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GMS Flash Alert

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Switzerland – "Mind the Gap" Social Security Strategy in Light of Brexit

Switzerland and the United Kingdom have signed an agreement covering citizens' rights that would apply once the U.K. withdraws from the European Union (EU).

The so-called "Agreement between the United Kingdom of Great Britain and the Swiss Confederation on Citizens' Rights Following the Withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement" ("new Agreement")[1] was signed as part of the Swiss government's "Mind the Gap" strategy and is comparable to the current Withdrawal Agreement[2] presently under review. The new Agreement covers U.K. and Swiss citizens' rights in regard to immigration, social security, and recognition of job titles following the withdrawal of the U.K. from the EU as per the termination of the "Agreement on the Free Movement of People" ("FMOPA").

WHY THIS MATTERS

Once the U.K. exits from the EU ("Brexit"), Regulations (EC) No 883/2004 and (EC) No 987/2009 on the coordination of EU social security systems will no longer be applicable between Switzerland and the United Kingdom. The coming changes have left cross-border workers concerned about their social security status. There is a need for clarity in regard to which social security regime they will be subject to after Brexit and what will happen to their benefits.

From a social security perspective, the aim of the new Agreement is to safeguard, as far as possible, changes for persons currently covered by the existing rules, and to protect the rights acquired under the FMOPA.

Background and Current Legal Situation

At present, the economic relationship between U.K. and Switzerland is largely based on the EU framework agreement Switzerland has with the EU. The EU social security ordinances on the coordination of social security (Ordinance

883/2004 and Ordinance 987/2009 in particular) apply between Swiss citizens seconded or working in EU countries as well as EU citizens seconded or working in Switzerland. Following the U.K.'s withdrawal from the EU (at this stage, set for 29 March 2019), these agreements will cease to apply between Switzerland and the United Kingdom.

What happens after 29 March 2019, is still under discussion.

Scenarios Envisaged

The Swiss government is carefully monitoring developments and is preparing for various scenarios, whilst being in continuous talks with the United Kingdom. From a planning perspective, the following scenarios should be considered. The possibility that the British parliament (or the European parliament) rejects the U.K.-EU Withdrawal Agreement. In this "no-deal Brexit" scenario, the new Agreement on citizens' rights will become applicable from 30 March 2019, the day following the U.K.'s withdrawal.[3]

In an alternative scenario, a U.K.-EU Withdrawal Agreement would be ratified between the EU and the U.K., with the U.K. ceasing to be an EU member state as of 29 March 2019, but entering a transition period that is currently expected to last until 31 December 2020. The U.K. and the EU might jointly decide to trigger an extension of the transition period of up to two years. During this period, EU law continues to apply to the U.K., even though the U.K. will have left the EU; agreements that the EU has concluded with third countries, including the Swiss-EU FMOPA, will continue to apply to the U.K. until the end of the transition period.[4]

Social Security Implications

In the field of social security, the U.K.-Swiss agreement on citizens' rights aims to avoid as far as possible changes for persons currently covered by the FMOPA and to protect the rights acquired under it. Importantly, the new Agreement only protects existing rights under the FMOPA and does not apply to persons who, depending on the scenario, move between Switzerland and the U.K. **after 30 March 2019 or after 1 January 2021**. Regulations (EC) No 883/2004 and (EC) No 987/2009 shall continue to apply for persons covered by the U.K.-Swiss agreement on citizens' rights. The same state remains competent for social security, collects contributions, and provides benefits without discrimination. For example, A1 certificates under the applicable social security legislation and the rights attached to it remain in force.

KPMG NOTE

In the event that Switzerland and the U.K. cannot agree on a new bilateral social security agreement, the bilateral social security agreement of 1968 should still be applicable (more on that below) depending on the scenario – either on 1 January 2021 or on 30 March 2019 – for those persons. However, persons moving between Switzerland and the U.K. **after 30 March 2019 or after 1 January 2021** are not covered by the U.K.-Swiss agreement on citizens' rights. (As Switzerland is not part of the EU, bilateral agreements between Switzerland and the U.K. still exist.)

Post-Brexit and Bilateral Social Security Agreement between Switzerland and U.K.

Under the assumption that the 1968 Convention on Social Security between Switzerland and the United Kingdom of Great Britain and Northern Ireland ("bilateral Swiss/U.K. social security agreement") is the legal basis for the international social security coordination aspects of cross-border workers, there are some details to be considered when it comes to the application of Certificates of Coverage (CoC) via the bilateral Swiss/U.K. social security agreement.

The bilateral agreement would apply only to areas covered by the material scope of the agreement: old age pension and invalidity. Health Insurance and accident insurance are not covered by the bilateral agreement – so, there is no protection against double payments in the two countries.

Further, the bilateral Swiss/U.K. social security agreement only has provisions to allow posted workers (assignees) to remain in their home social security system. There is no multi-state worker clause in this agreement – the consequences of this distinction being that posted workers can remain in their home social security system, irrespective of nationality, for 24 months (the ordinary coverage period) with a possibility of extending the coverage for an additional four years. However, for multi-state workers a pro-rata split of social security contributions based on a work-day split would apply for Swiss and U.K. citizens.

KPMG NOTE

Third-country nationals enjoy no protection against double social security payments, which means in a worst case scenario they may have to pay full social security contributions on 100 percent of their employment in both countries, based on residency on the one hand and formal employment on the other.[5]

Implications for National Legislation

On a national social security level, as a consequence of the end of the application of Regulations (EC) No 883/2004 and (EC) No 987/2009 between Switzerland and the U.K. depending on the scenario, the U.K. will be considered a non-EU state on 1 January 2021 or 30 March 2019.

When an individual permanently leaves Switzerland for another EU country, Switzerland will not pay out the mandatory part of the occupational pension scheme. After the U.K. is no longer considered an EU member state, this restriction will not be applicable when moving from Switzerland to the U.K., and full pension capital could be distributable.

Further, persons who move to the U.K. would be able to join the voluntary OASI/DI (Old-age and survivors'/disability insurance) again. To do so, the individual must have been insured with the Swiss OASI/DI for at least five years without interruption at the time he or she departs from Switzerland.[6]

FOOTNOTES:

1 See 20 December 2018 press release/news story, "Swiss Citizens' Rights Agreement" on the U.K. government's website.

2 To see the draft agreement on withdrawal (14 November 2018), click here.

3 For more information see "FAQ Brexit" on the Swiss authorities' website.

4 Ibid.

5 For more information see "Information BREXIT in the field of social security" published by the Swiss social security authorities.

6 Ibid.

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