STBV reporting becomes special!

Employment Tax | Tax voice

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Eleanor Meredith highlights the facts: it is true that STBV reporting has become special

Introduction

Tracking, and reporting appropriately, the comings and goings into the UK of group employees, who are based outside the UK, tends to be a major headache for the UK entities of international groups. The UK tax compliance burden in particular has become more onerous since HMRC reviewed its provision for short term business visitors' reporting (HMRC Manual at PAYE 82000 Appendix 4), following the introduction of the Statutory Residence Test (SRT). One particularly unhelpful development was a new focus on individuals who were for any reason ineligible for an exemption from UK tax under the employment income article of a double tax treaty.

This comprised two main groups, those from non-treaty countries, such as UAE and Brazil, and those employed by branches of a UK entity (so ultimately employed by UK employers). This is a significant challenge for UK companies in certain sectors, such as banking and insurance, which commonly use a branch structure internationally.

HMRC's release of a new-format special arrangement of PAYE reporting that can, from 2015/16 onwards, be applied to certain individuals in this group is therefore to be welcomed. In this article I explore the scope and limitations of this reporting, together with the underlying guidance issued by HMRC, and what this is likely to mean for affected employers in practice.

Overview of the arrangement

The special arrangement is an administrative easement only, but it is a significant one, particularly bearing in mind the challenges that RTI presents when a host employer may not have instantaneous access to details of all international visitors at the time that payroll calculations have to be run for any given month. Where a host employer has signed up to the arrangement, it is not required to account for PAYE for individuals covered by the arrangement, except as a month 12 PAYE calculation. In cases where the individual is entitled to personal allowances, and the taxable remuneration is limited, this may avoid payments of tax being made that are not ultimately due. It is also anticipated that individuals within the arrangement will be wholly outside self-assessment, which will minimise reporting obligations and associated compliance costs.

The special arrangement applies only to employees for whom treaty exemption cannot be in point because either they are employed by a branch of a UK entity and so have a UK employer, or their home country does not have a double tax treaty with the UK. Directors of UK entities are specifically excluded from the arrangement. In addition, it can only apply to employees who have no more than 30 UK workdays in the tax year concerned.

The 30 day limit

The 30 day limit is quite different from a conventional treaty days limit, in that it covers only workdays, not days of UK presence. In addition, as it aims to tax only those workdays that are taxable under UK domestic law, only those on which substantive duties are performed will need to be included. This is likely to cover most UK workdays, as individuals coming to the UK to work will generally be performing activities that extend beyond the limited case law definition of incidental duties. However, there are employers who bring individuals into the UK for training, and provided no other work related activity is performed on a training day, that day may be omitted from the day count as one on which only incidental duties were performed.

The interpretation of travel to and from the UK in the context of the 30 day limits also deserves a mention. The commentary in HMRC’s PAYE Manual indicates that it will be an employer’s responsibility to decide when travel within the UK should and should not make that day count for the purposes of the special arrangement and

cross-refers to the rule of thumb set out in Appendix 2 of the Employment Income Manual. This is a practice developed by HMRC some years ago that operates as a means of estimating what is a UK and what is an overseas workday in a travel context, depending on length of journey and arrival time in or departure time from the UK.

The primary function of the practice is to support apportionment of earnings in relation to travel where the employee is entitled to overseas workdays relief. However, where it is particularly helpful in the context of the PAYE special arrangement is that someone arriving in the UK in the afternoon or evening will normally be assumed to have a wholly non-UK workday. Similarly someone leaving the UK in a morning will also be assumed to have a wholly non-UK workday. In both cases, this is subject to the individual concerned not actually undertaking any duties in the UK.

In practice, whether any duties are performed or not will be difficult to police, both for HMRC and employers, especially where delays in travel mean that a journey does not start or end exactly as expected. However, in cases where any given individual is getting close to the 30 day limit host employers may want to take steps to monitor time spent working in the UK more actively, and to encourage affected individuals to plan their travel appropriately, bearing in mind how it will affect the day count. Where this makes the difference between reporting under the special arrangement and being obliged to report via RTI, the implications go beyond an extra day’s worth of UK tax.

Whatever else they do, host employers will actively need to monitor time spent in the UK by individuals who they want to be subject to the arrangement, so that they can report anyone exceeding the limit appropriately under RTI without any unnecessary delay.

Remuneration to be included

The agreement requires tax to be applied to the UK workday portion of all remuneration including any benefits in kind. Many UK provided benefits such as travel and accommodation will be eligible for detached duty relief, but ongoing home country benefits typically will not be, and their value may be difficult to ascertain, especially where different valuation rules apply.

More helpfully, and provided that the individual is not subject to tax equalisation the calculation only requires a gross up on the benefit in kind, and not on any cash remuneration. This appears to be a recognition by HMRC that as it may be difficult practically for the employee to obtain a tax credit in the home location on the basis of withholdings, especially if the amounts involved do not justify the preparation of home country tax returns, tax leakage is possible.

Filing deadline and payment of tax

The arrangement is subject to a strict filing deadline of 19 April following the end of the tax year concerned and late filing penalties can apply in case of any default. HMRC has been very clear that this is a strict deadline and that there is unlikely to be any relaxation of this. The related payment of tax is due by 22 April (assuming an approved method of electronic communication is used) and penalties and interest charges may also apply in the case of late payment.

National Insurance

The arrangement does not extend to NIC, but given the 52 week exempt period that normally applies for individuals who do not ordinarily fulfil conditions to be within the territorial scope of NIC this may have little practical impact.

Conclusions

It is too early to tell how popular the special arrangement will ultimately be, but it has already attracted a lot of interest, particularly among UK headquartered organisations that operate through branches internationally. If it proves to be a practical solution to what would otherwise be an RTI nightmare for employers, it will be a welcome relaxation to the strict legislative approach.