Switzerland

Regulation (EC) No. 833/2004 to be adopted from 1 April 2012 in relation to determining social security contribution liabilities and resultant employee state benefit positions for cross-border workers

Executive summary
Regulation (EC) No. 883/2004 entered into force within the EU on 1 May 2010. Initially, this legislation and the related A1 certification processes only applied to appropriate moves between EU Member States. This resulted in the social security contribution position of employees on assignment between Switzerland and EU member states remaining “covered” under the pre-existing legislation and E101 processes (EEC Council Regulation No. 1408/71).

The Swiss authorities have now confirmed that Switzerland will adopt Regulation (EC) 883/2004 for certain categories of employee with effect from 1 April 2012. This will potentially alter the ongoing social security contribution position of assignees currently on assignment, as well as applying different criteria and processes in relation to new moves occurring on or after this date in relation to the possibility of home country social security coverage under the A1 Certification processes.

On 1 May 2010, EU member states adopted new legislation contained within Regulation (EC) 883/2004. Switzerland and the three EFTA countries failed, however, to adopt the new legislation at that time and, therefore, moves involving any of these four countries continued to be covered under the old legislation and E101 related processes (under EEC Council Regulation No. 1408/71).

The Swiss authorities have now confirmed that Switzerland will now adopt the new legislation contained within Regulation (EC) 883/2004 with effect from 1 April 2012. They have also clarified that this will not extend to any assignment involving non EU/Swiss national (whose social security contribution position will continue to be determined under the former legislation).

Administrative challenges
There will be significant challenges for many organizations in implementing both the new legislation and related processes within Switzerland (as evidenced by the various issues and delays that occurred back in May 2010 when the EU adopted this legislation) including:

- The need to continue to concurrently apply both the old and new legislation to moves depending on the nationality of the individual employee and the other home/host country - the current legislation and related processes involving E101 certification will continue to apply to “third country nationals” and those involving moves to and from the three EFTA countries (although we understand that the
three remaining EFTA countries are currently considering whether it might be possible for them to similarly adopt the new legislation with effect from 1 April 2012).

There will be a transition period during which certain employees, already on assignment, may opt to have their social security contribution position determined under the new legislation. Employers will now be required to undertake detailed work duty tracking in relation to any employee deemed to be a “multi-state” worker.

The specific criteria to help determine the social security contribution position of employees working in the international transport industry under the current legislation will not now apply to any new employees/arrangements - which can result in a significant change in the appropriate country in which social security contribution liabilities will arise.

Next steps
It is essential that all employers with cross border workers with arrangements involving Switzerland urgently review and consider the implications of this significant change in relation to:
➤ How it will affect current assignees.
➤ How it will affect new assignees and how to modify any current internal processes to ensure that applications for home country coverage are correctly considered and filed under appropriate A1 or E101 certification requirements.

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