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LAW SHOOTER

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FRESH LEGAL UPDATES

Dear Clients and Readers,

In our February newsletter you can read a very interesting article about the insurance obligations in case of employment in more than one EU member state.

We hope that you will enjoy this months edition, we wish you all the best for this year and remain at your entire disposal should you have any questions regarding the articles.

Dr. Arne Gobert
Managing Partner

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INSURANCE OBLIGATIONS IN CASE OF EMPLOYMENT IN MORE THAN ONE EU MEMBER STATE

More and more people work abroad nowadays and work in even more EU member states at the same time. In such cases it is worth to be informed and to deliberate in which country are the healthcare services contributions payable. Our present article is aimed at providing assistance to that.

European Union prescribes the principle of one insurance at a time. Accordingly, a person pursuing activity in more member states can be insured only in one member state at a time based on the Union rules, thus if an EU member state is concerned, it must be determined first of all which member state's law is applicable. We summarize the most important rules in the below sections as follows.

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Fundamental provisions

National law of one EU member state can be taken into account in two cases when determining the insurance obligation: (a) if the residence of the worker, or (b) if the registered seat of the employer is situated in the given member state.

a) Applicability of the legal provisions of the member state having competence according to residence:

Legal provisions of the member state having competence according to residence are applicable, if the employee pursues substantial part of its activity in the member state of residence.

We may talk about substantial part of the activity when the working time or wage (other benefit) related to the activity pursued locally by the employee reaches 25 percent of the total working time, and of the wage (benefit). For the determination of the latter, the competent authority investigates the past and next 12 months' expectable activity pursued in Hungary and in other member states.

b) Applicability of the law of the member state competent according to the registered seat of the employer:

The law of the member state competent according to the registered seat of the employer must be applied, if the employee not pursues the substantial part of its activity in a member state where it otherwise resides. For example if an employee living in Hungary is employed by an employer seated in Austria and the employee pursues the substantial part of its activity in Austria, then it will be insured in Austria (according to the registered seat of its employer), irrespectively from its domicile.

Employment relationship in one member state and an independent activity in another

If a given person pursues work in one member state within the framework of employment relationship, while pursues independent activity in another, the insurance obligation will exist in a member state of the place of employment - irrespectively of the comparable ratio between the two activities.

According to the Hungarian legal regulations a person in an employment related relationship, a business partner, or a person concluded a legal relation adequate to an employment relationship according to the law of another member state shall be regarded as employee.

Requirement of the A1 certificate

If according to the above, the insurance relationship of the foreign employee was determined, then a certificate, so called A1 certificate must be required from the social security organ of the member state of the employment relationship declaring that the compulsory contributions were paid in that member state upon the main employment relationship or other pursuit of work and it must be duly preserved. Whereas according to practice the existence of the A1 certificate will be strictly examined by the tax authority.

If the employee, the self employed person besides its local employment pursues work as an employee or self employed person simultaneously in another member state, according to the EU rules for the determination of the applicability of the Hungarian law it may provide the following data to the metropolitan/county government agency's health insurance financial administrative organ competent according to its permanent or temporary domicile, or upon its choice the registered seat of its employer:

- Personal identification data, citizenship, address, **social security identification code (so called TAJ number)**, registration number of the self employed person,
- Name, registered seat (domicile), tax identification number of the employer(s)
- TEÁOR (NACE classification) number according to the pursued business activity
- If the employee is employed both locally and in another member state, the extent of its working time and the amount of its wage (benefits) related to both the domestic and foreign employment relationship, and their comparable ratio



- If the self employed person is self employed both domestically and in another member state as well, the amount of the **entrepreneurial income acquired both domestically and in the foreign member state, and the comparable ratio between them.**

If the employee is employed exclusively by only one employer at a time or alternately in more member states, the A1 certificate can be required by the employer.

For the justification of the above data the employee must submit the contract based on which the employment related relationship is pursued in another member state, and the self employed person, the document certifying the pursuit or the entitlement for the pursuit of such activity.

Temporary determination of the insurance obligation

An EU citizen engaged in a gainful occupation on the territory of the European Union may not find him or herself in a situation that would not insured (mandatorily, or voluntarily) according to the law of any member state. In order to this the insurance obligation must be defined from the first day of the activity, even in those cases as well when from the circumstances of the activity the insurance obligation cannot be defined unambiguously:

- If the given person pursues its activity only in one member state's territory he or she will become insured according to the rules of that member state.
- If the given person pursues its activity in the territories of more member states, his or her insurance obligation must be determined with a temporary nature in that member state where the given person applies for it.
- In lack of the explicit request of the given person, the insurance obligation must be determined with temporary nature in the member state of domicile.

In case the insurance obligation is determined with temporary character according to the Hungarian rules,

the metropolitan/county government agency's health insurance financial administrative organ competent according to the insured person's domicile or according to the place of employment will issue a form A1 with a validity for the term 6 months, on which it indicates that the determination of the insurance obligation is of temporary character.

The metropolitan/county government agency's health insurance financial administrative organ will send one copy of the A1 form to the institution of that member state, on which territory the insured person is also engaged in gainful activity. If the organ of the other member state does not raise objection within the period of two months from the receipt of the temporary decision, the determination of the insurance obligation will become final.

However, if a dispute arises with an institution of another member state regarding the determination of the insurance obligation, the institutions in question will conduct reconciliation on the issue.

If the parties determine during the reconciliation that the law of the other member state is applicable, the determination of the insurance obligation has retroactive effect until the first day of the activity.

Determination of the exception

Request to determine exception from the EU rules must be submitted at the competent organ of that member state – according to the possibility mutually by the employer and the employee – in which the given employee wishes to remain insured.

The self employed person may also request the determination of the exception. In this case more member states and their competent authorities may differ with mutual agreement that the person is insured in the member state originally defined by the EU regulations.

Determination of exception may take place, if in the lack of determining that exception such other special exceptional circumstance would exist, which makes the exceptional rule applicable.



Summary

It is not easy to decipher the Hungarian system of social security rules, which is further complicated by the "EU social security law" as well.

It may be easier to find the right direction if we keep in mind the fundamental purposes of the legislation: if necessary, workers must be treated, where they work (or pursue the substantial part of their activity), and pay taxes and contributions. Accordingly an EU citizen may be insured only in one member state at a time.

Acting carefully pursuant to the above rules is very important, whereas this way it can be avoided that problems arise later on with the insurance, thus in case of questions to that effect, our professionals remain at your kind disposal.

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