United Kingdom: New rules change the social security treatment of employment-related securities for mobile employees

February 16, 2015

In brief

From April 6, 2015, the UK is introducing new rules that determine the circumstances under which UK social security contributions (National Insurance Contributions or NICs) will be due in respect of employment related securities (ERS) for internationally mobile employees (IMEs). Historically, the UK has typically applied an 'all or nothing' approach to social security on ERS, including share options, restricted stock and restricted stock units. This has often resulted in differing amounts being subject to income tax and National Insurance, creating complexity for employers.

HM Revenue and Customs has also historically used a number of concessionary practices under which they would not pursue the collection of NICs in certain circumstances even where the contributions were strictly due. This created uncertainty for employers, although it often reduced the UK social security costs relating to ERS.

The new rules are intended to simplify matters by aligning the tax and social security treatment of ERS to the greatest extent possible, while respecting the UK's obligations under bilateral Social Security Agreements, European Regulations and UK domestic social security legislation. In essence, NICs will now be applied to ERS income on a time apportionment basis. UK NICs will be due on a pro-rated basis at the date of vest/exercise to the extent that an individual has been within the UK social security system for a part of the period between grant and vest. Global mobility program managers should consider quantifying any increased costs likely to arise from this new measure.

In detail

The new rules to be introduced by the UK government from April 6, 2015 are intended to provide a greater degree of alignment between the tax and social security treatment of ERS for IMEs. They are also intended to provide certainty on the circumstances in which NICs will be due. Finally, they are also intended to minimise the risk of dual social security contributions charges.

The legislation sets out the circumstances under which income arising from ERS will be disregarded in the calculation of NICs. In essence, the proportion of the income which relates to days during the 'relevant period' (essentially the period from grant to vest) during which the individual is not in the UK social security system will be disregarded.

The UK government's view is that this approach is consistent with the model developed by the Organisation for Economic Cooperation and Development (OECD) as it applies social security based on the extent to which economic activity (i.e., employment duties) have been carried out in each country.

There are a number of other issues of which employers should be aware:

Alignment is only partial

UK employees assigned to countries with which the UK has no social security agreement typically remain subject to UK National Insurance on general earnings for 52 weeks following departure. Conversely, non-UK employees assigned to the UK from non-agreement countries are typically exempt from National Insurance for the first 52 weeks.

As a consequence of these rules, a different proportion of ERS income received by employees moving to or from non-agreement countries during the 'relevant period' will be subject to UK National Insurance. The tax charge will be pro-rated based on the date of arrival to/departure from the UK, while the NICs charge will be pro-rated based on the date on which the individual becomes liable to or ceases to be liable to National Insurance (i.e., 52 weeks following arrival in or departure from the UK).

Dual liabilities may occur

There may be cases where other countries apply a different approach to pro-ration or will not apply pro-ration to the sourcing of ERS for social security purposes at all. In such cases a dual charge will occur at the time of the chargeable event.

Businesses may need to consider how they would approach a double social security charge arising under these circumstances.

Lack of clarity in respect of cash bonuses persists

The new legislation does not extend to cash bonuses. Historically, there has been uncertainty as to the correct approach to apply to cash bonuses and unfortunately this uncertainty remains.

Costs are likely to increase

The UK government's view is that this was not intended to be a revenue generating measure. However, scenario modelling conducted by PwC shows that the new rules create a higher NIC charge more frequently than a lower NIC charge. Clients should therefore be aware that they may now be liable to UK NIC charges on ERS where under the old rules there were none.

Increased administrative burden?

Businesses are already required to track individual's movements during the relevant period for income tax purposes so arguably the increase in administrative burden to enable businesses to comply with these new rules will be minimal.

However, companies will need to track different periods for tax and social security for moves between the UK and non-agreement countries, and the employer will be required to know the date(s) on which employees switched from one social security system to another during the relevant period. This will add a further layer of administrative complexity.

Timing

These new rules will come into force from April 6, 2015, although confirmation of the UK government's proposed legislation was only released on February 5, 2015. As a result, businesses have a limited amount of time to gain sufficient understanding of these rules to minimise risk of non-compliance.

Further guidance

The government has promised to release detailed guidance covering the new measures in advance of the implementation date. These will hopefully assist employers to understand their obligations in more detail.

The takeaway

Global mobility program managers should ensure that they have robust processes in place to be able to track employees' social security positions and calculate liabilities correctly.

It may be beneficial to undertake a global review to identify country combinations for which dual contributions liabilities arise. Proactive strategies to manage these dual liabilities could then be considered.

In the current environment where cost reduction is still critical to many business strategies, consideration should be given to quantifying the increased costs likely to arise from this new measure.

As the new rules come into force on April 6, 2015, action must be taken as soon as possible to understand them, their impact on internationally mobile employees, and related compliance obligations.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your regular PwC Global Mobility engagement team or one of the following representatives from PwC UK:

Global Mobility Services —United Kingdom

Ben Wilkins
+44 (0) 207 212 4096
ben.wilkins@uk.pwc.com

Laura Hutton
+44 (0) 207 804 9427
laura.hutton@uk.pwc.com

Global Mobility Services —United States

Peter Clarke, Global Leader
(203) 539-3826
peter.clarke@us.pwc.com