Just visiting

Employment Tax

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Steph Carr explains the circumstances in which an employer can enter into a short term business visitors agreement

Key Points

What is the issue?

More employers have an internationally mobile workforce but they risk being non-compliant with PAYE regulations for staff who are visitors to the UK

What does it mean to me?

Short term business visitors (STBVs) are facing greater scrutiny by HMRC, so it is important that employers take preventive steps and for their advisers to understand the consequences if they fail to do so

What can I take away?

An understanding of the actions required to access a relaxation of PAYE rules for STBVs to the UK and the associated reporting requirements

Given the increasing number of multinational corporations with UK operations, HMRC recognise that employees will move between international offices. Visits to the UK may be short-term assignments of a few months or business trips of a few days. Under the circumstances of these short trips, employers often make assumptions and underestimate what is required of them as a result.

The rules

It is a common misconception that no UK tax or Pay As You Earn (PAYE) will be due unless the employee becomes tax resident (indeed, further simplifying this to having spent 183 days here). In fact, it is HMRC's position that these employers have an obligation to add such employees to their UK payroll and pay PAYE to HMRC from their first day working in the UK. The responsibility rests with the UK employer rather than the employee. If HMRC find that the employer is not PAYE-compliant in respect of their STBVs, they risk penalties, interest, and wider investigations into their PAYE compliance, which can be expensive in terms of time and professional costs. In this case, prevention is cheaper than the cure.

What can be done?

Assuming that all the conditions are met, HMRC will enter into an agreement known as an EP Appendix 4, or 'short term business visitors agreement'. This grants a relaxation of these strict PAYE rules and allows the employer to self-assess whether tax will be due. Given the potential administrative burden of applying the rules rigorously, it is strongly advised that employers seek to put in place such an agreement to make use of the relaxation.

To be covered by the agreement, the employees must be:

- resident in a country with which the UK has a double taxation agreement under which the ‘dependent personal services – income from employment’ article is applicable;
- coming to work for a UK company or the UK branch of an overseas company, or are legally employed by a UK-resident employer, but economically employed by a separate non-resident entity; and
- expected to stay in the UK for 183 days or fewer in any 12-month period.

Staying compliant

Part of the agreement with HMRC is an obligation to file annual reports detailing the number of STBVs arriving in the UK each tax year. Therefore, it is imperative that employers have systems in place that allow them to track employees’ movements, such as travel records, expense claims and office visitor records. HMRC requires an internal reporting system to be in place.

Reports are due to HMRC by 31 May after the end of the tax year. The requirements vary depending on the amount of time spent in the UK:

- 1–30 days: no reporting requirements.
- 31–59 days: if there is no formal contract of employment with the UK employer and the 59 days do not form part of a more substantial period (together with earlier or subsequent trips) only a list of names of such employees is required.
- 1–59 days not falling within the scope of the above category, and other visitors for 60–90 days: the employer must provide the following information for each relevant employee:
    - full name;
    - last known UK and overseas addresses;
    - nature of duties undertaken;
    - date work started and ended;
    - to which country a tax return covering worldwide income is submitted; and
    - employer statement confirming that the UK company does not ultimately bear the cost of the employee’s remuneration or function as the employee’s economic employer during the visit.
- 91–150 days: all of the above, plus a certificate of residence from the home country’s tax authorities or, for US citizens and green card holders, evidence of continuing residence.
- 151–183 days: an individual application must be made to HMRC at the earliest point that the employer anticipates that the employee will spend more than 150 days in the UK, including all of the information above plus a statement from the employee explaining why they consider themselves to remain resident in their home country under the terms of the appropriate article in the relevant double taxation agreement.

Key points to remember

- Any visitors coming from non-treaty countries are immediately excluded from STBV treatment. Frequently seen examples of non-treaty countries are Brazil and the United Arab Emirates (UAE).
- Generally, where the employee’s employment costs are recharged to the UK entity, the conditions of the ‘dependent personal services’ article of the double taxation agreement are contravened and STBV treatment is not available, unless:
    - the employee spends fewer than 60 days in the UK (which do not form part of a more substantial period). In this case HMRC accept that the overseas company remains the employer and any costs borne in the UK will not prevent the home country employer from being considered the ‘economic

employer' under the conditions of the treaty. This is known as the 60-day rule.

- For the purposes of the treaty, a 'day' is counted as physical presence in the UK at any time in that day, regardless of how brief that period is. This also includes non-working days such as weekends or annual/sick leave (which can add to the difficulty of tracking the number of days accurately).
- If the employee's workdays in the UK are purely 'incidental' in nature, they are not considered taxable in the UK, and there is no PAYE requirement. Incidental duties include visits to the UK for training, receiving updates on business developments, or preparation for ad hoc meetings or conferences. There is no need to consider STBV treatment under these circumstances.

Transfer pricing

To the extent that an employee is performing work duties benefiting the UK entity rather than the jurisdiction in which they are employed and paid, there is a cross-border benefit. Transfer pricing rules mean that cost recharge might be an obligation rather than a choice, and this is something to consider when determining whether to apply STBV treatment.

Social security

When considering the social security consequences, the world can be split into three distinct regions:

1. EU/EEA countries and Switzerland: the employer should assess whether an A1 certificate should be obtained to ensure exemption from UK national insurance. Although not a strict interpretation of the legislation, a pragmatic approach to this would be when it becomes known that an employee will spend more than 30 days in the UK. If the employee is not in the UK for more than 30 consecutive days, but has a regular pattern of visits exceeding 30 days for the year, an A1 certificate should be obtained as a multi-state worker (available if the employee spends at least 25% of their working time in their home location).
2. Reciprocal social security agreement countries (including the US, Canada and Japan, Jersey and Guernsey): on a similar basis, if an employee is working in the UK for 30 or more consecutive days, or if a regular pattern of visits adds up to 30 days or more, a certificate of coverage should be obtained.
3. Countries with no agreement (including Hong Kong, Singapore and UAE): the employee will be exempt from UK national insurance for the first 52 weeks they spend in the UK.

Recent developments

HMRC have announced a new simplified annual PAYE system for employees who spend fewer than 30 days working in the UK during the tax year, but do not fall within the scope of the STBV agreement. This means a relaxation of real time information, allowing employers to assess the correct amount of PAYE to pay in a single full payment submission (FPS) to be filed by the end of the tax year. This should reduce the payroll administration required for employees working in the UK for short periods.