Short term business visitors (STBVs) and HMRC’s Appendix 8

Employment Tax | Tax voice

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Eleanor Meredith looks at the changes being made to the PAYE Special Agreement for short term business visitors

Little has changed in the world of reporting for short term business visitors to the UK since my article for Employment Taxes Voice last year. However, for one particular group the reporting mechanism is about to change and the scope of it will also extend. This group and the changes about to affect them are the focus of this article.

HMRC is in the process of reforming its PAYE Special Arrangement for short term business visitors, which is aimed at individuals who are taxable in the UK on their employment income from their first UK workday, but who spend very limited time working in the UK in any given tax year. Typically, these individuals either come from a non-treaty country, or are employed by branches of a UK entity. This means they can never meet the standard treaty condition for exemption from tax that requires remuneration to be paid by or on behalf of a non-UK employer, and not borne by a permanent establishment of the non-UK employer in the UK.

This reporting regime was introduced in the summer of 2015 following a recommendation by the OTS, and represented a compromise, balancing the tax that could be due on a very limited number of UK workdays (no more than 30) and the administrative burden of conventional PAYE reporting in this situation. The circumstances in which the regime could apply and its requirements were set out in a page of HMRC's PAYE Manual, at PAYE 81950.

Consultation of 2018

Following a short consultation in the summer of 2018, the government agreed to two key reforms of the regime. The first was that the total number of workdays an individual could have in the UK and remain eligible for inclusion in the regime was to be doubled to 60 days per tax year. The second was a welcome easement in the due date for filing end of year reporting from 19 April following the end of the tax year, to 31 May. This was critical, as the difficulties in gathering data to report worldwide remuneration for these individuals had made the previous deadline so tight that many UK entities felt unable to sign up to the arrangement. The same extension was applied to the deadline for the payment of any tax due under the arrangement.

What is happening now?

Both reforms were to take effect from the 2020/21 tax year, which at the time this was announced (Budget 2018) seemed an unreasonable delay for an arrangement covered only by HMRC guidance.

The reason for the delay has now become clearer, however, as it has been decided that the extension of the PAYE filing deadline in particular, has to be on a statutory footing. A related draft statutory instrument (https://tinyurl.com/qpe98pj) was released on 3 February 2020. The draft law will make an amendment to the PAYE Regulations, introducing the concept of a special arrangement and providing for a

written agreement between HMRC and the employer to underpin it.

Interestingly, the statutory instrument indicates that both the due date for filing the end of year return and the due date for the payment of the tax should be specified in the agreement, while indicating that it can be no later than 31 May following the end of the tax year. One would assume that as a matter of practice HMRC would adopt this latest permitted date in all agreements issued, but this is obviously an aspect that both employers and practitioners will want to check before any agreement issued to them is signed formally.

HMRC is also moving its PAYE Manual guidance from its current page - which is only easily found if you know where to look, and far from obvious if you do not - to a new Appendix 8 in the PAYE Manual. This has a certain logic to it, as it will sit with other agreements, which have the potential to ease the strict legal PAYE reporting position, and should be easier for the uninitiated to find.

The updated version of the guidance has yet to be published, but is likely to have similar content to the previous version. The regime will continue to use an annual PAYE reporting arrangement, with all calculations and full payment submissions being undertaken at the end of the tax year. It will also have the same restrictions as the previous regime; for example, it cannot apply to anyone who has a liability to UK National Insurance, or to any directors of UK companies. Anyone covered by the arrangement will not normally be expected to complete a self-assessment tax return, unless they have other UK liabilities.

A gross up of the tax due will only normally be applied to cash remuneration if the employee is tax equalised. However, where benefits in kind are provided, HMRC also expect a tax gross up to be applied to them, unless the employee is bearing any tax due on the provision of the benefit.

There is no requirement for the agreement to be put in place before the start of the tax year, possibly because it may only become apparent later in a tax year when visitors first come to the UK that it is needed. Generally speaking, where the need for an agreement may be anticipated, employers will want to set up the arrangement as early as possible in the tax year. This is because the agreement itself serves as a confirmation that HMRC have accepted this is a case where deduction of tax under a regular PAYE scheme would be impractical.

As previously, only one PAYE scheme of this type will be permitted per employer.

What do employers need to do now?

Any employer who wishes to take advantage of the new arrangement will need to sign up to the new format Appendix 8 once this is released. HMRC announced this change with articles in the October 2019 edition of their Employer Bulletin, and in issue 74 of their Agent Update bulletin. They have also written to employers who already have a special arrangement in place for 2018/19. The communication, which could have been more clearly expressed, invited existing users to indicate whether they wished to enter into the new format arrangement or to cease the existing arrangement (although the intention was that employers should choose one alternative only, this was not made clear on the attachment that they were asked to return, although HMRC subsequently issued an email clarification via the Expatriate Tax Forum, confirming this).

Aside from having to sign up to the new arrangement, from an employer perspective, the new arrangement will operate in a very similar way to the previous one. In principle, employers can gather relevant payroll data at any time during the tax year, and this may be advisable where the population likely to be within the arrangement is clear, but may need to be more ad hoc for a more transient population. In either case, the timeframe, while a big improvement on the previous arrangement, remains tight, especially when working across numerous countries and time zones to collect payroll and benefit details.

Is there any bad news in the update?

Overall, the new format arrangement is intended to offer increased flexibility and should be welcomed. However, it should also be noted that in any instance where the employment income cannot be offset in full by a personal allowance, there will be a tax cost. Having an increased number of days permitted in the UK has the potential to increase the tax cost for the employer significantly, especially where a gross up is required because the individual is subject to tax equalisation arrangements or because of benefits in kind. Individuals who are non-resident in the UK by virtue of full time work abroad will usually want to keep UK workdays to no more than 30 to ensure they continue to meet this test; this may be less of a concern for others who would qualify as non-resident under other parts of the statutory residence test.

It was always probable that HMRC would apply penalties and interest in the event of late filing of returns and/or payment of tax. The agreement is predicated on some discretion being allowed to HMRC under the PAYE Regulations, and if they feel the agreement is not operated appropriately, they can withdraw it without notice. Having an agreement withdrawn late in the tax year, or being refused one for the following tax year, is a further possible sanction that employers will want to avoid if at all possible.

Conclusions

The Appendix 8 agreement is likely to represent a pragmatic alternative to the restrictions of RTI payroll reporting for the right sort of population, but there will continue to be potential pitfalls for employers who underestimate the scale of the reporting issue. The easements are largely welcome, but this will remain a challenging area for employers with mobile populations that fit the criteria.