**NICs Overseas Aspects**

Welcome to this special podcast on the overseas aspects of National Insurance Contributions, where I want to explain the rules for employees coming to work in the UK, or indeed those leaving the UK to work abroad. And when Class 1 National Insurance Contributions are payable or must cease to be deducted. I will also briefly mention the May 2010 changes to the rules for cross-border workers within the European Union and the European Economy Agreement area.

Section Two, workers coming to the UK to work

Special rules determine whether or not an employee from abroad has to pay UK National Insurance Contributions and this will depend on being present in the UK, the amount of time spent in the UK and any Reciprocal Agreements that the UK has with the home country from where the visiting employee has come. Being resident, present or having a place of business in the UK is often not defined in the Social Security legislation but is just a question of fact. Generally an employer will be said to be resident, present or having a place of business in the UK if the registered office is in the UK, even if no actual business is carried out in the UK. For NIC purposes the UK comprises England, Scotland, Wales and Northern Ireland and people living in the Isle of Man are usually treated as though they are living in the UK.

Any employee coming to work in the UK from abroad, but working directly for a UK employer, as opposed to being seconded from a foreign employer, will be liable for UK NICs from day one. And typically within the UK, whether we’re in London, Cardiff, Edinburgh, Bristol, all around the UK in our cities there will be lots of foreign workers, many of whom have come to the UK not from a posting by an employer abroad, but simply to come with the right to work in the UK and pay tax and National Insurance in the normal way.

Well next we have to consider where the seconded employee is coming from, again I emphasise the seconded employee – where are they coming from. There are special rules for employees who are seconded from the European Economic Area, the EU, plus Iceland, Lichtenstein and Norway, and also Switzerland because of an agreement that it has with the EU.

The following is a list of countries in the European Economic Area, plus Switzerland:

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Iceland, Republic of Ireland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and of course the good old UK. We’re all part of the European Economic Agreement countries.

An employee coming from, I’ll call it an EU country, should have a certificate of coverage issued by their home country to prove that they’re still paying contributions in that country. The home country employer who sends them to the UK must apply for the certificate of coverage, which is nowadays normally the A1, and previously, before 1st May 2010, would have been an E101.

Under EU regulations any person who is a citizen of an EU member state will only be liable to pay Social Security contributions, which of course are our NICs, in just one member state at any time. The state in which the contributions are due is usually the state where the individual habitually works or lives. The regulations provide that where an earner who is employed in the Territory 1 member state, by an undertaking to which he is normally attached, is sent by his employer to work in another member state, he is to remain subject to contributions law of the first state, provided that the period of employment in the second state is not expected to last for a period in excess of twenty four months and he’s not been sent to replace another person whose period of employment in the second state is at an end. So, if we just look at a simple example, someone coming to work in the UK on secondment from a German employer, who comes here for twenty four months or less would be expected to remain paying German contributions and not pay any contributions in the UK system.

As I’ve already said, there is a requirement that the home country would obtain a certificate of coverage, the certificate A1 as it now is, E101 as it used to be. These certificates will be issued subject to certain conditions. Including the period of time to be spent in the host country must not be expected to last more than five years, the employee must not be sent to the host country to directly replace another worker whose period in the host country has just ended, the individual should be an existing employee of his or her home country employer before started the secondment in the host country, and here we’re looking at the UK. Or, if an employer has recruited in one member state for immediate posting to another member state, the employer must carry on business the employee’s home state.

So just some rules to bear in mind, and these points have to be covered when the certificate is applied for. A copy of the certificate should be retained by the employee as evidence of continuing liability to social charges in their home country, again, that may be quite important because I know of clients of mine where a director has been stopped at immigration and has been asked for their certificate of coverage. A copy of the certificate should be held by the UK employer to justify using Category X, and therefore justify not deducted Class 1 NICs in the UK. An application for a certificate of coverage should be made before the secondment starts but it can be made retrospectively.

I’ve mentioned in the introduction that new regulations were introduced by the European Union in May 2010. The regulations are EC Regulation 883/2004, these are new rules for cross-border workers and they’re intended to be a simplification of the old rules. Again, it’s important to note that the old rules will continue to apply in respect of third country nationals, so perhaps an Israeli sent from France to work in the UK, because the UK has opted out of applying the new rules to third country nationals. The old rules will also apply to Greenland, and they will continue to apply for any employee who’s issued with an E101 certificate, under the old regulations, which was Regulation 1408/71.

So what we have is that the new regulations provides replacement of the old E101 certificate of coverage, with the new Form A1, but again, as I’ve said, existing certificates will remain valid until their expiry date, if they have one. The EU has also indicated that it wants to introduce some form of electronic communication and the UK has said that it will try and adopt this method, in fact by 2011. An important point to note is about dual liability. The previous position under the old regulations was such that some individuals could be employed in one member state but self-employed in another member state and therefore paying contributions in two member states. Well that can’t happen under the new regulations, because under the new regulations, that person would only pay contributions in the member state where he is an employee. One of the main changes under the new regulations which allow a posted worker to be assigned for up to twenty four months, instead of the previous requirement of an initial posting of up to twelve months, and an application would then be made if necessary to extend for another twelve months. This is a good easement; it’ll save costs and make life simpler for a lot of UK employers.

We’ve talked about the EU, now I want to consider employees coming from another country where there’s a Reciprocal Agreement, such as with the USA and in fact the UK has arrangements with quite a number of countries outside of the EU, where similar certificates of coverage can be provided and employees can continue to pay contributions in their home country Social Security schemes, instead of paying them to the UK.

Some of the agreements with these Reciprocal Agreement countries include the Isle of Man, Guernsey and Jersey, when treated as part of the UK for those purposes. In other words, they’ve jointly entered in the agreements with the UK and these countries.

The countries with which we have agreements include, again in alphabetical order:

Barbados, Bermuda, Bosnia Herzegovina, Canada, Croatia, Guernsey, Israel, Jamaica, Japan, Jersey, Korea, Macedonia, Mauritius, Montenegro, New Zealand, Philippines, Serbia, Turkey, USA and the old Yugoslavia, and in terms of the old Yugoslavia, Slovenia is a member of the EU and is treated in line with other EU countries.

Some of the countries are under agreements which are for Double Contributions Conventions, so we have the double contributions conventions with the Republic of Korea and Japan, which only cover Social Security contribution liability, but the double contributions convention with Canada, for example, also covers benefits.

The various agreements with the Reciprocal Agreement countries need to be looked at, because they will have different periods of coverage. Barbados for example provides coverage for a three year period, whereas Bermuda only provides for a one year agreement. Cyprus, the Channel Islands, Jamaica, Malta and Turkey provide for three year agreements, Yugoslavia is a one year agreement, Israel, Mauritius and the Philippines are two year agreements and then you have the Republic of Korea and the USA, where the agreement can cover a five year period.

An important point to remember is that if the secondment continues beyond the period covered by the certificate of coverage, then UK Class 1 NICs will be payable from the expiry of the exemption period. So our employer clients need to be keeping a note of this to ensure that they start deducting UK NICs at the appropriate time.

The third group of countries from where someone may be seconded to the UK will be a country where the UK has no agreement, and surprisingly that will include countries like China and India. So, an employee who is seconded to the UK from such a country where there is no Reciprocal Agreement will still not have to pay UK NICs for the first fifty two weeks of the secondment, and that fifty two weeks start from the first Sunday after the employee arrives in the UK. Importantly, the employee must not normally live or work in the UK and must have been sent here to work temporarily by an overseas employer, who has a place of business outside of the UK, and that’s even if they have a UK place of business as well.

Next, I want to look at workers going the other way, so workers leaving the UK, as opposed to those coming from the UK. Employees leaving the UK to work abroad for an employer in the overseas country will be subject to the Social Security legislation of that overseas country in which they will be working, but again, this may not be case for employees that are sent abroad to work for their UK employer. When we consider the position of employees who are sent to work abroad, we again have to look at where are they going? Are they going to an EU country? Are they going to a Reciprocal Agreement country or are they going to a country with which the UK has no agreement whatsoever?

The new regulations that I’ve referred to allows for initial applications to be made by the employer to provide for up to twenty four months coverage. For someone going abroad to work on a secondment basis, the UK employer would make an application to Newcastle, seeking approval for the issue of a certificate of coverage. The fact that it’s now a twenty four month period instead of the old rules for a twelve month period will, as I said already, involve cost savings and the new Form A1 covers all the different types of applications.

Again, if I can briefly mention that the UK has arrangements with countries outside of the EU, such as the USA, and these provide that employees can, for a certain period of time, continue to pay UK contributions instead of going onto the contributions of the host country. Applications by UK employers have to be made to Carr Residency in Newcastle, using the Form CA3821 and CA3822, an application can also be made online. Very much the same rules as we have for the people coming into the UK.

And then, the third and final group we have is people who are going on secondment from the UK to work for a non-agreement country, again, as I’ve already mentioned, such as China or India, where the employee will remain subject to UK NICs for the first fifty two weeks of the secondment abroad. There are conditions, and the conditions are that the employer has a place of business in the UK and that the employee is ordinarily a resident in the UK and that the employee was resident in the UK immediately before starting the work abroad. No certificate of coverage can be provided to confirm the continuing UK NIC liability, which again is why a record of the assignment of the relevant dates should be maintained to satisfy HMRC that the fifty two week applied.

UK NICs should cease after the fifty two week period, when consideration should be given to the likely gap in the contributions record. When they come off the UK system, if they’re still on the UK payroll, Category X will apply. In terms of employees leaving the UK system, and the consideration given to their protection of their State Pension, state benefits, I’ve mentioned this separately in a podcast on NICS – The Basics, but, to repeat it, when UK Class 1 NICs cease to be payable, employees and directors may want to consider paying voluntary NICs to protect their entitlements. Currently Class 2 NICs are payable at £2.50 per week or Class 3 voluntary contributions are payable at £12.60 per week, and, as I say, I’ve discussed that already in the podcast on NICs – The Basics, so you might want to go back and look at that if you have any issues on it.

Section Four, summary

This podcast was taking a brief look at the rules for working coming to or leaving the UK to work abroad and I hope I’ve not made it sound too complicated, because it isn’t really that complicated. We have to consider when employees are coming to the UK on a secondment how long it is before they start paying UK contributions, and we’ve got the basic rule of fifty two weeks. But, if they’re not coming to the UK on a secondment, but come to be employed directly by a UK employer they will pay normal Class 1 NICs from week one. Similarly, when they’re going abroad from the UK on a secondment, they will be expected to remain on the UK system for at least the first fifty two weeks and perhaps for as long as five years, depending on what agreements are in place.

Anyway, I hope that you’ve found that useful and I thank you for listening.