Lecture Title: Tax & National Insurance – Part 2

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Social Security – Introduction

- It is not an option to choose the country within which social security contributions are paid…..this is determined by the specific laws and rules

- A person should not be in a position whereby social security contributions are payable in more than one country for the same period

- Certain areas trigger substantial doubts in the social security treatment, e.g. shipping, aviation ... this may become more complex due to the fact that different Member States / countries may not necessarily provide for a consistent interpretation

Regulation (EC) No. 883/2004

- It is **not enough to look at domestic law** ... EU law on social security actually supersedes domestic law in case of conflict

- One of the EU regulations which tackles social security issues within the European Union is Regulation 883/2004

- The regulation is important when **addressing cross border NI matters within the EU**

- Reg. 883/2004 in general applies to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States

Regulation (EC) No. 883/2004

- Reg. 883/ 2004 provides for a mechanism **to determine the MS where social security** is due and also provides for the regulation of a number of **benefits** including: Sickness benefits; Maternity benefits; Invalidity benefits; Old-age benefits; Unemployment benefits; Family benefits

- The general rule under Reg. 883/ 2004 is that NI should be due in the MS where the employment/ self-occupation **activity is carried out**

- As a general rule social security should be payable in one country

- The above general rule is then subject to a number of **exceptions** e.g. In case of multiple employments, postings, etc.

Brexit

- Transitory period: The provisions of Regulations 883/2004 and 987/2009 on the coordination of social security systems will continue to apply until the end of the transition period on 31st December 2020 and, under certain conditions, even after the end of transition period.

- Going forward
  - one would need to look into the situation pre & post transitory period
  - rights applicable to EU & UK nationals

Some ad-hoc cases
Case 1: Early retirement

- Special provisions exist for cases of early retirement

If a person

- is married, and
- is not legally separated or abandoned, and
- was in insurable employment on 04/01/2004, and
- after 04/01/2004 benefitted from an early retirement scheme

... he/ she may **elect** to be treated as a **self-employed** person and **pay** Class 2 contributions accordingly

This may be beneficial in order to safeguard pension entitlement + pension amount

Some ad-hoc cases
Case 2: Part time employment

- Employed NI classification takes precedence, e.g. in case of part time employment and self-occupation, part time employment should prevail

- Higher employment income (in case of multiple employments) should be subject to NI ... even if higher income is from the part time

- Therefore SSC is still payable even if an individual is employed on a part-time basis

- Following the implementation of the Budget Measures Implementation Act 2022, part time workers will be given the possibility to pay social security contributions on more than one part time job, up to a maximum of 40 hours per week.

Some ad-hoc cases
Case 2: Part time employment (cont.)

- We might have a situation where one could possibly not be liable to pay contributions on part time employment is when the individual is only employed for less than 8 hours on calendar week basis (this being his/her only employment). In this case he/she should not be classified as an employed person and also no NI should be due if all the following conditions are met:

  - He/she not carrying out any other self-occupation, and
  - His/her yearly means do not exceed €1,470 in the case of a married person who is wholly maintaining his/her spouse and whose spouse is not self-occupied or in insurable employment, or €1,005 in the case of any other person, and
  - An application with the Director of Social Security is filed for a certificate of low income

Some ad-hoc cases
Case 3: Mariners

- General rule under Regulation 883/2004 is that social security contributions are due in the country of the vessel's registration (i.e. the flag state)

- However if the mariner is remunerated by an undertaking whose registered office or place of business is in the mariners MS of residence ... social security contributions should be payable in such other MS

- The Maltese authorities are not typically willing to accept payment of Maltese social security contributions in such circumstances ... such an approach is to avoid possible heavy claims of coverage on Malta

Some ad-hoc cases
Case 3: Mariners (cont.)

- We have had cases where the SSD argued that although remuneration may be paid by a Maltese company, this was not considered enough to shift the burden of NI to Malta ... substance is typically requested

- A difficult area to deal with ... approach from foreign countries may not be consistent

Some ad-hoc cases
Case 4: Aviation

- Similar to mariners, another area of debate

- General rule in terms of Regulation 883/ 2004 is that NI is payable in the MS in which flight crew resides if he pursues a substantial part of his activity in such MS

- Substantial part is taken to mean not less than 25% of an individual's working time and/ or remuneration ... if such tie breaker is not satisfied then NI should be due in MS of registered office/ place of business of the employer

Some ad-hoc cases
Case 4: Aviation (cont.)

- However a new provision by means of EU Regulation 465/2012 was introduced whereby flight crew should be liable to NI in the MS where the home base is located ... home base is defined as: the country nominated by the operator where the flight crew normally starts and ends a duty period and where the operator is not normally responsible for the accommodation of the said flight crew

Some ad-hoc cases
Case 5: Postings

- Postings of employees is regulated by both domestic law and Regulation 883/ 2004
- Regulation 883/ 2004 supersedes domestic law in case of conflict
- Regulation 883/ 2004 provides that NI should still be payable in the home state if
  - Posted by employer to another MS
  - Anticipated duration is of not more than 24 months
  - Not sent to replace another person

- In cases where NI is still payable in the home state, a specific statutory form (A1) would need to be approved by the home state ... this would provide proof that NI is still being paid in home state

Some ad-hoc cases
Case 5: Postings (cont.)

- *Interesting case:*
  - *Maltese individual seconded to the Italy*
  - *Posting criteria satisfied*
  - *Individual paid from the Italy*
  - *How does one deduct Maltese NI?*

- Social Security Department suggested that the Italian company should be registered in Malta and deduct Maltese NI through such registration
- However this creates issues … would the Italian company risk being taxed in Malta through the Maltese registration?
- Hence in practice this is no real solution (given the risks that such a registration carries) and consequently still leaves the question unanswered i.e. how to deduct the Maltese NI?

National Insurance Class 1

- If a person earns a yearly rate of €15,600 how much would be his basic weekly rate?
- What Category would the person be in if they are born in 1995?
- How much national insurance would they be paying per week?
- How much national insurance would they be paying per year?
- How much would the employer be paying in a year?

National Insurance Class 1

- If a person earns a yearly rate of €15,600 how much would be his basic weekly rate? €300
- What Category would the person be in if they are born in 1995? C
- How much national insurance would they be paying per week? €30
- How much national insurance would they be paying per year? €1,560
- How much would the employer be paying in a year? €1,560

National Insurance Class 1

- If a person earns a yearly rate of €31,200 how much would be his basic weekly rate?
- What Category would the person be in if they are born in 1958?
- How much national insurance would they be paying per week?
- How much national insurance would they be paying per year?
- How much would the employer be paying in a year?

National Insurance Class 1

- If a person earns a yearly rate of €31,200 how much would be his basic weekly rate? €600
- What Category would the person be in if they are born in 1958? D
- How much national insurance would they be paying per week? €37.90
- How much national insurance would they be paying per year? €1,970.80
- How much would the employer be paying in a year? €1,970.80

National Insurance Class 1

- If a person earns a yearly rate of €5,200 how much would be his basic weekly rate?
- What Category would the person be in if they are born in 1995?
- How much national insurance would they be paying per week?
- How much national insurance would they be paying per year?
- How much would the employer be paying in a year?

National Insurance Class 1

- If a person earns a yearly rate of €5,200 how much would be his basic weekly rate? €100
- What Category would the person be in if they are born in 1995? B
- How much national insurance would they be paying per week? €10 or €18.28
- How much national insurance would they be paying per year? €520 or €950.56
- How much would the employer be paying in a year? €950.56

Maternity Fund

- How much maternity fund should be paid yearly by the employer for the following amounts

- €100 per week
- €300 per week
- €500 per week (1962 onwards)

Maternity Fund

- How much maternity fund should be paid yearly by the employer for the following amounts

- €100 per week - €28.60
- €300 per week - €46.80
- €500 per week (1962 onwards) - €78

National Insurance Class 2

- If a person was employed in 2021 and shifted to self-occupation from 1 January 2022 (i.e. this is his first year as Self Occupied) how much NI does he have to pay weekly?

- What Category would the person be in if they are born in 1995?

- How much national insurance would they be paying per year?

National Insurance Class 2

- If a person was employed in 2021 and shifted to self-occupation from 1 January 2022 (i.e. this is his first year as Self Occupied) how much NI does he have to pay weekly? €31.29

- What Category would the person be in if they are born in 1995? SA

- How much national insurance would they be paying per year? €1,627.08

National Insurance Class 2

- What is the relevant Category for a Self Occupied person born in 1995?

- If a person’s net annual earnings in the previous year amounted to €20,000 how much NI does he have to pay weekly?

- How much national insurance would they be paying per year?

National Insurance Class 2

- What is the relevant Category for a Self Occupied person born in 1995 and whose annual net earnings in the previous year amounted to €20,000? SB

- If a person’s net annual earnings in the previous year amounted to €20,000 how much NI does he have to pay weekly? €57.69

- How much national insurance would they be paying per year? €3,000

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Tax rates for basis year 2022 – Resident rates

Tax Rates for Basis Year 2022

TAX RATES			
Chargeable Income (€)			
From	**To**	**Rate**	**Subtract (€)**
Single Rates			
0	9,100	0%	0
9,101	14,500	15%	1,365
14,501	19,500	25%	2,815
19,501	60,000	25%	2,725
60,001	and over	35%	8,725
Married Rates			
0	12,700	0%	0
12,701	21,200	15%	1,905
21,201	28,700	25%	4,025
28,701	60,000	25%	3,905
60,001	and over	35%	9,905
Parent Rates			
0	10,500	0%	0
10,501	15,800	15%	1,575
15,801	21,200	25%	3,155
21,201	60,000	25%	3,050
60,001	and over	35%	9,050

Tax rates for basis year 2022 – Non-Resident rates

Tax Rates - 2008			
Chargeable Income (€)			
From	To	Rate	Subtract (€)
0	700	0%	0
701	3,100	20%	140
3,101	7,800	30%	450
7,801	and over	35%	840
Tax Rates 2001 - 2007			
Chargeable Income (Lm)			
From	To	Rate	Subtract (Lm)
0	300	0%	0
301	1,300	20%	60
1,301	3,300	30%	190
3,301	and over	35%	355

Income Tax – Single Rates

- This is applicable to people who are:

  (i) either not married and have no children or
  (ii) by Married couples with no children and who both work full-time

Income Tax – Married Rates

- This is applicable to:

  (i) a single parent or

  (ii) married couples where only one of the spouses is in full time employment (the other spouse can either not be in employment or has a part time employment on which 15% tax rate is applicable)

Income Tax – Parent Rates

- This is appliable when:

  (i) Parents have a child who is less than 18 years of age (or between 18 and 23 and attending full time education)

  (ii) Such child is not gainfully occupied or if gainfully employed does not earn more then €3,400 per annum

Global Residence Programme

The Global Residence Programme is aimed at attracting more third country national individuals in taking up residence in Malta without taking up employment in Malta, with foreign-source income remitted to Malta by the beneficiary or its dependants being taxed at a flat rate of 15%, subject to a minimum tax of EUR 15,000 per annum.

Beneficiaries should satisfy a number of qualifying criteria in order to be eligible for the beneficial tax treatment.

Global Residence Programme

In particular, applicants must hold immovable property in Malta for a purchase price of not less than EUR 275,000 (with lower thresholds applicable in the case of property situated in certain areas in Malta and/or Gozo). Alternatively, individuals may rent property in Malta for an annual rental payment of not less than EUR 9,600 (with lower thresholds applicable in the case of property situated in certain areas in Malta and/or Gozo).

Malta Retirement Programme

A Malta Retirement Programme is applicable to pensioners in receipt of periodic pension income. Such pension income must constitute at least 75% of the pensioner's chargeable income in Malta, and such pension must be received in Malta. A number of other statutory conditions apply in order to be eligible for the said programme. Again, under this programme, foreign-source remitted income is taxed at 15%, subject to a minimum tax liability of EUR 7,500 per annum and an additional EUR 500 per each dependent, per annum. This Programme includes third country nationals.

Returned Migrant

Subject to the satisfaction of a number of conditions, a returned migrant may elect to be taxed on a source and remittance basis (rather than on a world-wide basis). In this case, foreign-sourced income received in Malta should amount to at least €14,000 plus €2,400. These will be subject to tax in Malta at a flat rate of 15% on foreign income remitted to Malta with a tax-free brackets of EUR 4,200 for single taxpayers and EUR 5,900 for married taxpayers, subject to a minimum tax liability of EUR 2,325 per annum after double taxation relief.

UN Pensions Programme

The United Nations (UN) Pensions Programme Rules, 2015 are designed to attract foreign pensioners retiring from the United Nations. Similar to the Global Residence Programme and other programmes already in place, applicants must satisfy a number of conditions, including holding immovable property in Malta for a purchase price of not less than EUR 275,000, or EUR 220,000 for property situated in certain areas. Alternatively, individuals may rent property in Malta for an annual rental payment of not less than EUR 9,600, or EUR 8,750 for property situated in certain areas. A beneficiary who should receive at least 40% of the UN pension or a widow’s/widower’s benefit in Malta is not subject to income tax on such income in Malta.

Other foreign-source remitted income should be taxed at a flat rate of 15%, subject to a minimum tax of €10,000 (or €15,000 where both spouses are in receipt of a UN Pension), after double tax relief

Highly Qualified Persons

The Highly Qualified Persons Rules cater for expatriates (i.e. individuals who are Maltese residents but not domiciled in Malta) in receipt of income payable in terms of a 'qualifying contract of employment' in respect of activities carried out in Malta. Such expatriates may be subject to tax on such income at a beneficial flat rate of 15%. The beneficial rate may be availed of by individuals occupying an “eligible office” in financial services or gaming sectors or in undertakings holding an air operators certificate. These Rules have now been extended to cover specific positions of employment in the sphere related to assisted reproductive technology. No determination in terms of these Rules should be issued following 31 December 2020, and any determination issued should refer to an employment commencing by 31 December 2021 and terminated by 31 December 2025.

Highly Qualified Persons

“Eligible office" in the financial services and gaming sectors (and undertakings holding an air operators certificate) comprises employment in one of the following positions:

- Actuarial Professional
- Aviation Continuing Airworthiness Manager
- Aviation Flight Operations Manager
- Aviation Ground Operations Manager
- Aviation Training Manager
- Chief Executive Officer
- Chief Financial Officer
- Chief Commercial Officer
- Chief Insurance Technical Officer
- Chief Investment Officer
- Chief Operations Officer (including Aviation Accountable Manager)
- Chief Risk Officer (including Fraud and Investigations Officer)
- Chief Technology Officer
- Chief Underwriting Officer
- Head of Investor Relations
- Head of Marketing (including Head of Distribution Channels)
- Head of Research and Development; (including Search Engine Optimisation and Systems Architecture)
- Portfolio Manager
- Senior Analyst (including Structuring Professional)
- Senior Trader/Trader
- Odds Compiler Specialist

Highly Qualified Persons

"Eligible office" in an aerodrome licensed undertaking refers to employment in the following position:

- Chief Executive Officer

"Eligible office" in the assisted reproductive technology sector comprises employment in one of the following positions:

- Embryologist
- Responsible Person
- Lead Quality Manager

Highly Qualified Persons

Scheme Rules

a) Employment Income

Individual income from a qualifying contract of employment in an "eligible office" with a company licensed by the Competent Authority is subject to tax at a flat rate of 15% provided that the income amounts to at least €75,000 (seventy five thousand euro) adjusted annually in line with the Retail Price Index. The 15% flat rate is imposed up to a maximum income of €5,000,000 (five million euro), the excess is exempt from tax.

Highly Qualified Persons

In practice this means that the minimum income (based on the Retail Price Index published by the National Statistics Office) must exceed the following thresholds:

- €75,000 for basis year 2010
- €76,136 for basis year 2011
- €78,207 for basis year 2012
- €80,100 for basis year 2013
- €81,205 for basis year 2014
- €81,457 for basis year 2015
- €82,353 for basis year 2016
- €82,881 for basis year 2017
- €84,016 for basis year 2018
- €84,991 for basis year 2019
- €86,385 for basis year 2020
- €86,938 for basis year 2021
- €88,242 for basis year 2022

Highly Qualified Persons

The 15% tax rate applies for a consecutive period of five years for European Economic Area (ie EU countries plus Norway, Iceland and Liechtenstein) and Swiss nationals and for a consecutive period of four years for third country nationals. Individuals who already have a qualifying contract of employment in an "eligible office" two years before the entry into force of the scheme may benefit from the 15% tax rate for the remaining years of the scheme. This means that a national of the EEA and Switzerland who has a qualifying contract of employment in an "eligible office" starting in 2008 (basis year) will benefit for three years from the scheme, ie basis years 2010, 2011 and 2012, while a third country national will benefit from one less. This "grandfathering" only applies for eligible offices in the financial services and gaming sectors.

Highly Qualified Persons

The four or five year period, as the case may be, commences from the year when the individual concerned first becomes taxable in Malta. In cases where the individual was taxable in Malta but not benefiting under this Scheme and subsequently comes to Malta and becomes eligible under the Scheme, he can benefit only if the four or five year period has not elapsed; the benefit is for the years remaining from the date of eligibility under the Scheme until the said four or five year period from the date of first being subject to tax in Malta elapses. Nationals of the EEA and Switzerland who have availed themselves of the benefit under this scheme may apply for a one-time extension of five years to the qualifying period.

Third country nationals of who availed themselves of the benefit under this scheme may apply for a one-time extension of four years to the qualifying period.

Highly Qualified Persons

b) Qualifying Contract of Employment

An individual may benefit from the 15% tax rate if he satisfies all of the following employment conditions:

1. derives employment income subject to income tax in Malta
2. has an employment contract subject to the laws of Malta and proves to the satisfaction of the Competent Authority that the contract is drawn up for exercising genuine and effective work in Malta (Note: where an individual receives salaries from different companies in the same group and the group relationship of such companies is of 100% ownership, he will still be eligible if the aggregate salaries (excluding fringe benefits) are higher than the minimum thresholds as specified above).
3. proves to the satisfaction of the Competent Authority that he is in possession of professional qualifications and has at least five years professional experience;

Highly Qualified Persons

4. has not benefitted from deductions available to investment services expatriates with respect to relocation costs and other deductions (under article 6 of the Income Tax Act);
5. fully discloses for tax purposes and declares emoluments received in respect of income from a qualifying contract of employment and all income received from a person related to his employer paying out income from a qualifying contract as chargeable to tax in Malta;
6. proves to the satisfaction of the Competent Authority that he performs activities of an eligible office; and
7. proves that:

Highly Qualified Persons

i. he is in receipt of stable and regular resources which are sufficient to maintain himself and the members of his family without recourse to the social assistance system in Malta;
ii. he resides in accommodation regarded as normal for a comparable family in Malta and which meets the general health and safety standards in force in Malta;
iii. he is in possession of a valid travel document;
iv. he is in possession of sickness insurance in respect of all risks normally covered for Maltese nationals for himself and the members of his family.

Highly Qualified Persons

Application to Benefit from the Scheme

An application for a formal determination relating to eligibility under the Highly Qualified Persons Rules must be made to:

- The Chairman, Malta Financial Services Authority
- The Chairman, Lotteries and Gaming Authority
- The Chairman, Authority for Transport in Malta (in the case of Aviation Services)
- The Chief Medical Officer to Government using this form (in the case of assisted reproductive technology).

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