to have a UK employer; and
- Immediately prior to the work abroad they were resident/present in the UK; and
- During the work abroad they are ordinarily resident in the UK.

Where such an employee has then been displaced due to COVID-19, their social security position would need to be re-assessed, particularly in light of HMRC's new guidance. The guidance appears to provide some relaxation on the payment of NIC, but equally may increase the burden upon a subsequent re-departure from the UK.

HMRC have formally reintroduced a concession, confirming that, if the UK duties are not incidental to overseas employment and the 52-week period of liability has ended, the employer can:

- Disregard the first six weeks of employment in the UK – this is not a legal requirement but a concession to ease administration when an employee briefly returns to the UK that only applies where they return to the UK for the same employer – and thus pay no NIC for this period; and then

- Pay NIC in the normal way for any further period in the UK, which could give rise to a marked increase in assignment costs for the employer.

However, HMRC also note that if the employee then goes to work abroad again, a new 52-week NIC liability may arise when the individual returns to their normal overseas work location. This would need to be assessed on a case-by-case basis, as the individual assignee's facts and circumstances would dictate any obligation.

The cost of this additional year of UK NIC will not have been budgeted for, and many will feel it should not apply given the exceptional and unexpected nature of the return to the UK.

Where an individual was still within their 52-week liability period, but due to COVID-19 they returned to the work temporarily in the UK, HMRC have indicated that employers should treat the employee as still abroad. Employers should continue to deduct Class 1 contributions until the 52-week period of Class 1 liability is met.

HMRC do not specify for this scenario what would happen if the individual is back in the UK for sufficient time to finish their first 52-week liability before then going abroad again. We anticipate, they could, as in the scenario above, expect a new 52-week liability period to arise if the conditions are met at that point. Again, this situation would require analysis to take account of the individual facts and circumstances.

If the individual has moved to a third country due to COVID-19, there are several possibilities:

- If the third country is one covered under the EC Regulations or has a bilateral agreement with the UK, then it may be possible to obtain a certificate of continuing liability so the individual can continue to pay UK NIC and be exempt from local contributions, but this would need to be assessed case-by-case.
- If the third country is also a non-agreement country, then whether the 52-week liability period continues depends on whether the individual is still in the same employment. We expect that for most COVID-19 displacements, this will be the case and the NIC liability should continue until the 52-week period from the point the individual originally left the UK has ended. However, if individuals did change their role due to the change of location, the 52-week liability may cease from the point they switch locations.

Each scenario should be reviewed case-by-case as the differing roles and country combinations are likely to garner different results.

The takeaway

Due to COVID-19, HMRC have agreed to allow an easement for employees temporarily returning to work in the UK from a non-agreement country. Many employers have been expecting a similar easement as to the guidance issued for employees returning from the EU and will be disappointed with these announcements.

Employers that have not paid UK NIC for those employees in the UK now will need to retrospectively amend payroll records to account for any liabilities outlined above.

Where individuals have returned to the UK and then recommence their overseas assignment, attention should be given to whether the NIC obligations have changed as a result of COVID-19, in that the UK liability period may have been extended or restarted.

Let's talk

For a deeper discussion of how this impacts your business, please contact your Global Mobility Services engagement team or one of the following professionals:

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