

UK Tax Considerations for Short Term Business Visitors to the UK and for Non-UK Resident Directors of UK Companies

By Paul Webb, 14th August 2019

Background

When individuals not resident in the UK are short term business visitors to the UK and/or are directors of UK companies, the individual's UK tax position needs to be considered carefully. UK tax may be due, but there are a number of options that might reduce or negate the UK tax payable.

Short Term Business Visitors

Short-term business visitors are individuals who are not resident in the UK but undertake visits to the UK on business, to work for a UK company. The UK company is treated as the individual's employer and must deduct tax under PAYE in the usual way. This applies even when the overseas company continues to pay the individual.

Individuals will usually be taxed on their worldwide income in their country of residence. This means that the same income might be taxed twice. In such circumstances, the individual would need to make a claim for double tax relief.

Short-Term Business Visitor Agreements

HMRC allows companies to enter into a Short Term Business Visitor Agreement ("STBVA") which removes the requirement to operate PAYE. The individual will not, therefore, be taxed on UK income and will not need to make a claim for double tax relief. The criteria for eligibility for a STBVA are as follows:

1. the individual must be resident in a country with which the UK has a relevant Double Taxation Agreement;

1. the individual must be working for a UK company or a UK branch of an overseas company, but remain an employee of an overseas company;

1. the individual is expected to stay in the UK 183 days or fewer in any 12 month period;

1. The UK company must not ultimately bear the cost of the employment. Even if an individual is legally employed by a UK company, they must be economically employed by an overseas company.

Individuals visiting from overseas branches of a UK company will not be eligible for a STBVA as HMRC considers an overseas branch to be part of the UK company and therefore the final criteria 4, above, is not met.

Under some circumstances an individual can still be eligible for the agreement where their remuneration is recharged to the UK host company (see criteria 4 above), provided that the employee's visits to the UK total fewer than 60 days in any single tax year. The employer would need a sufficiently accurate recording mechanism to validate that the 60 day rule has been met.

Reporting requirements vary substantially, depending on the number of days spent in the UK. Where reports must be made, these are due by 31 May following the tax year end of 5 April. Directors are not eligible for STBVAs.

PAYE Special Arrangements

PAYE 'special arrangements' deal with situations where a STBVA is not available because an individual is visiting from an overseas branch, or from a country with which the UK does not have a double tax treaty, such as Brazil.

- o In the situation where a host employer has adopted 'special arrangements', PAYE can be calculated annually, as long as the individual has not worked more than 30 work days in any one tax year.

- This eases the administrative burden and means that, where personal allowances are due, there may be no tax to pay. Certain incidental duties can be excluded from the calculation of work days.

The employer has responsibility to assess when a day counts as a work day, when travel to or from the UK has taken place on that day.

The filing deadline is 19 April following the end of the tax year, and any tax due must be paid by 22 April following the end of the tax year.

Directors are not eligible for PAYE 'special arrangements'.

National Insurance Contributions

UK National Insurance contributions need to be considered separately from tax arrangements.

- There is, however, a 52 week exemption from UK National Insurance contributions.

This means that National Insurance does not usually need to be considered until after 52 weeks of continuous residency. There are separate EU rules which apply in some circumstances. Please contact Dixcart for further information on this.

Non-UK Resident Directors of UK Companies

A non-UK resident director of a UK company is an office holder and therefore his or her earnings, in respect of their UK role, are subject to UK tax.

If the individual is not remunerated for the UK directorship there should be no tax to pay, although HMRC may argue that a proportion of the director's total remuneration should be allocated to the UK director role. It is therefore helpful if the director's employment contract sets out whether any remuneration is attributable to the UK directorship, to reduce the risk of HMRC seeking to allocate a portion of the overall remuneration to the UK role.

Self-Assessment Tax Returns

Non-UK resident directors fall within the UK self-assessment scheme for income tax. If HMRC issues a tax return, it must be completed and filed by 31 January, following the relevant tax year end of 5 April.

If HMRC does not issue a tax return, but UK tax is due, the individual must notify HMRC that they are within the criteria for filing a return. If they do not, penalties and interest will apply.

If a return is filed, but no tax is due, HMRC will not subsequently require a return every year, but will periodically check whether one is due.

Accommodation and Travel Expenses

As the individual is the director of a UK company, the UK will be treated as the regular place of work, and accommodation and travel expenses paid by the company are therefore taxable. There are some exceptions to this rule, in tightly defined circumstances.

Reporting

If an employer books and pays for the travel or accommodation, the costs are reported on the employee's P11D form. If the individual incurs the cost and is then reimbursed, the costs are treated as earnings, and PAYE must be applied. It may be possible to include these costs in a PAYE Settlement Agreement, to remove the reporting requirement and to allow the employer to directly pay the tax liability.

National Insurance Contributions ("NICs") for Directors

The NICs position will vary, depending on factors such as the home country of the director, whether that country is in the EEA and whether the country has a social security agreement with the UK.

Where appropriate criteria are met, the director may be exempt from NICs in the UK.

How Can Dixcart Help?

Dixcart can review the status and particular circumstances of short term business visitors to the UK, and non-UK resident directors of UK companies. Dixcart can then assist in determining if individuals are required to pay income tax and, if they are, the most cost efficient manner in which to do so, whilst ensuring that all obligations are met.

Dixcart can assist in determining tax and NIC obligations in respect of both employees and directors working internationally. We can assist with making a STBVA application to HMRC and advise on monitoring systems to ensure that employees' travel is properly recorded. We can also assist in approaching HMRC in respect of earlier years where compliance requirements may not have been met.

Dixcart can advise on the tax and NIC obligations of non-UK resident directors of UK companies and can prepare and file self-assessment tax returns and P11D forms where required.

Please speak to your usual Dixcart contact or to professionals in the Dixcart office in the UK: advice.uk@dixcart.com.