

Hybrid and distance working report: exploring the tax implications of changing working practices

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Foreword

In this report, the Office of Tax Simplification (OTS) considers evidence of trends in relation to increasing numbers of people choosing to work in different ways, including across borders. The report also considers whether the tax and social security rules are flexible enough to cope, and what businesses, advisers and other bodies are experiencing as new ways of working become business as usual.

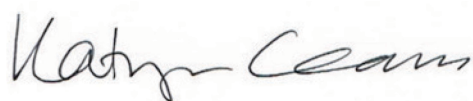
The public interest in hybrid and distance working is reflected in the wide range of responses the OTS received to the Call for Evidence and the Survey issued in respect of this report.

The report builds on the comments made by the wide range of those who responded to bring together a number of key findings.

The Call for Evidence for this work was mainly conducted after the government's announcement on 23 September 2022 that the OTS would close, made as part of the Growth Plan. To meet the government's directive to conclude outstanding work by the end of 2022, the OTS shortened the consultation period to eight weeks. In that context, the OTS is particularly grateful to all those who willingly gave time, ideas, challenge and support over the course of 39 meetings, many with large groups, and 50 written submissions. The OTS is also grateful to the 425 people who completed our Survey. Everyone the OTS spoke to was supportive of the OTS's work and the need to highlight the growing complexity in this area, and keen to collaborate and contribute to make this a true reflection of their concerns.

The OTS would like to thank Claire McEvoy who led the work on the report, supported by Emma Baylis, Rownak Choudhury, Mark Frost, Zoe Judd, Deborah Liddle, Julia Neate, Andy Richens and Graham Spencer, guided by OTS Head of Office James Konya. The OTS is also very grateful to the members of the OTS Board for their helpful steers and insights, and those in HM Treasury and HM Revenue & Customs for their interest and engagement in the report and its outcomes.

This is the final report from the Office of Tax Simplification; we hope that policy makers will find it useful as they take forward consideration of one of today's important issues.



Kathryn Cearns – OTS Chair



Bill Dodwell – OTS Tax Director

Executive summary and key findings

The growth of hybrid and remote working

Prior to the pandemic, most employees worked at their employer's location – an office, shop, manufacturing plant and so on. Some travelled on business, working at customers' locations or on the move. A few employees worked from home, perhaps with occasional office visits. Similar choices were made by self-employed individuals, depending on the nature of their work, with a greater likelihood of home working. The legal requirements to work from home where possible during the pandemic led to around 40% of the UK workforce working at home at least part of the week.¹ This has been facilitated by the availability of technology to support home working.

It has become clear that many employees would like to retain hybrid and distance working (defined below), even after a return to traditional workplaces has become possible. Employers have reacted accordingly, by adopting new working patterns to suit their organisation's structures and people, recognising the importance of adapting to employee demand. Many employers noted the current difficulty of recruiting (the "war for talent"), which influenced their decisions to meet requests for hybrid and remote working. Some have decreased traditional office space to reflect the reduced need for it. Employers are developing new policies and told us that they expected them to continue developing over the next few years. Employers were also well aware of the need for fairness in their approach, recognising that in some businesses many employees are not able to take advantage of hybrid working.

This report has concentrated on two areas:

- **hybrid working** where employees spend some of their working time in their employer's workplace and some of their time elsewhere (typically at home, but sometimes in a different country from their normal location)
- **overseas distance or remote working** where the employee works permanently in a different country to the business location

This report does not consider traditional, permanent 'work from home' arrangements or expatriate engagements, where the employer chooses to post the employee to an overseas business location and there are long-standing rules and guidance.

This report considers emerging trends with hybrid and distance working and identifies areas where these trends introduce new tax policy or compliance issues. It became clear during our work that employers and employees have new questions

¹ Is hybrid working here to stay? - Office for National Statistics (ons.gov.uk)

on tax policy and administration (including on guidance) arising from new working patterns. Where hybrid or remote working takes place in a different country from the main business location, there is a wide range of legal and employment issues; tax and social security issues were often an afterthought, with resulting compliance challenges.

The OTS's work considered employers of all sizes, both UK and overseas based, and their employees. The OTS had hoped to investigate whether self-employed individuals were starting to work part-time in a different country from their main location but in the period available for carrying out the review, little evidence was found of this.

Chapter 1 considers tax issues in the UK domestic context. These were driven by the trend for employers to allow hybrid working, which was widely adopted and accepted to be here to stay.

Chapter 2 focusses on the international context and trends, which are more complex. Chapters 3 and 4 then consider the tax and social security implications of those international issues.

Annex A lists the policy and administrative changes called for by respondents, and Annex B does the same for changes to HMRC guidance.

Key findings

Domestic (Chapter 1)

The main issues raised in relation to UK-based hybrid working relate to expenses and the need to address these issues potentially offers the opportunity to revise the whole approach adopted in the UK.

Travel expense deductions have been based on the principle that commuting costs are not a tax-deductible expense, whereas costs of travelling to a temporary workplace are a deductible expense. That rule still holds good for the majority in the workforce, for whom hybrid or remote working is not possible. However, hybrid working involves two or more workplaces, one of which might be a home as well. Should costs of travelling between a home-based workplace and an office workplace be tax deductible? Some hybrid workers suggested that they need the encouragement of tax relief to make the trip into the office.

During the pandemic HMRC made it much easier for employees to claim tax relief on home working costs. Some elements come with complexity: for example, the employer must collect equipment provided to an employee even where the costs of doing this exceed the equipment value. There are also differences in treatment for employer-incurred costs and reimbursed costs; the logic for this distinction was widely seen as unclear by both employers and employees. It was universally seen as better to remove this distinction.

Some respondents suggested that the government should consider offering a general employment allowance, which would allow a set amount to cover home working costs and travel from home to business locations. This could be offered to all employees and easily dealt with by the PAYE system, using the tax code where the allowance was not paid by employers. Costs covered by the allowance would not be tax deductible other than through the allowance.

Secondary issues apply in relation to benefits which have been defined by reference to an employee's 'permanent workplace'. For example, conditions in the cycle to work scheme are unlikely to be met by hybrid workers. Given the scale of the hybrid workforce, the government needs to make a policy decision on whether or not to retain the scheme, with adaptations (essentially to extend personal use) so that it functions in a hybrid world, with potential additional cost to the Exchequer.

Inevitably many suggestions were for additional tax reliefs, which would result in additional costs to the exchequer. However, the major change in working resulting from the pandemic may present an opportunity for government to re-evaluate longstanding rules and arrive at different approaches relevant to modern practices, without necessarily adding to exchequer costs.

Finally, respondents felt that there is a need for guidance on hybrid working and the associated tax issues. This could be a good area for some of the innovative approaches used by HMRC's guidance team – such as decision trees and step-by-step plans.

International (Chapters 2 to 4)

To be competitive in terms of retention and recruitment, most large employers the OTS spoke to had policies allowing staff to work temporarily overseas for limited periods (commonly 10-30 workdays a year). Take-up was minimal, but demand seen as likely to grow. They also noted increased instances of employees wanting to live permanently overseas whilst working for UK businesses, and for the same reasons were inclined to accommodate that for key personnel or those with specialist skills. Smaller businesses had seen some similar instances of employee demand but some did not have the resources to be able to accommodate the request.

Taxable presence and permanent establishment (Chapter 4)

The majority of the concern (especially from large businesses and partnerships) around cross-border issues these trends created focussed on the risk of employees overseas creating a taxable presence for the business (a 'permanent establishment'). Whilst businesses believed the tax due would be negligible, the administration of registering was seen as a significant burden, especially for partnerships. Businesses recognised the longer-term need for multilateral resolution through the OECD but called for the UK as an influential member to take a pragmatic approach and lead by example where people choose work in the UK for overseas employers.

For short-term stays attached to holidays, businesses hoped that easements could prevent the creation of a permanent establishment (set out in Chapter 4). They recognised that HMRC may see this as a compliance risk and suggested a 'safe list' of jurisdictions if needed.

For longer-term and permanent stays, businesses recognised that many employees would inevitably create a permanent establishment through the nature of their activities, such as concluding contracts. But for other types of employees, who were less definitively within scope of creating a permanent establishment, they asked for consideration to be given around concepts like fixed place of business and how such concepts may relate to a home office or a hotel room, and whether back-office functions, including HR and communications, could be recognised as 'preparatory and auxiliary' (and therefore not create a permanent establishment) in these circumstances.

It remains common for people who live in certain areas of either Northern Ireland or Ireland to be employed in the other territory. Where previously they would work entirely in that other territory, hybrid working may now mean some time working in their territory of residence. Businesses affected hoped that the UK government could discuss the issues of permanent establishment and payroll withholding for Income Tax and social security with Ireland to see if there are opportunities to simplify processes for companies and individuals in these circumstances.

Some multinationals attempted to negate the ongoing reporting burden of a new permanent establishment based on employees living permanently abroad by employing them locally, then re-charging the UK business. These multinationals hoped that the UK could in future provide safe-harbour guidance on transfer pricing implications to streamline the potential compliance implications.

Income Tax, payroll and social security (Chapter 3)

In the main the tax residence implications of new ways of overseas working were well understood, particularly for the UK with its statutory residence test. The UK's wide tax treaty network and its clear presentation on GOV.UK were also seen as helpful.

Social security was seen as more complex, and the agreements with other states less well documented. Even where there were agreements and arrangements such as the A1/certificate of continuing liability regime (see Chapter 3), these were framed in the context of employers posting the employee and it was unclear whether an employee choosing to temporarily work overseas would be covered. The EU has recently made progress on this issue and issued updated guidance in November 2022. The OTS understands that HMRC has agreed to adopt a similar position and should publicise its position on this.

Businesses also asked that the government look to expand its network of social security agreements (sometimes referred to as Reciprocal Agreements), and to update existing agreements to clarify the position for multi-state and hybrid workers. Where individuals come to the UK from non-agreement countries, respondents called for HMRC to adopt a clear position in guidance that they will not pursue UK social security where an individual chooses to work in the UK for a short (defined) period of time.

In terms of administration, businesses asked that HMRC adopt clearer guidance on social security rules across borders, both where there is a social security agreement as well as in the absence of one. Decision trees were seen as helpful. HMRC were also asked to resolve administration issues in relation to the processing errors for A1 applications that are being encountered.

For both tax and social security, it was seen as helpful to frictionless entry to the UK if HMRC could provide clear guidance on the requirements and process of registering where an employee of an overseas employer chooses to work in the UK and triggers Income Tax or social security withholding obligations. UK employers have often chosen whether to allow placement in a country based on whether they could understand the tax implications, so the converse was seen as likely to be true.

The increase of cross-border working was seen as putting pressure on HMRC's ability to process payroll compliance. Various different approaches were called for, such as allowing employers to self assess section 690 and appendix 5 arrangements (see

Chapter 3) and operate them as soon as an application has been made rather than waiting for formal approval from HMRC.

Short-term visitors (Chapters 2 and 3)

For employees coming to the UK for short-term visits many people suggested HM Treasury could implement a policy that time spent working in the UK under a set threshold, possibly 60 days or less, would not trigger tax, PAYE, social security or a permanent establishment. This would reduce the administrative burden for employers and employees and was seen as beneficial if the government wished as a policy objective to encourage people to come to the UK for a period of time.

Collating and simplifying guidance

As well as improving guidance in specific areas, respondents also called for clear and easily accessible HMRC guidance bringing together all the different areas that need to be considered when individuals are working remotely abroad either short-term or longer-term. Respondents told us that it would also be useful to have guidance for individuals working remotely in the UK for overseas employers and that there should be guidance aimed at employees as well as employers.

General areas of government policy highlighted by respondents

Most of the businesses the OTS spoke to saw an opportunity for government to align wider policy decisions to modern hybrid working practices in order to underpin or incentivise potentially desirable behaviours, both domestically and internationally.

Travel to work

Most respondents had taken the view that government policy and messaging implied a desire to have people back at the workplace, stimulating the economy and using public transport. This led to suggestions that home to work travel could be incentivised through the tax system by allowing commuting costs to be tax-deductible. Such a policy would of course carry a significant cost. Notably, very few employers were paying, or had plans to pay, for their employees' commute.

Energy and the green agenda

Also, in terms of incentives through tax-deductible commuting costs, respondents saw opportunities for government to reduce energy use by encouraging employees into the office, where one building is heated and lit instead of multiple domestic residences.

Existing green initiatives around cycle to work and electric vehicle charging points near the workplace were identified as being in need of amendment if they were to continue to incentivise behaviour as intended (see Chapter 1).

Links were drawn between impact on the environment and the need for employers to recover larger assets (such as desks and chairs) from employees where these had been employer-provided. It was widely seen as uneconomical for mid-sized or larger employers to recover these or to re-use them where recovered, which led to them being sent to landfill by either the employer, or by the employee who obtains new equipment from the next employer.

Chapter 1

Domestic UK hybrid working

Introduction

- 1.1 The large scale move to hybrid working for employees has happened over just a few years, and it is not surprising the tax system has not kept pace with these changes.
- 1.2 During the height of the pandemic, when lockdown provisions were imposed, the use of technology enabled office staff to work productively from home. Whilst most employers the OTS spoke to are now imposing a set number of days per week in the office, there is also broad recognition that flexible, hybrid working patterns are a key part of recruitment.
- 1.3 Home working has now evolved to include:
 - a proportion of time spent in the employer's premises with a proportion of time spent at home (or another location of the employee's choosing such as a shared working space) – this is typically a guided or required number of days or proportion of working time
 - fully remote working with only minimal requirement to attend an employer's premises (for example, once a month or quarter, or periodically for training)
 - fully remote working – no requirement to attend an employer's premises at all
 - employee choice – employees free to choose where they complete their work
- 1.4 The Income Tax system was designed in a time with more traditional working patterns, and largely around the concept of a permanent workplace (with some exceptions for itinerant workers). The last major change to the travel and subsistence rules, for example, took place in 1998. The need for change is evident in the concessionary easements noted in this Chapter which were made during lockdown, many of which were removed when lockdown ceased.
- 1.5 The chapter looks at the challenges and complexities faced by employers, employees and advisers in applying the existing tax rules to the patterns of homeworking summarised above, firstly at areas where respondents to the OTS suggest substantive change was necessary, followed by those situations where straightforward changes would simplify the system, and finally those where guidance has already been updated but respondents felt would benefit from better signposting.

Areas where more substantive change is called for

Background

- 1.6 The OTS was told there is inconsistency in treatment between the different forms of tax deduction listed below, under working from home arrangements. At least one large employer had developed a matrix setting out the contrasting rules under the different scenarios that employees within their firm encountered. A generic example of this summary matrix is set out in Table 1 below with full details set out in the following paragraphs.

Table 1: the different tax consequences resulting from different reasons for home working

Scenario	Is the employee eligible to claim:		
	Tax free expenses for travel between home and workplace? ¹	The homeworking allowance (of £6 per week) paid by the employer?	Their own tax free expenses for additional heating and lighting costs of working at home?
1. The employer has mandated home working for all staff by closing the office, or for a team (for example HR or finance) by closing part of an office. It is impractical for those employees to travel to another workplace.	Not applicable, as the previous normal workplace has closed.	Yes. This is a tax free expense as a formal home working arrangement is in place.	Generally yes, net of any home working allowance (see left).
2. The employer requires the employee to work from home part of the week, as there are not enough desks at the normal office. This includes situations where an employer seeks volunteers (see scenario 3) and then mandates home working after insufficient uptake.	No. Travel expenses are taxed as a benefit in kind as, despite lack of office space, homeworking is not an objective requirement of the role.	Yes. This is a tax free expense because a formal home working arrangement is in place.	No. Despite lack of office space, homeworking is not an objective requirement of the role.

¹ Travel to other workplaces may be claimed as a tax-free expense, unless frequency of presence creates a permanent workplace.

Scenario	Is the employee eligible to claim:		
	Tax free expenses for travel between home and workplace? ²	The homeworking allowance (of £6 per week) paid by the employer?	Their own tax free expenses for additional heating and lighting costs of working at home?
3. Through a formal arrangement, the employee may choose to generally work from home, but may visit the office infrequently.	No. Travel expenses are taxed as a benefit in kind as the employee is working from home by choice.	Yes. This is a tax free expense because a formal home working arrangement is in place.	No. Homeworking is not an objective requirement of the role.
4. An employee has space in the office but chooses regularly to switch between home and their office with no arrangement (written or oral) in place.	No. Travel expenses are taxed as a benefit in kind, as the employee has space in the office and is working from home by choice.	No. An expense would be taxable as a benefit in kind as the employee is choosing to work from home.	No. Homeworking is not an objective requirement of the role.

Homeworking – employer allowance for additional household expenses

- 1.7 There has been an exemption for the reimbursement of reasonable household expenses, where an employee works under a homeworking arrangement, since April 2003.³ For the exemption to apply, there must be an arrangement and the employee must work at home regularly. Merely taking work home in the evening would not qualify.
- 1.8 The exemption covers additional household costs due to working at home, such as:
- heating and lighting in the work area of the home environment
 - metered water usage in the work area of the home environment
 - internet usage and business phone calls (where there was previously no provision)
 - home contents insurance
- 1.9 The OTS was told the tax benefit of reimbursement of home broadband costs was complex to manage and should simply be an Income Tax and National Insurance exempt benefit, whether employer provided or reimbursed. A similar example in the past was the tax treatment of the

² Travel to other workplaces may be claimed as a tax-free expense, unless frequency of presence creates a permanent workplace.

³ S316A ITEPA 2003 Income Tax (Earnings and Pensions) Act 2003 (legislation.gov.uk)

provision of a single mobile phone for an employee, which was exempted from Income Tax and National Insurance from 6 April 2006.

- 1.10 To ease the burden of calculating these amounts, a flat rate of £6 per week (or £26 per month) may be made, or alternatively an agreed benchmark scale rate. There is then no further need for the employee to retain receipts.
- 1.11 HMRC guidance on this area has recently been updated to make clear hybrid and flexible working arrangements are included within this exemption. However, some respondents were uncertain whether a particular homeworking arrangement falls within, suggesting clearer guidance could be necessary, with an adviser asking for a form of words and working practice that would constitute a homeworking agreement.

Homeworking – employee claim for additional household expenses

- 1.12 The legislation⁴ allows the deduction of an expense if:
- The employee is obliged to incur and pay it as holder of the employment, and
 - The amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.
- 1.13 HMRC guidance⁵ sets out that for homeworkers to satisfy condition (b) above for household expenses, all the following circumstances need to apply:
- the duties carried out at home are substantive, that is, all or part of the central duties of the employment
 - those duties cannot be performed without the use of appropriate facilities
 - no such facilities are available on the employer's premises, or the nature of the job requires living so far from the employer's premises that it is unreasonable to expect travelling in every day, and
 - at no time either before or after the employment contract is drawn up may the employee choose whether to work at the employer's premises or elsewhere
- 1.14 The test is therefore much stricter than that for exemption of a homeworker allowance paid for by the employer, set out above. Where the tests are satisfied, an employee may claim a deduction of £6 per week (£26 per month) without the need to justify the figure for ease of administration. Alternatively additional amounts may be claimed but evidence would be necessary.
- 1.15 Coronavirus restrictions during the tax years 2020-21 and 2021-22 meant that increased numbers of employees were eligible under these rules and a concession operated enabling a claim to be made under this section where

⁴ S336 ITEPA 2003 Income Tax (Earnings and Pensions) Act 2003 (legislation.gov.uk)

⁵ EIM32760 - Other expenses: home: working from home - HMRC internal manual - GOV.UK (www.gov.uk)

the employee was required to work at home due to these restrictions at some point in the tax year. This concession ceased to apply on 5 April 2022. An online portal is available to make such a claim and respondents told the OTS that whilst these claims have now been removed from PAYE coding notices, there were instances of others claiming via Self Assessment where the allowance was still included within the code number, with HMRC continuing to remove them.

- 1.16 Where a homeworking allowance is also paid by the employer, this must be netted off against the expenses claim made by the employee under this section.
- 1.17 Respondents across the board told the OTS of a lack of understanding on the tax differences between the employer provided homeworking allowance and an employee's own claim for a tax deduction.

Travel and subsistence

Introduction

- 1.18 As noted above, the travel and subsistence tax rules for employees have been largely unchanged since 1998, whilst working practices altered under the pandemic lockdowns have developed into hybrid patterns involving working from home. The paragraphs below set out the tensions and misunderstandings created by applying the established tax rules to these new patterns.

The rules – legislation and guidance

- 1.19 There are two pieces of legislation that set out whether travel expenses are allowable for tax purposes. The first⁶ provides relief for travel if:
 - a) The employee is obliged to incur and pay them as holder of the employment, and
 - b) The expenses are necessarily incurred on travelling in the performance of the duties of the employment.
- 1.20 HMRC guidance⁷ confirms that travel between two places of work, in the same employment, would be incurred in the performance of the duties. Further, for a travelling appointment all travel would be in the performance of the duties, even where starting or ending at home. A travelling appointment is one where the duties inherently involve travelling, such as a commercial traveller or service engineer. Such appointments are often known as itinerant. An exception would be where duties are in a particular area and the employee chooses to live elsewhere.
- 1.21 The OTS was told this rule was understood in work practices pre-pandemic, but hybrid working has led to misunderstanding, particularly for the employees involved but also for managers and other non-tax staff. The guidance sets out that the fact an employee works at home is not enough for this section to apply, since the place of living is a matter of choice not an

⁶ S337 ITEPA2003 Income Tax (Earnings and Pensions) Act 2003 (legislation.gov.uk)

⁷ EIM32368 - Travel expenses: travel in the performance of the duties: travelling appointments: deductible expenses: responsibility for an area - HMRC internal manual - GOV.UK (www.gov.uk)

objective requirement of the job. Therefore, the majority of hybrid working arrangements will not qualify under this section.

1.22 The second⁸ provides tax relief for journeys undertaken if:

- a) The employee is obliged to incur and pay them as holder of the employment, and
- b) The expenses are attributable to the necessary attendance at any place in the performance of the duties of the employment.

1.23 This subsection does not apply to expenses which are substantially ordinary commuting, between home and a 'permanent workplace'.

The legislation defines a permanent workplace as a place that the employee regularly attends in the performance of the duties of the employment and is not a temporary workplace. Temporary workplace is one where the employee attends in performance of the duties of employment for the purpose of performing a task of limited duration or for some other temporary purpose.

1.24 A place is not regarded as temporary if the employee's attendance is in the course of a period of continuous work

- a) Lasting more than 24 months, or
- b) Comprising all, or almost all the period of employment, or
- c) At a time when it is reasonable to assume it will be in the course of such a period.

1.25 HMRC guidance⁹ sets out that regular attendance means frequent or follows a pattern, and therefore could include fortnightly trips to a workplace. But the longer the interval the higher the possibility the visit is temporary.

1.26 A period of continuous work at a place occurs if over the period, the duties of the employment are performed to a significant extent at the place. Guidance¹⁰ treats the performance of duties to a significant extent at a workplace as 40% of working time over the period set out in the three bullets above, referred to by advisers as the '24/40 rule'.

1.27 A permanent workplace may also consist of an area, for example a particular city, if:

- d) The duties of the employment are defined by reference to an area,
- e) In the performance of those duties the employee attends different places within the area,

⁸ S338 ITEPA2003 Income Tax (Earnings and Pensions) Act 2003 (legislation.gov.uk)

⁹ EIM32070 - Travel expenses: travel for necessary attendance: definitions: permanent workplace: regular attendance - HMRC internal manual - GOV.UK (www.gov.uk)

¹⁰ EIM32080 - Travel expenses: travel for necessary attendance: definitions: temporary workplace: limited duration, the 24 month rule - HMRC internal manual - GOV.UK (www.gov.uk)

- f) None of the places the employee attends in the performance of those duties is a permanent workplace, and
- g) The area would be a permanent workplace if the subsections referred to the area where they refer to a place.

Non-executive directors

- 1.28 The guidance includes an example¹¹ of an NHS board member who attends board meetings in Exeter, but has no office facilities available there, so receives papers and prepares for the meetings at home. The guidance concludes this work is preparatory and not substantive, and no deduction is available for homeworking and travel costs incurred.
- 1.29 A number of professional advisers and a representative body for investment companies told the OTS the rules and guidance were complex and needed simplification, particularly as the work from home outside the boardroom by non-executive directors can indeed be considered substantive.

Commuting

- 1.30 HMRC guidance¹² confirms that any travel between a permanent workplace and home, or any other place where attendance is not necessary to perform the duties of the employment, are ordinary commuting and not tax deductible. The guidance confirms it may be possible to claim travel from home to a permanent workplace if the home is a workplace and its location is itself dictated by the requirements of the job.
- 1.31 It is however possible to claim travelling expenses from home to a temporary workplace. But where that journey is substantially the same as the normal commuting journey, then it is treated as ordinary commuting and the cost is not deductible. The guidance¹³ says a journey that is at least 10 miles longer, each way, would not be regarded as substantially the same. Additionally, a journey in a different direction would not be substantially the same, even if the distance is the same.
- 1.32 A number of overseas governments allow tax free payments or a tax deduction for commuting costs. In France, employers are responsible for reimbursing 50% (public transport shortest second class) travel costs, tax free. In the Netherlands, commuting costs on public transport are tax free, with an allowance for private commuting. New Zealand allow an employer allowance for commuting tax free where there is no public transport available, otherwise only the excess over the employee's normal journey is allowable. In Denmark, an employee may make a claim for a deduction for commuting where the round trip exceeds 24km, based on a scale rate per mile.

¹¹ Example 1 EIM32790 - Other expenses: home: working from home: examples - HMRC internal manual - GOV.UK (www.gov.uk)

¹² EIM32055 - Travel expenses: travel for necessary attendance: definitions: ordinary commuting - HMRC internal manual - GOV.UK (www.gov.uk)

¹³ EIM32300 - Travel expenses: travel for necessary attendance: safeguards against abuse: journeys treated as ordinary commuting - HMRC internal manual - GOV.UK (www.gov.uk)

- 1.33 Luxembourg enables a tax free allowance to be claimed for commuting based on the distance travelled, and Poland allow a small fixed rate deduction for employees towards commuting travel costs.

PAYE Settlement Agreements

- 1.34 Legislation¹⁴ introduces the concept of a PAYE Settlement Agreement (PSA), which allows an employer to make one annual payment to cover the Income Tax and National Insurance contributions on benefits in kind that are:
- minor, or
 - irregular, or
 - given in circumstances where it is impractical to apply PAYE, or to apportion particular benefits which are shared between a number of employees
- 1.35 A benefit included in a PSA will mean PAYE need not be operated, nor a return on form P11D be necessary, and therefore relieves the employee of their own reporting and payment obligations.
- 1.36 HMRC guidance¹⁵ is available, and the first guideline for compliance documentation has been published on this area¹⁶ as part of the review of tax administration for large businesses, giving the HMRC view on issues which are complex or widely misunderstood.
- 1.37 The guidance sets out that the following may not be included:
- cash payments
 - large benefits provided regularly
 - round sum allowances
 - shares
 - payments into funded retirement benefit schemes
 - items where tax already deducted under PAYE or reflected in the employee's tax code
 - profits from mileage payment schemes
- 1.38 At least one adviser reported to the OTS that it is not possible to include excess working from home reimbursements as HMRC may regard these as cash, resulting in an administrative burden of including within the payroll.
- 1.39 The OTS explored this when carrying out a review of employee benefits and expenses in 2013 and 2014, and the final report¹⁷ noted that a quick simplification for employers would be to allow travel expenditure to be included in a PSA. The OTS has heard this again from a number respondents

¹⁴ S703-707 ITEPA 2003 Income Tax (Earnings and Pensions) Act 2003 (legislation.gov.uk)

¹⁵ PSA 1000 onwards

¹⁶ GFC1 (2022): Guidelines for Compliance — help with PAYE Settlement Agreement calculations - GOV.UK (www.gov.uk)

¹⁷ Review of employee benefits and expenses: final report (publishing.service.gov.uk)

(both large businesses and advisers), in particular where the travel is unexpectedly found to be taxable and the employer discovers so after the event, which could occur where a pattern of attendance expected to be irregular turns out to meet the meaning of permanent. An example given to the OTS related to the 40% rule being unexpectedly broken. However, it was not clear from the guidance whether such travel expenses can currently be included in a PSA.

What the OTS has been told

- 1.40 The prevailing view expressed by businesses was that the tax system would be clearer if the same tax outcome were reached when reading across each scenario in Table 1 above.
- 1.41 On travel, the OTS was told there is a need for judgements to be made by employees and employers, for example, whether an employee is working from home under an objective requirement of the job. Whilst the contract may set this out as a condition of employment, it was not always appreciated this needed to be followed through in practice.
- 1.42 Whilst most (especially large) employers will have gained an understanding of the rules, employees will not necessarily have done so, and may have the assumption that working from home under an agreement means travel is allowable as a tax free expense. This could be effected if the legislation were to be changed by removal of the word 'necessary'.
- 1.43 Technology allows remote workers to manage a number of sites, and HMRC practice has been to treat the whole area of the sites as a permanent workplace, even though only visited on a handful of occasions. Businesses told the OTS that this can create a disproportionately large administrative burden on employers where only an insignificant amount of tax is at stake.
- 1.44 The OTS repeatedly heard there was now a need to rethink the permanent and temporary workplace legislation. The 40% test was thought to be no longer appropriate to current working practices, and the 24 months test too short a period to incentivise workforce mobility, particularly for infrastructure projects. Respondents referred to the above OTS review on employee benefits and expenses in 2014 and considered the suggested changes be revisited. In particular, the suggestion of a statutory percentage test to redefine the permanent and temporary workplace was considered relevant to hybrid working, so that where an employee who spends less than, for example, 30% of their working time at a particular location, this would form a temporary workplace and travel would be allowable. This would also address the non-executive director feedback above, where board members with considerable work to be carried out from home, would be able to deduct travel expenses.
- 1.45 The OTS was told of the increasing practice by employers of making the use of third party flexible office arrangements available to employees. Currently the guidance is silent on whether there is any taxable benefit on such provision. Where regular meetings were held in flexible work locations, clear guidance was called for on whether this could be regarded as a permanent

workplace, and if so, which travel and subsistence expenses would be taxable.

- 1.46 If change to legislation is not undertaken, respondents hoped that guidance could be clear and explicit on the implications of different homeworking arrangements (see table above for factors to consider). There exists a longstanding HMRC guidance book, the 490,¹⁸ on travel expenses, but this covers over 100 pages, indicative of the complexities here. Calls were made to take the opportunity of the development of hybrid working to review and clarify the guidance examples¹⁹ relevant to typical hybrid working patterns. One form of simplifying guidance put forward to the OTS was the development of a homeworking and travel expenses tool, such as was in place for the Check Employment Status for Tax.
- 1.47 Alternatively, a number of respondents from both representative bodies and businesses called for the introduction of a universal Income Tax and National Insurance free allowance for all employees, to cover commuting costs or household expenses for working at home. It was suggested that this could help encourage hybrid workers to spend some more time in the office connecting with colleagues in person. Whilst such a measure would come at a cost to the Exchequer, the cost could be managed by applying a fixed amount, or a cap based, for example, on total costs or number of journeys made.

Areas where straightforward change is called for

Cycle to work scheme

- 1.48 The cycle to work scheme was introduced in 1999, enabling the tax-free provision of a cycle and cycling safety equipment if certain conditions are met. The objective was to offer employees a cheaper and healthier form of travel. The scheme has involved over 40,000 employers and supported more than 1.6 million commuters to cycle to work.²⁰
- 1.49 The scheme normally operates as a salary sacrifice arrangement, whereby the employee sacrifices their pay to cover the cost of the cycle and safety equipment, although no ownership must change hands, in return for the use of the cycle and equipment. No Income Tax arises, or National Insurance contributions for the employee or employers. At the end of the hire period, should the cycle be transferred to the employee, an Income Tax benefit in kind can arise, although it is agreed the value (and therefore the tax benefit) would be nil after five years' use.
- 1.50 There are three conditions for the above tax benefits to apply:²¹
- a) There is no transfer in the property of the cycle or equipment,
 - b) The employee uses the cycle or equipment in question mainly for qualifying journeys, and

¹⁸ Tax and National Insurance contributions for employee travel: 490 - GOV.UK (www.gov.uk)

¹⁹ 490 booklet examples 3.36 and 3.38

²⁰ Department for Transport: Cycle to work scheme – Guidance for employers (June 2019)

²¹ S244 ITEPA 2003 Income Tax (Earnings and Pensions) Act 2003 (legislation.gov.uk)

- c) The cycles or safety equipment are available generally to employees of the employer.
- 1.51 HMRC guidance²² sets out that a qualifying journey is between home and a workplace, and that at least 50% of the cycle's use must be on these journeys.
- 1.52 There was an easement provided during lockdown, which removed this condition, but that easement ceased to apply from April 2022.
- 1.53 Respondents to the OTS have said the scheme is clearly not effective for employees working full time at home. They also recognised that potentially even those with a hybrid working pattern of around half their time in the office may not qualify for the 50% of overall use travelling to work unless the employee was strict in private use. The practical monitoring of compliance with the rules on use becomes almost impossible for employers.
- 1.54 If the government wishes to retain the scheme, the OTS heard repeated calls from employers to reintroduce the easement and make it permanent, enabling all workers to continue to enjoy the health, cost, and environmental benefits. Respondents did recognise that this broadening would change the focus of the scheme and is likely to increase availability and cost, which the government would need to balance when looking at the future of the cycle to work scheme.

Employer provided versus employee reimbursement

- 1.55 The legislation²³ and HMRC guidance²⁴ set out that no taxable benefit arises to an employee on the provision by the employer of supplies and services, where:
 - a) Private use is not significant, and
 - b) Where provided away from the employer's premises, it is for the sole purpose of enabling the employee to perform the duties of the employment.
- 1.56 Examples are office furniture, stationery and computer equipment. Excluded items are motor vehicles, boats, aircraft and alterations of living accommodation.
- 1.57 For no Income Tax or National Insurance contributions on the employee and employer to arise, the equipment must be returned to the employer with no change in ownership. However, the exemption does not apply where the employer reimburses the employee or incurs the cost on the employee's behalf.
- 1.58 As a temporary concession from 16 March 2020 to 5 April 2022, any reimbursement by an employer for the cost of office equipment was exempt

²² EIM21664 - Particular benefits: exemption for bicycles - HMRC internal manual - GOV.UK (www.gov.uk)

²³ S316 ITEPA 2003 Income Tax (Earnings and Pensions) Act 2003 (legislation.gov.uk)

²⁴ EIM21611 - Particular benefits: supplies and services provided other than on the employer's premises: introduction - HMRC internal manual - GOV.UK (www.gov.uk)

from Income Tax and National Insurance contributions for the employee and employer, where it was provided solely to enable homeworking as a result of the pandemic and would have been exempt if provided directly by the employer.

- 1.59 The OTS was told that due to the natural uptake of hybrid working, the concession on allowing employer reimbursed expenditure on the above should be reintroduced and given statutory backing. Additionally, the current practice of requiring an employer to keep track of employer provided equipment for its return, often where the equipment has negligible value, penalises smaller employers who may not have a centralised procurement system. Respondents suggested this requirement to return equipment provided for homeworking should be removed, or possibly removed up to a certain threshold, since frequently the cost of retrieval was out of all proportion to the value of the equipment. Environmental issues were also raised, as it was often easier to scrap or pay the employee to scrap the equipment. It was thought a well governed expenses policy would be equally as effective.
- 1.60 Similar points were raised around electric vehicle charge points. The legislation²⁵ and guidance²⁶ set out the current rule, in place since 6 April 2018, that no taxable benefit arises on the charging of an electric or plug in vehicle, where provided at or near the employer's premises. However, it does not extend to reimbursement of charging costs incurred by the employee.
- 1.61 The OTS was told that new building regulations²⁷ require new residential properties with on-site parking to be provided with an ULEV charge point, with similar provisions for existing residential buildings undergoing renovation. The legislation²⁸ will remove any taxable charge for company cars where an employer directly pays for charging facilities at an employee's home. Respondents felt that reimbursement of charging facilities for expenses that an employee incurs should also be exempt, aligning the treatment as called for with office equipment above.

Workplace nurseries

- 1.62 The legislation²⁹ allows exemption from Income Tax and National Insurance for workplace nurseries where certain qualifying conditions are satisfied. In particular, the childcare provided must be on the employer's premises or under a partnership arrangement with other parties, provided the employer is wholly or partly responsible for funding. However, the provision does not

²⁵ S237A ITEPA 2003 Income Tax (Earnings and Pensions) Act 2003 (legislation.gov.uk)

²⁶ EIM01035 - Employment income: charging facilities at or near the employee's workplace - HMRC internal manual - GOV.UK (www.gov.uk)

²⁷ Building Regulations etc (Amendment) (England) (No 2) Regulations 2021 (SI 2021/1392)

²⁸ S202(1) ITEPA 2003, see also EIM 23900 Income Tax (Earnings and Pensions) Act 2003 (legislation.gov.uk)

²⁹ S318 ITEPA 2003 Income Tax (Earnings and Pensions) Act 2003 (legislation.gov.uk)

extend to private dwellings,³⁰ nor buying individual places at a commercially run nursery.

- 1.63 A number of advisers told the OTS that hybrid workers may live some distance from these premises, and consideration should be given to extending the exemption provisions.

Example of an area where HMRC guidance has adapted

Christmas parties or similar annual functions

- 1.64 The legislation³¹ provides an exemption from Income Tax for the provision of an annual party or similar annual function for the employees generally, or where an employer operates at more than one location, available generally for those employees at a particular location. The cost per head for the party or function must not exceed £150, and if two or more such events are held, must not exceed £150 in total.
- 1.65 For the purposes of the £150 limit, the cost will be the expense of providing the party or function, plus accommodation and travel provided for those attending (whether or not they are employed by the employer), inclusive of VAT where applicable, divided by the number of those attending.
- 1.66 The legislation makes no reference to virtual parties, but HMRC guidance³² includes a paragraph and example setting out that a virtual event provided through the use of IT will fall within the exemption, provided the conditions set out above are met.
- 1.67 However, some respondents to the OTS were unaware of this extension for virtual functions, where there was some confusion with the separate trivial benefits exemption, suggesting that further publicity could be necessary, for example by way of the Employers Bulletin,³³ videos and webinars. Respondents suggested there were likely to be further nuances coming to light over time, for example home workers not able to access workplace sports events and facilities and considered guidance on these areas should remain under review.

Summary of changes suggested by respondents

- the legislation on temporary workplace and the 24 months and 40% of working time tests are no longer appropriate and need review
- the government should clarify by way of policy and guidance the treatment of business travel and commuting for the hybrid working employee. This could include the development of an online tool, along the lines of the Check Employment Status for Tax tool

³⁰ EIM21915 - Benefits: exemption for workplace nurseries: premises provided by the employer: conditions to be met to 5 April 2005 - HMRC internal manual - GOV.UK (www.gov.uk)

³¹ S264 ITEPA 2003 Income Tax (Earnings and Pensions) Act 2003 (legislation.gov.uk)

³² EIM21690 - Particular benefits: annual parties and other social functions - HMRC internal manual - GOV.UK (www.gov.uk)

³³ HMRC employer bulletins - GOV.UK (www.gov.uk)

- The government should consider the introduction of a universal employee Income Tax and National Insurance exempt allowance to cover homeworking and commuting costs
- the cycle to work scheme should be refocussed by removing the condition requiring mainly for qualifying journeys
- the tax difference between the employer providing office equipment for homeworking and the employer reimbursing an employee purchase should be removed
- the Income Tax and National Insurance exemption for employer provided charge points at an employee's home should be extended to cover reimbursement where the installation costs were incurred by the employee
- the requirement that equipment provided for homeworking be returned to the employer should be removed
- home broadband costs for homeworkers, whether employer provided or reimbursed, should be exempt from Income Tax and National Insurance contributions
- the scope of PSAs should be expanded to enable excess working from home payments and travel costs unexpectedly found to be taxable to be included
- the guidance regarding homeworking arrangements falling within homeworking allowance exemption should be clarified, with examples of contracts and practices that would fall within and those outside
- consideration should be given to extending the workplace nursery exemption to enable hybrid workers to access childcare provision

1.68 All these changes (apart from improving guidance) would come at an Exchequer cost; the government will no doubt consider priorities in a broader policy context.

Chapter 2

Cross-border working trends

- 2.1 Lockdowns in the UK and overseas have had an impact on working patterns. At the start of the pandemic this was often because individuals became displaced in a country other than their normal work location. As the UK and other countries began to emerge from lockdowns, more cases came to light of individuals choosing to work from another country.
- 2.2 This chapter summarises the emerging trends in cross-border working patterns, a summary of the issues arising, and how employers are managing them. Tax issues and areas where respondents called for simplification or improved guidance are explored more fully in Chapter 3.
- 2.3 Businesses and business and professional bodies told us most had encountered some form of cross-border working. In most cases this had led to employers developing policies which addressed both these circumstances and the compliance issues surrounding them, tax included.
- 2.4 Organisations spanned a broad range of sectors and sizes. Larger organisations typically had more in-house resources (tax, legal, HR and so on), so were better equipped to recognise the compliance issues, although most had consulted with external professional advisers. Although the OTS heard directly from fewer smaller and mid-sized businesses, those the OTS did hear from said they were less well equipped to understand the compliance issues or had access to fewer resources to deal with them. Some of the smaller and mid-sized businesses who responded were therefore more reluctant to accept cross-border working, whereas others consciously accepted the benefits of greater flexibility alongside greater exposure to compliance risks.
- 2.5 Most respondents called on HMRC to do more to raise awareness of the compliance risks of overseas remote work and to provide guidance to help taxpayers comply with their obligations.

Trends in cross-border working

- 2.6 Respondents observed that a number of cross-border working patterns emerged initially as a result of the pandemic but have subsequently become more commonplace. Office based employees press their employers with the contention that improved technology enables them to perform their work remotely. This is sometimes termed “work from anywhere” although the OTS did not encounter any business which permits complete flexibility.
- 2.7 The patterns which most businesses had observed can be most easily split into **short-term** (temporary) and **long-term** (sometimes permanent).

- 2.8 There is a third distinction possible in looking at medium-term stays, where employees do not intend to stay for long or permanently, but still remain abroad for 60-180 days. This typically takes them outside of any existing easements but may not trigger all considerations (such as changes in tax residence). This is looked at more detail in Chapter 3, 'Cross-border compliance issues'.
- 2.9 The OTS heard some evidence that more senior employees or those with specialist or otherwise desirable skills were more likely to be able to gain approval to work overseas for longer periods. However, businesses were concerned with the business, tax and regulatory risks of senior and decision-making employees working overseas and considered fairness across the workforce.
- 2.10 A further pattern is also examined below, the '**Digital Nomad**'. The OTS is aware that much has been written about the concept of Digital Nomads so sought to explore this more fully with respondents. There are potential links with those wishing to stay for medium-term work in another country.
- 2.11 The International Monetary Fund¹ has noted risks to the global personal tax base:
- "As opportunities expand for cross-border remote work, a bigger segment of the labour Income Tax base becomes more mobile - estimated currently at 1¼ percent of the global personal Income Tax base. In the future, personal tax coordination will gain importance and raise issues such as those related to corporate taxation."
- 2.12 The online rental platform Airbnb reports that it has seen significant changing trends in how its guests are using rental properties worldwide, with many choosing to live and work in a location for extended periods of time. It reports:²
- long-term (28 days or more) stays are Airbnb's fastest-growing category by trip length, reaching an all-time high globally in Q1 2022 and more than doubling in size from Q1 2019
 - one in five nights booked in Q1 2022 were for stays of a month or longer
 - nearly half of nights booked on Airbnb in Q2 2022 were for one week or more
- 2.13 The natural assumption Airbnb makes is that stays of such significant length must include time spent working in the rental properties.
- 2.14 Furthermore, Airbnb has partnered with several governments and authorities to promote destinations to remote workers and has recently published its own guide to offer insights into how communities can attract and benefit from remote workers.³

¹ Fiscal Monitor, April 2022 (imf.org) see executive summary and chapter 2

² Airbnb_Q1-2022-Shareholder-Letter_Final.pdf (q4cdn.com)

³ Airbnb_Q1-2022-Shareholder-Letter_Final.pdf (q4cdn.com)

Short-term working patterns and associated compliance challenges

- 2.15 All the large businesses the OTS spoke to had introduced policies to allow their staff to work for a short period in another country from their usual place of work. They universally acknowledged that these new policies followed employee demand and are now seen as an important benefit for office based workers. Individuals wish to work for periods in a different country for personal reasons: perhaps visiting family or taking a longer vacation period by adding a period of work.
- 2.16 The amount of time permitted to work overseas varied. Employers typically permitted overseas stays of 10-30 days per year, with a small number being prepared to consider longer periods of up to 90 days. The most common pattern the OTS observed was up to 20 overseas working days in a year. A year was often a rolling 12 months, but sometimes a calendar or financial year. Many also required that the 20 days be split into not more than two occasions in order to limit the administrative burden of the policy.
- 2.17 The administrative burden of operating such policies was seen by most as considerable. In an indicative example, one large employer advised that it had received remote working requests running into the thousands in relation to over 100 countries. Each country's domestic tax law is different, and it may be easier to trigger payroll (or other obligations) in one country than another, thereby making it difficult for employers to operate blanket policies in relation to cross-border remote working.
- 2.18 The exact policies and procedures vary across employers but generally seek to balance permitting employee flexibility with managing risk for the business. Particularly focussing on the tax aspects, typical policies include:
- **eligibility of employees** –mainly included ensuring right to work, but not all employers got involved. Some organisations also excluded seniors or similar parties who may create any permanent establishment risk
 - **restrictions on activities** –also linked to permanent establishment risk, some employers restricted visiting business premises or undertaking decision making activities
 - **permitted countries** –some employers had curated lists of permitted countries based on their research into their local law and regulation (including tax), which had allowed them to adopt straightforward common policies. All employers made restrictions based on personal safety and security, and data security, usually using the FCDO guidelines
- 2.19 Other non-tax factors of which businesses are mindful alongside the right to work and personal safety included employer liability insurance, private health insurance, health and safety, and IT and data security.
- 2.20 Different businesses had varying levels of processes involved at each stage of checking, but all reported that the administration was a considerable burden. These policies reflect responses predominantly from UK-based businesses (so with employees working overseas) but were echoed in the approaches outlined by overseas respondents and those setting global policies.

2.21 Depending on the level of sophistication, some businesses are using these processes to monitor and inform compliance activities in a range of areas. These were not limited to tax, but the areas of tax compliance typically considered were:

- presence for income taxes or payroll withholding
- presence for social security – applications to HMRC for A1 certificates or certificates of continuing liability
- permanent establishment – whether the overseas activities could give rise to the risk of a taxable presence for the employer

Long-term working patterns and associated compliance challenges

2.22 The long-term work patterns considered in this report focussed on long-term residence in a country different from the business location benefitting from the individual's services. The report does not consider expatriate assignments, where an individual is assigned by a multinational to work in a business operation in different country, so that the services and the business are in the same country.

2.23 The business case for long-term work in a different location from the business receiving the services is based around lack of availability of suitable employees in the business location. We heard examples of specific individuals wishing to stay in their home location, perhaps for family reasons, or because they did not have the right to work. In other cases, there could be a more general lack of workers in the business location, or costs could be much higher.

2.24 In these cases, businesses had different compliance challenges or often required additional infrastructure to accommodate these more permanent arrangements. The issues considered were:

- employing entity – in which entity should an individual be employed? If the business does not have a suitable entity in a location, sometimes a third party 'Employer of Record' or a group employment company might be used
- permanent establishment – what activities are undertaken and do they give rise to the risk of a taxable presence being recognised?
- transfer pricing – within a multinational group, which entity bears the costs of employment and are recharges required?
- presence for income taxes or payroll withholding – in which country are these due and how can double withholding requirements be mitigated?
- Overseas Business Visitor reporting – does the individual visit the UK and are there reporting obligations?
- Social security – in which country or countries is employer or employee social security due?

2.25 There is some academic research seeking to estimate the potential risk to UK tax revenues of long-term remote working, drawing on assumptions around

how many UK roles may be internationally mobile and how many people move abroad in practice.⁴ Other researchers have explored how specific sub-populations can and do migrate in response to rates.⁵

Digital Nomads

2.26 There have been a number of media articles describing the lives of ‘Digital Nomads,’ where people work online while regularly moving across borders rather than being in a fixed place.⁶ There are websites which provide advice to Digital Nomads, or those considering becoming Digital Nomads.

2.27 There is little data on how many people are adopting this approach, or how quickly the population is growing.

2.28 Respondents to the OTS’s Call for Evidence shared their anecdotal perspective that more people are likely to be adopting a digitally nomadic lifestyle. However, a genuinely nomadic lifestyle is difficult to sustain, as people must manage visa and tax obligations as well as unreliable income and limited access to public services, from healthcare to education for their children. An academic noted some digital nomads may be non-compliant due to their inexperience and those who do sustain the lifestyle structure their affairs to work within the existing rules – quoting one experienced Digital Nomad’s approach:

“I have a UK accountant, all my businesses are registered in the UK. I know some Nomads have offshore companies, but the UK is one of the only countries in the world that publishes their non-tax resident status requirements in black and white.”⁷

2.29 The International Monetary Fund noted in April 2022⁸ that over 40 jurisdictions are offering ‘Digital Nomad visas,’ with tax breaks, to attract individuals, and their spending, to their country. These visas typically permit an individual to spend up to a year in the country, without personal tax liabilities. A common condition is that the individual does not provide services to consumers or businesses in the country; issuing countries do not wish to hollow out their own tax base. The IMF concludes that at this stage the risk to global tax revenues is low, being 0.1-0.2% of GDP depending on the country, but remarks that the issue may grow in importance.

⁴ De la Feria, R. and Maffini, G. (2021) ‘The impact of digitalisation on personal income taxes.’ Available at: The impact of digitalisation on personal income taxes - White Rose Research Online

⁵ See, for example:

- Akcighit, U. Baslandze, S. and Stantcheva, S. (2016) ‘Taxation and the International Mobility of Inventors.’ Available at: Taxation and the International Mobility of Inventors (aeaweb.org)
- Kleven, H. Landais, C. and Saez, E. (2013) ‘Taxation and International Migration of Superstars: Evidence from the European Football Market.’ Available at: <https://eml.berkeley.edu/~saez/kleven-landais-saezAER13football.pdf>

⁶ See, for example:

- BBC (2022) ‘The rise of digital nomad families.’ Available at: The rise of digital nomad families - BBC Worklife
- BBC (2021) ‘Is the great digital-nomad workforce actually coming?’ Available at: Is the great digital-nomad workforce actually coming? - BBC Worklife

⁷ Cook, D. (2022) ‘Breaking the contract: digital nomads and the State.’ *Critique of Anthropology*, 42(3), 304–323. <https://doi.org/10.1177/0308275X221120172>

⁸ Fiscal Monitor, April 2022 (imf.org)

Spouses accompanying armed forces personnel serving abroad

- 2.30 Several organisations representing families in the armed forces highlighted that sometimes the spouses of military personnel can accompany those military personnel on overseas postings. In these circumstances, the tax and social security rules can foster difficulties where the spouse seeks employment overseas, including where they seek to work remotely for a UK employer.
- 2.31 This complexity can be exacerbated by Status of Forces Agreements ('Agreements') or host nation agreements determining the rights of a spouse while they accompany military personnel. These agreements can mean host tax authorities do not consider military spouses to be resident for tax purposes. The fact the spouse may use a British Forces Post Office address can sometimes help or hinder their efforts to comply with their tax obligations, depending on the host country.
- 2.32 Most of these organisations called on the government to provide guidance by jurisdiction to complement the relevant Agreements and help spouses accompanying military personnel overseas comply with their obligations while working. Several proposed the older Agreements could be helpfully updated to reflect modern ways of working, while one proposed a spouse in these circumstances could be deemed to be UK resident. Another respondent noted acting on these concerns would align with the government's commitment to support the partners of serving personnel to continue their careers.⁹

How common is cross-border remote working?

- 2.33 Most of the organisations from which the OTS heard had encountered some form of cross-border working. However, most also noted that only a very small proportion of their employees had in fact worked in a different country on a short-term basis, with most organisations saying that typically around 2-5% of eligible people had taken up the opportunity to work overseas. Several large employers had noted up to 10% take-up; there is no clear underlying reason to explain different take-up levels.
- 2.34 Notwithstanding this low take-up rate, most businesses were strongly of the view that being able to offer employees this opportunity was likely to be a fixture in their organisations for the foreseeable future and certainly while the labour market remains tight. This was predominantly down to the so-called 'war for talent' and perception that this flexibility was important in attracting and retaining people. A smaller proportion of businesses describe themselves as "talent first" or "location agnostic" and therefore actively seek to recruit from an international talent pool before exhausting recruitment options in the UK.
- 2.35 Based on our findings, the extent of cross-border working can be summarised as follows:

⁹ UK Armed Forces Families Strategy 2022-32 (publishing.service.gov.uk)

- short-term – very common, with most businesses encountering it in some form although it had only been undertaken by a small proportion of their workforce
- long-term or permanent – less common than short-term, but still encountered by most large businesses. Again, a very small proportion of individuals in most organisations were working in this way. Small and medium businesses were less likely to have encountered this or to have been able to accommodate it if they had

How is cross-border working expected to evolve?

2.36 Most organisations the OTS spoke to anticipated that cross-border remote working would continue to be a feature in their organisations for the foreseeable future. In general, they did expect that their organisation's approach would continue to evolve, primarily based on three factors:

- employee demand for cross-border remote working
- competitor policies – the need to remain competitive within comparable organisations (usually within sectors)
- legislative developments – predominantly in the areas of tax or immigration which might make particular countries more, or less, attractive for cross-border working or otherwise affect the risk profile of a company's approach

2.37 The OTS heard some views that employers would prefer to have their employees in the office for a greater period or proportion of working time and would like to consider restricting their policies. However, most are currently mindful of the 'war for talent' and so watching market trends and competitor policies closely.

2.38 Another commonly heard view was that businesses are monitoring the increasing number of countries amending legislation and introducing 'nomad visas' and associated payroll relaxations as these may give rise to opportunities to amend policies where risks are lowered or to attract people in particular locations.

Chapter 3

Cross-border payroll and social security issues

Introduction

- 3.1 Working across borders can have implications for an employee's residence, Income Tax, social security and payroll position. Businesses may also encounter issues with corporate tax and permanent establishment risks. This chapter and chapter 4 (Cross-border corporate tax and partnership issues) concentrates on those issues where we have heard there are increased complexities caused by the changes in the ways people are working across borders.

Income Tax and employee tax residence

- 3.2 In the UK an individual's tax residence status is determined by reference to the statutory residence test¹ and this continues to be the case where an individual is working in the UK as a result of hybrid or distance working. Where an individual is resident in more than one country, there are many double taxation agreements with the UK which resolve where an individual is considered treaty resident, thereby confirming which country has primary taxing rights.
- 3.3 In the main the tax residence implications of new ways of overseas working were well understood, particularly for the UK with its statutory residence test. The UK's wide tax treaty network and its clear presentation on GOV.UK were also seen as helpful.

Social security

Introduction

- 3.4 In addition to the tax considerations of working across borders, people must consider the potential liability to local social security and the risk of liability to social security in multiple countries. Employees who live and work in the same country as their employer will be in the straightforward position of paying social security only in that state. It becomes more complicated when employees work in a different state to where they live (including between Ireland and the UK) or work in a different state to their employer (either on a temporary or permanent arrangement).
- 3.5 The general principle of the rules is that an employee should pay social security in the state where they work. However, the rules allow exceptions to

¹ RDR3: Statutory Residence Test (SRT) notes - GOV.UK (www.gov.uk)

this, as social security is attached to benefits such as state pensions, healthcare, and child support, so it is generally better to pay social security in only one country and to have a continuous social security record, rather than have 'pots' of social security contributions in multiple countries.

3.6 An academic we spoke to on cross-border social security issues commented that:

'There is a widespread view, reflected in domestic social security law, bilateral social security agreements and EU rules, that people should be subject to the social security law of a State with which they have a close (or even the closest) connection. The nature and strength of that connection depend on the type of benefit and beneficiary. For instance, (free or subsidised) urgent healthcare might be available to people who have just arrived, but a stronger connection is required to claim unemployment benefits or old-age pensions. This could be called the 'integration–protection nexus': other things being equal, a person's social protection in a State should bear a relation to their integration there.'²

3.7 As mentioned above, there are exceptions in social security agreements which allow individuals to remain paying into their home social security scheme if they are temporarily posted to another country. There is an agreement for employees from the UK, EU, Iceland, Liechtenstein, Norway, or Switzerland and countries where there is a social security agreement. For employees from the rest of the world, where there are no agreements, there is a unilateral UK position that can allow individuals to remain paying into their home social security scheme.

3.8 If an individual comes to the UK from or leaves the UK to go to countries in the EU, Iceland, Liechtenstein, Norway, or Switzerland³ or a country where there is a social security agreement⁴ with the UK, then provided they meet certain conditions, they can obtain a certificate (A1, or certificate of continuing liability) that allows them to remain liable to pay contributions in their home country social security system.

3.9 If an employee comes to the UK from a country where there is no social security agreement, then provided they meet the following conditions,⁵ they, and their employer, do not pay UK National Insurance for the first 52 weeks:

- they are normally employed outside the UK by a non-UK employer (even if the employer has a place of business in the UK)
- they are employed in the UK temporarily
- they are employed mainly outside the UK
- they are not ordinarily resident or employed in the UK

² N Rennuy, 'The trilemma of EU social benefits law: Seeing the wood and the trees' [2019] Common Market Law Review 1549, in particular 1552–1558.

³ National Insurance for workers from the UK working in the EU, Iceland, Liechtenstein, Norway, or Switzerland - GOV.UK (www.gov.uk)

⁴ Apply for a certificate of continuing liability for National Insurance - GOV.UK (www.gov.uk)

⁵ New employee coming to work from abroad - GOV.UK (www.gov.uk)

- 3.10 HMRC considers an individual to be ordinarily resident for social security in a country if they:
- normally live there, apart from temporary or occasional absences
 - have a settled and regular mode of life there
- 3.11 If an employee leaves the UK to work in a country with no social security agreement,⁶ the employer and employee may be obliged to pay UK National Insurance for the first 52 weeks following their departure provided they meet certain conditions:
- the employer has a place of business in the UK
 - they are 'ordinarily resident' in the UK
 - they were resident in the UK immediately before starting the employment abroad
- 3.12 Where an employee is regularly working in two countries, there are multi-state workers rules for countries within the UK, EU, Iceland, Liechtenstein, Norway, or Switzerland⁷ that can determine the country where social security is due. If the individual carries out more than 5% of their work in a second country, they are considered a multi-state worker. Under these rules, provided they perform substantial duties (no less than 25% of their working time and/or remuneration) in the country where they are resident, they will pay social security in that country. Where they don't meet this criteria, normally social security would then be due in the state where their employer has its registered office or place of business.⁸
- 3.13 There were relaxations introduced by EU Member States during the pandemic and applied by the UK to adopt a 'no impact' position for employees where due to the pandemic they were not working in their usual location.⁹ The relaxation has now been extended through until 30 June 2023.

Implications for hybrid and remote working

- 3.14 The implications are different for those working temporarily across borders to those working permanently in a different country to their employer.

Employees working temporarily across borders in a country with a social security agreement

- 3.15 The OTS has heard that confusion has arisen for employees that choose to temporarily work abroad in a country where there is a social security agreement. This is because the legislation and agreements tend to be based on an employee being **posted** to the other country, and as mentioned earlier in the report there is a trend for more employees to **choose** to work abroad for short periods. The OTS understands that different countries are taking

⁶ Social Security abroad: NI38 - GOV.UK (www.gov.uk)

⁷ Check which country's social security legislation applies to you (CA8421) - GOV.UK (www.gov.uk)

⁸ Which rules apply to you? - Employment, Social Affairs & Inclusion - European Commission (europa.eu)

⁹ <https://ec.europa.eu/social/BlobServlet?docId=25818&langId=en>

different approaches to interpreting the difference (if any) that this distinction makes.

- 3.16 It has been suggested that it would make sense for employees choosing to work in another country for a temporary period to remain in their home country social security system to avoid them having a broken and fragmented social security record. The OTS was told that this would make sense, as when an individual is posted to another country, they remain organically linked to their home country and arguably this is the same with someone choosing to work in another country. Respondents told us that it would be simpler for employers, the tax authorities, and the employee, as this would mean less administration generally and would avoid employers having to register and pay in other countries.
- 3.17 As social security rules depend on agreements between the different countries, and given the breadth of countries involved, respondents strongly hoped for a multilateral agreement between countries to make clear that 'choosing' to work in another country for a short period of time should mean the employee remains in their home social security system. As in other areas, respondents also hoped that the UK government could adopt an influential position on this and make it clear that their position was that they believe a certificate could be issued under the A1/certificate of continuing liability regime for those choosing to work in another country for a short period of time.
- 3.18 The EU has recently made progress on this issue, and the interpretation of Article 12,¹⁰ in their Guidance Note on telework updated on 14th November 2022.¹¹ This sets out that provided there is agreement between the employer and employee concerned, that an A1 certificate can be applied for in cases of distance/remote working. In particular, it specifically gives examples where:
- an employee agrees with the employer that s/he will telework during the 4 weeks to better concentrate on a specific project
 - an employee stays at the holiday place and starts to telework there for another month before returning home and resuming work in the office.
- 3.19 HMRC have confirmed that their position is as set out below:
- an employee is entitled to an A1 certificate for temporary activity (including remote working) in the EU where this is done with the agreement of the employer, and they meet any other entitlement conditions
 - employers and employees are encouraged to ensure that applications are made promptly. HMRC considers each application on the information available to it by reference to the relevant co-ordination regime. However,

¹⁰ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland) (legislation.gov.uk)

¹¹ <https://ec.europa.eu/social/BlobServlet?docId=25818&langId=en>

an individual is not entitled to an A1 certificate where they are working temporarily in the EU against their employer's instructions

- 3.20 Following this, HMRC should now update their guidance to set out this position. Also, discussions with other countries to obtain similar agreements would be welcomed by respondents.

Employees working temporarily across borders in a country without a social security agreement

- 3.21 For those individuals coming to the UK from non-agreement countries, HMRC could make clear in guidance that they will not pursue UK social security where an individual chooses to work from the UK for a short (defined) period of time. For individuals choosing to leave the UK to work in a non-agreement country for a short period of time, it is likely that UK social security will continue to be due so the individual's record would be maintained. It would depend on the rules in each host country as to whether they would apply social security in that country as well. This, however, is not a new issue but it may affect more individuals if more choose to work in non-agreement countries for short periods of time.
- 3.22 In order to reduce the risk of dual social security liabilities arising where individuals choose to work across borders, respondents told us that it would be useful for agreements to be made and guidance to be updated to clarify that short-term remote workers should continue to pay social security in their home country and not in the country where they are temporarily based. Respondents also suggested that the UK expand its network of social security agreements to reduce the number of non-agreement countries.

Employees working in two countries on a regular basis

- 3.23 As mentioned above, there are rules in place for multi-state workers within the UK, EU, Iceland, Liechtenstein, Norway, or Switzerland. However, this is not the case for other social security agreements and respondents felt it would be helpful if the UK's Agreements could be updated to clarify the position for multi-state and hybrid workers. It was felt clarification under the UK/USA social security agreement needs to be a priority as agents mentioned they are seeing more cases where people are working in both countries.
- 3.24 Respondents also felt that domestic rules need to be updated where there are no agreements in place to make it clear in which cases National Insurance would be triggered where employees spend part of the month working in a non-agreement country and part of the month working in the UK. Apportionment rules are in place which allow for UK National Insurance to only be paid on the portion of salary attributable to an employee's UK duties, but this does not apply where there is a UK employer.

Employees working permanently in a different location to their employer

- 3.25 Where an employee is hired abroad to work for a UK employer and that employee will work remotely from home and not in the UK, social security will be due in the country where the employee is based. The UK employer will need to register an account for contribution in the other country and find a mechanism to pay the social security in that country.

- 3.26 The same applies where an overseas employer hires an employee from the UK and that employee will work remotely from the UK, as UK employee social security will be due. The employer will need to register for contribution in the UK and pay employee social security to HMRC. An additional complexity arises where there is no employer in the UK, as employer social security is not usually due unless the employee is from EU, Iceland, Liechtenstein, Norway, or Switzerland where deemed presence rules exist, and in those cases employer social security would be due. For example, an employee working in the UK from the US would only trigger employee social security, whereas an employee doing the same thing from EU will trigger both employee and employer social security. This complexity has always existed, but more cases will now arise due to the increase in employees working from countries where there is no employer presence.
- 3.27 Respondents told us that HMRC should ensure the guidance is clear on what foreign employers need to do to register for and pay social security in the UK in these instances. Current guidance appears to be limited¹² and needs to be expanded given the increase in employees working from home in the UK for an overseas employer.

Simplifying the administration

- 3.28 The increase in hybrid and distance working has given rise to more complex cases in certain circumstances, for example, someone who is employed in France and in the past would have worked fully from France can now spend two weeks a month working from home in the UK. Respondents felt increased guidance on various hybrid and distance working scenarios would be extremely helpful. Furthermore, respondents asked for a dedicated point of contact at HMRC to deal with queries quickly as their recent experience has been that it is taking several months to receive a response.
- 3.29 There was wide agreement from payroll professionals about administration issues arising from submitting social security certificate applications in the UK. The OTS heard that A1 certificates are being sent to employers with incorrect information on them due to processing errors. The applications have been submitted online correctly (and re-checked after submission) but the information on the form that comes back differs from what was submitted, as if errors have appeared in transcription by HMRC. Rather than the form being repaired by HMRC, employers are told to submit a new form. Respondents felt it would be useful if HMRC systems could be electronically joined up so there is no room for administrative errors to appear on the HMRC end, or if this is not possible, for HMRC to accept that they should return to the original, correct submission rather than demanding a re-submission. There was also wide agreement that it was taking too long to process social security applications.

¹² See, for example:

- When and how an employee operates PAYE on their employment income - GOV.UK (www.gov.uk)
- National Insurance for people in the UK working where there is no employer in the UK (hmrc.gov.uk)

Simplifying existing payroll compliance processes where employees work short-term across borders

- 3.30 Payroll compliance is an issue for both outbound employees working overseas for UK businesses, and inbound employees working in the UK for overseas businesses.

Outbound

- 3.31 For outbound employees, the UK government has no direct control over other countries' compliance rules. However, where an employee remains on UK payroll when working abroad but UK PAYE is not due, they can apply for a NT (No Tax) code so that UK PAYE is not withheld. We have heard that applications for NT codes are taking significant amounts of time to be processed, which can lead to double withholding for months where employees are also on the overseas country payroll. Many respondents considered that HMRC should automate the process of issuing NT codes.

Inbound

The existing arrangements in place

- 3.32 There are existing PAYE arrangements in place to ease double tax and payroll compliance burdens for employers of those working temporarily in the UK who remain on their home country payroll. The ones the OTS have heard about as part of this report have been set out in table 2 below:

Table 2: PAYE arrangements where employees temporarily work in the UK for an overseas employer or where employees have withholding obligations in two countries

What it is called	What it allows
Section 690 Income Tax (Earnings and Pensions) Act 2003 ¹³	<p>Where an employee is only due to pay tax in the UK on the portion of their employment income relating to their UK duties, then provided certain conditions are met, employers can apply under section 690 ITEPA 2003 for formal permission from HMRC to exclude a portion of employee's pay from UK PAYE, thereby only operating PAYE on the employee's earnings relating to work in the UK.¹⁴</p> <p>For example, if an employee is only taxable in the UK on 20% of their employment earnings, then their employer can apply for permission from HMRC to withhold PAYE on only 20% of their earnings. An employee with a salary of £35,000 would in this example only have PAYE deducted on £7,000 of their employment income.</p>

¹³ Income Tax (Earnings and Pensions) Act 2003 (legislation.gov.uk)

¹⁴ Apply for a direction to operate PAYE on an employee's earnings - GOV.UK (www.gov.uk)

What it is called	What it allows
EP appendix 4: criteria for short-term business visitors	This arrangement allows for strict PAYE requirements to be relaxed for employees on short-term business visits to the UK from countries that have a Double Taxation Agreement with the UK. Provided certain conditions are met PAYE can be disregarded and instead a short-term business visitor report can be sent to HMRC. ¹⁵
EP appendix 5: net of foreign tax credit relief	<p>Where an employee's circumstances mean they are subject to monthly tax withholding on their employment income in both the UK and another country, an employer can apply to HMRC for permission to operate an appendix 5 arrangement.¹⁶ This allows the monthly foreign tax withheld to be taken as a credit against the UK PAYE due each month, effectively giving relief for double taxation upfront and easing the employee's cashflow.</p> <p>For example, if an employee was subject to foreign monthly taxes of £200 and monthly UK PAYE of £450 was due, by applying the appendix 5 arrangement, only £250 of UK PAYE would be withheld each month.</p>
EP appendix 6: modified PAYE in tax equalisation cases	<p>Where employees are tax equalised, this arrangement allows employers to operate PAYE on an estimated basis during the year.¹⁷</p> <p>Tax equalisation means that an employee pays no more and no less tax on an overseas work assignment than they would have paid had they stayed working at home. Normally how this works is the employer pays the actual taxes due in both countries and the employee pays a hypothetical tax equal to what they would have paid had they remained working in their home country. Typically, they remain on home country payroll and the employer operates a payroll in the UK reporting their foreign earnings and operating UK PAYE on this. It can be difficult to obtain details of accurate foreign earnings in real-time, so this arrangement allows the employer to report the foreign earnings on a best estimate basis during the year with a reconciliation on the Self Assessment tax return.</p>

¹⁵ PAYE82000 - PAYE operation: international employments: EP appendix 4: criteria for short term business visitors - HMRC internal manual - GOV.UK (www.gov.uk)

¹⁶ PAYE82001 - PAYE operation: international employments: EP appendix 5: net of foreign tax credit relief - HMRC internal manual - GOV.UK (www.gov.uk)

¹⁷ PAYE82002 - PAYE operation: international employments: EP appendix 6: modified PAYE in tax equalisation cases - HMRC internal manual - GOV.UK (www.gov.uk)

What it is called	What it allows
Pay As You Earn (PAYE) special arrangement for Short Term Business Visitors (STBV) Appendix 8	These arrangements permit employers of short-term business visitors who are taxable in the UK, such as those who are employed from overseas branches and those visiting from countries without double taxation agreement, to pay and report tax in respect of PAYE income by 31 May (following the end of the relevant tax year) if the normal operation of PAYE is considered 'impracticable'. ¹⁸ This is for short-term business visitors who spend up to 60 days in the UK.

Suggestions for change

3.33 Respondents have asked for several changes to be made in order to make it simpler to deal with the payroll compliance when employees are working for short periods in the UK. These include:

- HMRC to allow employers to operate section 690 and appendix 5 arrangements once an application has been made by the employer. Currently, employers must wait for formal approval from HMRC, and this is taking many months to be received. In the meantime, employers are forced to deduct UK tax whilst knowing it will not ultimately be due, causing employees to have a cashflow burden with withholding in both countries. Respondents have therefore asked whether the rules around waiting for formal approval can be relaxed either through legislation amendments or concession, moving to a self assessment system whereby employers would be able to operate the relaxation as soon as it is applied for. Respondents universally noted that very few applications are declined, so it would seem this would be minimal risk for HMRC; further, it is the employer's responsibility to operate PAYE correctly and penalties can be issued where that is not done
- HMRC to create an online portal for employers to use to make applications for section 690 and appendix 5 applications. The OTS has heard that many employers still make applications via post. There is an option to submit a section 690 if the employer has a valid government gateway ID¹⁹
- HMRC to extend the appendix 8 arrangements to allow for relaxation of PAYE up to a higher number of days than the current 60 days, potentially up to 90 days
- HMRC to consider allowing an equivalent of an EP appendix 6 for employees who are not tax equalised (so are responsible for paying their own taxes) and remain on foreign payroll but where PAYE is due in the UK. This will allow employers to operate PAYE on an estimated basis for employees choosing to work in the UK for longer than 60 days (appendix

¹⁸ PAYE81950 - PAYE operation: international employments: PAYE special arrangement for short term business visitors (STBV) appendix 8 - HMRC internal manual - GOV.UK (www.gov.uk)

¹⁹ Apply for a direction to operate PAYE on an employee's earnings - GOV.UK (www.gov.uk)

8 currently allows a relaxation up to 60 days). Reporting foreign employment income through a UK payroll can be operationally difficult. It requires the UK employer to collect details of the compensation from the foreign employer, analyse it to work out which items are taxable in the UK and report it in the correct month. HMRC recognise this is difficult where an employee is tax equalised, but respondents argued that it is no less difficult for those who are not tax equalised. Most employees working in the UK by choice will not be tax equalised

- another way to simplify the process for those spending time in the UK could be to make the rules clearer around when there is a PAYE withholding requirement in the UK. Rules around this have always been complicated, such as assessing substantive or incidental workdays, and whether there has been a recharge of costs or whether there is a branch structure (so effectively the costs are borne by the UK). This is then also complicated further by working out whether they are from a treaty country (and can be included on an EP appendix 4: short-term business visitor agreement), or from a non-treaty country (and whether EP appendix 8 can apply). Many respondents noted that it would be simpler if there could be a relaxation of PAYE rules for all individuals coming to the UK for under a determined threshold, such as 60 days. This would also then make it easier where there is no UK entity, and the individual is just working from home in the UK. Extending this relaxation to cover other areas is discussed in the 'Making compliance simpler' section below
- as mentioned above, the existing PAYE arrangements do allow some UK PAYE flexibility, but the OTS has heard that the guidance can be hard to follow for the new working arrangements. Respondents therefore asked for further guidance and examples on how these schemes can assist employers with the correct PAYE reporting for hybrid workers
- respondents asked for a clear and simple online tool for employers to use to help them assess whether their employee's presence in the UK is creating a formal 'taxable presence' for PAYE purposes. They also asked for clear guidance on when a PAYE obligation arises and the entities whom HMRC would allow to fulfil the PAYE obligation (for example, the overseas employer or a nominated UK entity in the group). Respondents suggested HMRC's existing guidance in its Employment Income Manual could be expanded to include examples under hybrid and distance working scenarios²⁰
- there is an option for direct collection of PAYE liabilities from employees of foreign employers with no place of business in the UK²¹. Respondents asked for the guidance to be clearer on when this option should be used including examples and what the process involves given the increase in employees working in the UK for an overseas employer

²⁰ PAYE81610 - PAYE operation: international employments: employers 'presence in UK' - HMRC internal manual - GOV.UK (www.gov.uk)

²¹ When and how an employee operates PAYE on their employment income - GOV.UK (www.gov.uk)

Making compliance simpler

- 3.34 Businesses recognised that some of the compliance solutions will require multi-national agreements, likely facilitated through the OECD, although it was felt that other changes could be made independently unilaterally by the UK.

Collating and simplifying guidance

- 3.35 It was mentioned that clear and easily accessible HMRC guidance bringing together all the different areas that need to be considered when individuals are working remotely abroad either short-term or longer-term would be useful. Respondents told us that it would also be useful to have guidance for individuals working remotely in the UK for overseas employers and that there should be guidance aimed at employees as well at employers.

Easements for short-term visitors

- 3.36 It was mentioned that simplification of the rules for short-term visits to the UK similar to those suggested for tax of cross-border teleworkers by the European Economic and Social Committee²² would be welcomed.
- 3.37 Broadening from existing easements, it was suggested that there could be a simplification blanket policy where anything under a set period, possibly 60 days or less, spent working in the UK would not trigger tax, social security, or a permanent establishment.
- 3.38 This was seen to potentially remove significant administrative burdens for the employer and employees who have the right to work in the UK, allowing them to work from a UK location temporarily without triggering any compliance issues for the employer or employee.
- 3.39 These ideas were also suggested as potentially enabling contribution to the UK economy by allowing short-term visitors a frictionless entry to the UK. Many respondents noted this as in keeping with the wider move to 'Digital Nomad' visas (see Chapter 2), and as fitting with a perceived government agenda to make the UK a frictionless place to come and spend time and money.

Summary of changes called for by respondents

- 3.40 On social security, respondents asked for the following steps to be taken:
- HMRC should work with countries that have a social security agreement with the UK to obtain agreement that an individual can remain liable to pay contributions into their home social security scheme if they 'choose' to work in another country for a short period of time. HMRC could also adopt an influential position on this and make it clear that their position is that they believe a certificate could be issued under the A1/certificate of continuing liability regime for those choosing to work in another country for a short period of time. Where agreement has already been sought, such as with the EU, HMRC guidance should be updated to reflect this

²² Taxation of cross-border teleworkers and their employers | European Economic and Social Committee (europa.eu)

- HM Treasury should look to expand its network of social security agreements and to update existing ones to clarify the position for multi-state and hybrid workers
- HMRC should look to resolve administration issues in relation to the processing errors for A1 applications that are being encountered and improve the time it takes for HMRC to process social security applications. HMRC should also provide a dedicated point of contact to deal with queries quickly
- HMRC should update guidance with clear examples in the following areas:
 - HMRC should improve the guidance available in relation to the various social security rules so that all employers and employees can easily understand the rules and work out which rules apply in their scenario. Decision trees may help with this
 - where individuals come to the UK from non-agreement countries, HMRC could make clear in guidance that they will not pursue UK social security where an individual chooses to work in the UK for a short period of time
 - guidance needs updating with examples for multi-state workers from non-agreement countries to show in which scenarios UK social security is due
 - where the overseas employer hires an employee from the UK to work remotely in the UK, HMRC guidance needs to be clearer on when employer and employee social security liability arises and how the overseas employer can register for and pay the social security due

3.41 On the payroll compliance processes, respondents asked for the following steps to be taken:

- HMRC should automate the process of issuing NT codes and if this is not possible, should improve the response time
- HMRC should allow employers to operate section 690 and appendix 5 arrangements once an application has been made by the employer rather than having to wait for formal approval from HMRC
- HMRC should create an online portal for employers to use to make applications for section 690 and appendix 5 applications
- HMRC should extend the appendix 8 arrangements to allow for relaxation of PAYE up to a higher number of days than the current 60 days, potentially up to 90 days
- HMRC should introduce an equivalent of an EP appendix 6 for employees who are not tax equalised and remain on foreign payroll to allow UK PAYE to be done on an estimated basis in-year
- HMRC should improve guidance and examples on how the various PAYE schemes can assist employers with the correct PAYE reporting for hybrid workers

- HMRC should simplify the rules further and allow a relaxation of PAYE rules for all individuals coming to the UK for days under a determined threshold, such as 60 days
- HMRC should provide a clear and simple online tool for employers to use to help them assess whether their employee's presence in the UK is creating a formal 'taxable presence' for PAYE purposes and clear guidance on when a PAYE obligation arises and the entities whom HMRC would allow to fulfil the PAYE obligation
- HMRC should improve guidance on when the direct collection of PAYE liabilities from employees of foreign employers with no place of business can be used including examples and clear details of the process to follow.

3.42 Respondents asked for the following to help make compliance simpler:

- HMRC should provide clear easily accessible guidance aimed at both employers and employees bringing together all the different areas that need to be considered when individuals are working remotely abroad for a UK employer either short-term or longer-term. It would also be useful to have guidance in relation to individuals working remotely in the UK for overseas employers
- for employees coming to the UK for short-term visits, HM Treasury should implement a policy that time spent working in the UK under a set threshold, possibly 60 days or less spent working in the UK, would not trigger tax, PAYE, social security or a permanent establishment. This would reduce the administrative burden for employers and employees

Chapter 4

Cross-border corporate tax and partnership issues

- 4.1 A company undertaking activities across borders may be taxed on its profits by reference to the territory it is resident in (where the company is incorporated or effectively managed),¹ where it has physical activities, or by the source territory (where the income arises). The international tax framework, reflected in the OECD Model Tax Convention,² the UN Model Tax Convention,³ and the Double Taxation Treaties the UK has entered in to, helps to determine which state has primary taxing rights in these situations, as well as the obligations the company has in terms of the application of the domestic law of the states involved.
- 4.2 Most countries seek to levy corporate tax on profits attributable to physical activities within their borders. Double Taxation Treaties limit the scope of taxation by defining taxable presence (permanent establishment) as well as the attribution of profits to such a taxable presence. The current proposals from the BEPS Inclusive Framework on new approaches to profit attribution and taxation (Pillar 1)⁴ without physical presence represent a new approach for digital activities.
- 4.3 Remote working introduces a new possible business model, as some employees may choose to work in a location where their employer does not otherwise have a business presence – taking advantage of technology to connect to the enterprise.
- 4.4 The key difference comparing the pre-pandemic and post-pandemic world is that it is the choice of some employees to work in a separate jurisdiction to their employer, rather than a choice by the business to post them to work for a business activity based there. As for employment, this may be short-term working whilst on holiday, longer-term or permanent stays, or something in-between.

¹ Article 4.3 of the OECD Model Tax Convention refers to persons other than individuals being resident either where they are incorporated or otherwise constituted, or their place of effective management. INTM154050 - Double taxation agreements: residence: Companies - HMRC internal manual - GOV.UK (www.gov.uk) explains how this interacts with the UK concept of central management and control.

² OECD Model Tax Convention on Income and Capital, 2017 version (OECD.org)

³ UN Model_2021.pdf

⁴ Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy – 8 October 2021 - OECD

Risks for companies of employees working overseas

- 4.5 Businesses and advisers felt strongly that updates are required to keep pace with modern ways of working where increasingly a very small number of employees may work wholly for the benefit of a company in one jurisdiction whilst they (temporarily or long-term) live in another jurisdiction.⁵
- 4.6 Employees that choose to work remotely in a separate jurisdiction to their employer can, in some circumstances under the current rules, create a right for the separate jurisdiction to tax some of their employer's profits. This possibility requires companies to monitor the rules and then, where necessary, register, calculate any corporate tax due and file to pay it. Whilst they recognised the broader purpose and necessity of the permanent establishment rules, most businesses considered these burdens are disproportionately complex for shorter hybrid working stays, where the tax potentially due is negligible. This is especially the case where an employee has chosen to spend a few days in a jurisdiction, for example to extend a holiday or to visit relatives.
- 4.7 Some respondents had adopted approaches to mitigate the risk of creating a permanent establishment, typically by permitting only short stays in a different country and, in some cases, limiting either the type of work which could be undertaken or not permitting those with certain roles to work overseas.
- 4.8 For long-term work, companies would consider using an existing local company to employ the individual, even where the beneficiary of the work was not the local company, and then making a recharge to the UK company (including a transfer pricing markup). Other options considered include a global employment company and, for a few, a third party 'Employer of Record'. An Employer of Record is the legal employer of a workforce and numerous organisations provide this as a commercial service. There were varying degrees of confidence around whether this did mitigate the risk, and as noted below it brought its own issues.
- 4.9 Overall, as with other areas of this report, many highlighted that those with more flexible policies, even if more costly in terms of administration and tax costs, were finding it easier to attract key employees. One business highlighted that it can take time to resolve cross-border discrepancies, and this can result in double taxation if a correction is made too late for a taxpayer to claim double tax relief.

Working toward domestic and multilateral solutions

- 4.10 Many companies proposed the international rules should be updated to ensure they reflect modern ways of working, calling for the UK to champion this work at the OECD. This would help reduce compliance costs and ensure a level playing field where a UK employer is considering allowing an employee to work overseas, as well as where an overseas employer is considering allowing an employee to work in the UK.

⁵ Tax reform for remote working abroad - ICC - International Chamber of Commerce (iccwbo.org)

- 4.11 While the OECD has already indicated it intends to explore the issues created by hybrid working internationally,⁶ this will likely take some time, not least due to the existing work on Pillar I and Pillar II. Respondents generally urged that where possible transfer pricing adjustments were simpler to administer both for tax administrations and for companies than additional permanent establishments.
- 4.12 Meanwhile, respondents highlighted there is some scope for HMRC to clarify how it would apply the existing rules to situations where overseas companies allow their employees to choose to work remotely in the UK, or for the UK to amend its domestic law. Many felt this would help provide certainty and improve the UK's position as a competitive place to do business.
- 4.13 The remainder of this chapter focuses on the specific issues respondents raised and their suggestions for the UK to consider unilateral action. While considering these proposals, HMRC will wish to strike an appropriate balance between facilitating cross-border working and deviating from international standards, creating new burdens and potentially introducing new opportunities for avoidance.

Considering permanent establishment

- 4.14 Corporate tax is chargeable on the worldwide profits of any company that is resident in the UK. A company is treated as resident in the UK if it is centrally managed and controlled here or if it is incorporated here and not treated as resident elsewhere under a double tax treaty). This can mean a company can transfer its tax residence to the UK if it allows important decisions to be taken here, triggering UK corporate tax on its worldwide profits (the possibility an employer may inadvertently shift its corporate residency to the UK because key decisions are being taken by people working remotely here is considered further below).
- 4.15 If a company is not resident but carries out activities in a jurisdiction (either through its employees or dependent agents), the international tax framework allocates some taxing rights over the profits of the company to the jurisdiction where there is determined to be a permanent establishment.⁷ The OECD model treaty and commentary (and the UN Model for certain countries) provide a definition of permanent establishment, although one of the outcomes from the BEPS project is that there is a broader range of definitions for countries to choose to adopt. Some of the key factors to consider when deciding if there is a permanent establishment include whether there is a fixed place of business, the agent habitually acts on behalf of the company and the activities are preparatory or auxiliary.⁸

⁶ <https://news.bloombergtax.com/daily-tax-report-international/oecd-to-consider-remote-work-tax-issues-official-says>

⁷ This right to tax is limited to the profits attributable to the permanent establishment. It can be difficult calculating these attributable profits – the next section considers this in more detail.

⁸ For more information on activities excluded from permanent establishment in the UK, see HMRC's Internal Manual INTM266120

Permanent establishment and working remotely overseas temporarily

- 4.16 Many respondents consider these factors when designing policies and procedures to control employees' choice to work overseas. Some require employees working remotely overseas to delegate specific tasks, including signing contracts, to others whilst they are away. Others prohibit employees from meeting clients in person or visiting a local office.
- 4.17 Most restrict the number of days an employee may choose to work overseas, and some monitor where employees are working to ensure they do not create a pattern or act habitually on behalf of the company. These restrictions help employers manage where a permanent establishment, and therefore corporate tax or a payroll obligation, may arise.

Permanent establishment and working remotely overseas permanently

- 4.18 Some companies, especially in the technology sector, are also hiring individuals that work remotely overseas over the longer-term or permanently. This can help the company access talented individuals. However, the employer must understand and comply with the range of employer obligations in the employee's jurisdiction, such as tax, employment rights, and health and safety.
- 4.19 Most groups consulted by the OTS considered establishing a local subsidiary to employ individuals or asked an existing subsidiary to employ them. A few might use an in-house global employment company. Others have engaged an intermediary (an employment organisation or an 'employer of record') to hire the individual on their behalf. The intermediary hires and pays the employee and is responsible for ensuring compliance with the corresponding employer obligations, while the original company pays the intermediary a fee for this service as well as providing the salary to pay the individual.
- 4.20 While some respondents felt these intermediaries provide a useful service, others cautioned that risks would remain with the ultimate engager. Several highlighted that while an employer might transfer its payroll responsibilities to an intermediary, a permanent establishment can still arise through the relationship between the company and the employee in respect of the work the employee carries out on its behalf.

Potential opportunities for UK action

- 4.21 Most respondents called for HMRC to clarify how it would apply the concept of permanent establishment where employees work remotely in the UK. Several noted it can be difficult to reach a conclusive position, even when third party experts provide advice on specific circumstances.
- 4.22 Many felt HMRC should introduce a day test to help define 'permanence' for corporate tax purposes. As is the case for employer payroll obligations, this would exclude cases where employees work remotely in the UK for shorter periods of time and help reduce administrative burdens. It would also help employers and HMRC focus resources on higher-risk cases. For example, as discussed above, HMRC could clarify it does not consider those who choose to spend less than, say, 60 working days a year in the UK acting for an overseas employer to create a permanent establishment. Several respondents recognised this could give rise to a loss of tax and suggested mitigating this

risk by requiring employers be based in specific places (a 'safe list' of jurisdictions).

- 4.23 Others encouraged HMRC to clarify when individuals choosing to work from their home office in the UK for an overseas employer would create a permanent establishment here. The OECD's Commentary says a home office may contribute to a permanent establishment where the company requires the employee to work from home and where the home office is at the disposal of the company.⁹ However, this is often not the case where an employee chooses to work from their home office. In addition, the employer does not generally pay the expenses of the home office (including rent and utility bills).
- 4.24 Several respondents noted some tax authorities have published rulings applying the permanent establishment tests to individuals choosing to work remotely for an overseas employer from their home office in their jurisdiction. This is to help illustrate how, in their view, specific fact patterns would not contribute to a permanent establishment for the employer.¹⁰
- 4.25 Many called for HMRC to clarify how it would apply tests of permanent establishment to other circumstances. These included:
- whether and when HMRC considers temporary accommodation (such as a hotel or the home of family members or a friend being used for remote work) to be at the disposal of an employer and so create a fixed place of business for permanent establishment purposes
 - which functions HMRC considers to be preparatory and auxiliary, potentially including any work from temporary accommodation, any internal or group-related services (such as human resources or general finance functions) and any decisions taken by relatively junior staff
 - when several employees choose to work remotely in the UK within a tax year, potentially simultaneously or on different dates, if no revenue or customers are generated as a result of an employee's work in a jurisdiction
 - how a UK resident contractor could create a permanent establishment for their overseas clients, especially the circumstances in which a contractor may be considered to be 'carrying on' the business of their client
 - if an overseas employee is temporarily away from work, for example on parental leave, and a UK resident provides temporary cover
- 4.26 Many respondents called for shifts from subjective tests, which depend on the facts of individual cases, to objective tests that can be more easily automated, to help reduce administrative burdens. Several businesses and advisers suggested HMRC could provide decision-based guidance that businesses could apply to specific fact patterns, drawing on the CEST model

⁹ The OECD Commentary illustrates how these tests may apply in practice, saying that:

- the company may require an employee to work from home by not providing office space;
- the home office may be at the disposal of the company if it owns, rents or has other access rights to the home office.

¹⁰ For examples, see: EU – Remote Working and Corporate Taxation - KPMG Global (home.kpmg)

for employment status, to help them make a decision and record their reasoning.¹¹

Managing potential permanent establishments and the Diverted Profits Tax

- 4.27 Several advisers noted avoiding a permanent establishment can trigger the Diverted Profits Tax.¹² These respondents questioned how HMRC would apply this test to employers' policies designed to ensure employees working remotely in the UK do not create a permanent establishment in the UK and recommended that HMRC issue guidance.

Calculating corporate tax due as a result of cross-border collaboration

- 4.28 Several multinational companies outlined how their teams are increasingly working across borders, especially to support each other to deliver short-term projects or provide cover for colleagues on parental leave. For example, a team leader based in a multinational's UK headquarters may work with colleagues employed through a German branch or subsidiary.
- 4.29 In these circumstances, the German office has transferred a service to the UK headquarters and some of the multinational's profits should be taxed by Germany as a result. Transfer pricing is used to determine how the profits should be allocated to Germany, using the 'arm's length principle' that transactions should be priced as though they are transactions between unrelated parties.
- 4.30 The OECD provides five main methods the employer can use to calculate the profits attributable to each individual employee.¹³ The multinational must choose the most appropriate method to calculate the profit attributing to a particular case and maintain records justifying this decision.
- 4.31 Respondents felt this was disproportionately costly and complex, especially where relatively little tax may be due. Some noted that, in the example above, the UK headquarters would generally reimburse the German company the costs of the employee, plus an appropriate mark-up to reflect the value they provided and felt this should be a proportionate approach.
- 4.32 However, these companies are currently obliged to demonstrate each case on its merits and justify their decision to apply this approach. They felt this administrative burden is disproportionate considering the tax is generally negligible. Several highlighted their companies could establish several teams working across several borders, requiring them to establish and potentially justify the correct transfer price for many small individuals around the world.
- 4.33 Several respondents have also highlighted they are considering whether it may be more appropriate to allow employees to work across borders within

¹¹ Check employment status for tax - GOV.UK (www.gov.uk)

¹² INTM489500 - Diverted Profits Tax: contents - HMRC internal manual - GOV.UK (www.gov.uk)

¹³ These are the comparable uncontrolled method (CUP), the resale price method, the cost-plus method, the transactional profit split method and the transactional net margin method. HMRC's International Manual provides further information, [here](#).

their existing structure, establish new companies specific to employ staff for cross-border work or create a permanent establishment.

Potential opportunities for UK action

- 4.34 Respondents called on HMRC to consider whether the cost of reimbursing a UK employer, with an appropriate mark-up for services provided to overseas companies, could provide an appropriate default method for establishing the transfer price in these circumstances. They felt this would minimise burdens while dovetailing with their approach.
- 4.35 If HMRC was content this approach could be used by default in principle to help establish any UK corporate tax due, they proposed HMRC consider providing:
- further clarity by establishing and publishing a potential range of mark-ups to reflect the value different types of employees would provide;
 - a safe harbour to reduce the risk companies bear where they use this default method, provided they use an appropriate mark-up. This could include agreeing that:
 - documentation justifying the decision to apply ‘the cost-plus’ approach is not necessary;
 - penalties will not be imposed in these circumstances; and
 - there is no need for an employer to consider if they have a permanent establishment in the UK.
- 4.36 Some noted that transfer pricing is an inherently complex and subjective part of tax law and suggested collaboration with HMRC to provide certainty around cross-border remote working could be a helpful step toward providing certainty in other areas.

Determining corporate residency

- 4.37 As outlined above, corporate tax is chargeable on the worldwide profits of any company that is resident in the UK. A company is treated as resident in the UK if it is centrally managed and controlled here, or if it is incorporated here and not resident elsewhere under a Double Taxation Treaty. This can mean a company can transfer its tax residence to the UK if it allows important decisions to be taken here, triggering UK corporate tax on its worldwide profits. Broadly, this is true in many other territories as well, with UK companies potentially becoming resident elsewhere.
- 4.38 HMRC notes the place of directors’ meetings can be a significant factor in deciding where control and management is exercised.¹⁴ This risk of wholesale moving tax residence is relatively low for a business with multiple key decision makers, but can be higher for smaller companies, including start-ups, where control and management is concentrated in a smaller number of directors.

¹⁴ See, for example, HMRC’s Internal Manual INTM120180

- 4.39 Several respondents cautioned this may deter some employers from hiring UK residents as senior decision-makers. Some may not allow those individuals to make key decisions while in the UK working remotely or supporting a start-up here. Others may require these individuals to travel abroad to attend board meetings, increasing costs while undermining efforts to protect the environment.
- 4.40 In addition, this can mean UK businesses must carefully manage the control and management of overseas companies. This can include overseas companies set up to help test new markets or as part of a corporate restructure designed to facilitate investment from overseas investors.

UK and Ireland border

- 4.41 It has been and remains common for people who live in certain areas of either Northern Ireland or Ireland to be employed in the other territory. The ability to do this is maintained in the Common Travel Area.¹⁵
- 4.42 Prior to the pandemic, individuals were most likely to have lived in one territory but spend all their working time in the other, where their employer was based. Hybrid working has allowed these people to now spend some time working from their country of residence as well; meaning they spend time working in two territories.
- 4.43 Employers in this situation raised concerns that this would create a permanent establishment for the business in the country of the employee's residence.
- 4.44 Many also noted that this kind of hybrid working across borders can lead to more complex or unclear tax and social security issues for the employer and employee, including monitoring the number of workdays in each location and potentially meaning the employer would need to withhold tax and social security on behalf of both territories (discussed in Chapter 3).
- 4.45 Some businesses reported needing to adopt different employment terms for cross-border workers which restricted their ability to work in a hybrid way.
- 4.46 Businesses affected by this hoped that the UK government could discuss these issues with Ireland to see if there is a way to simplify processes for companies and individuals in these circumstances.

Partnerships

- 4.47 Several respondents highlighted many of the issues relating to the taxable presence of companies apply to partnerships. Around 7% of UK businesses operate as partnerships, while around 75% operate as companies.¹⁶
- 4.48 However, the administrative burdens created by cross border working can be more burdensome for partnerships than businesses. In some cases, the partnership and each partner would need to file tax returns in the overseas location, while a company would only have a single return filing. Double tax relief may present difficulties where the second country treats the

¹⁵ Common Travel Area: rights of UK and Irish citizens - GOV.UK (www.gov.uk)

¹⁶ UK business; activity, size and location - Office for National Statistics (ons.gov.uk)

partnership as a company, and it is consequently difficult for individual partners to obtain credit relief.

Summary of changes suggested by respondents

- across the board, moving from subjective case-by-case tests toward objective tests would help facilitate automation and reduce administrative costs, both for business and for HMRC
- international action is required to clarify how employees choosing to work remotely in a separate jurisdiction to their employer would impact on the employers' corporate tax
- recognising international action will take time, HMRC could clarify how the existing rules around permanent establishment should be applied to employees working remotely in the UK for an overseas employer. The range of circumstances include:
 - how many days an individual may work here before triggering a permanent establishment, for example if an employee works here temporarily while on holiday
 - if a home office or temporary accommodation such as a hotel room or the house of a friend, are considered a 'fixed place of business' for an employer
 - whether back office functions, including HR and finance, are considered 'preparatory and auxiliary'
- HMRC could indicate where it is appropriate to use the cost-plus transfer price as the default methodology for the calculation of corporate tax for intracompany services. Where employers reasonably apply this method to calculate the corporate tax due, HMRC could go further to help reduce administrative burdens and risk for taxpayers
- businesses affected by employees working across the UK/Ireland border hoped that the UK government could discuss the issues of permanent establishment as well as payroll withholding for Income Tax and social security with Ireland to see if there is a way to simplify processes for companies and individuals in these circumstances

Annex A

Policy and administrative changes suggested by respondents

Domestic

- A.1 On domestic hybrid working, respondents raised the following policy and administrative issues:
- the legislation on temporary workplace and the 24 months and 40% of working time tests are no longer appropriate and need review
 - the government should clarify by way of policy and guidance the treatment of business travel and commuting for the hybrid working employee. This could include the development of an online tool, along the lines of the Check Employment Status for Tax tool
 - The government should consider the introduction of a universal employee Income Tax and National Insurance exempt allowance to cover homeworking and commuting costs
 - the cycle to work scheme should be refocussed by removing the condition requiring mainly for qualifying journeys
 - the tax difference between the employer providing office equipment for homeworking and the employer reimbursing an employee purchase should be removed
 - the Income Tax and National Insurance exemption for employer provided charge points at an employee's home should be extended to cover reimbursement where the installation costs were incurred by the employee
 - the requirement that equipment provided for homeworking be returned to the employer should be removed
 - home broadband costs for homeworkers, whether employer provided or reimbursed, should be exempt from Income Tax and National Insurance contributions
 - the scope of PSAs should be expanded to enable excess working from home payments and travel costs unexpectedly found to be taxable to be included
 - consideration should be given to extending the workplace nursery exemption to enable hybrid workers to access childcare provision

International

- A.2 Respondents called for HM Treasury to implement a policy for employees coming to the UK for short-term visits so that time spent working in the UK under a set threshold, possibly 60 days or less spent working in the UK, would not trigger tax, PAYE, social security or a permanent establishment. This would reduce the administrative burden for employers and employees.
- A.3 Specifically on cross-border social security policy and administration, respondents asked for the following steps to be taken:
- HMRC should work with countries that have a social security agreement with the UK to obtain agreement that an individual can remain liable to pay contributions into their home social security scheme if they 'choose' to work in another country for a short period of time. HMRC could also adopt an influential position on this and make it clear that their position is that they believe a certificate could be issued under the A1/certificate of continuing liability regime for those choosing to work in another country for a short period of time. Where agreement has already been sought, such as with the EU, HMRC guidance should be updated to reflect this
 - HM Treasury should look to expand its network of social security agreements and to update existing ones to clarify the position for multi-state and hybrid workers
 - HMRC should look to resolve administration issues in relation to the processing errors for A1 applications that are being encountered and improve the time it takes for HMRC to process social security applications. HMRC should also provide a dedicated point of contact to deal with queries quickly
- A.4 Specifically on cross-border payroll compliance policy and administration, respondents asked for the following steps to be taken:
- HMRC should automate the process of issuing NT codes and if this is not possible, should improve the response time
 - HMRC should allow employers to operate section 690 and appendix 5 arrangements once an application has been made by the employer rather than having to wait for formal approval from HMRC
 - HMRC should create an online portal for employers to use to make applications for section 690 and appendix 5 applications
 - HMRC should extend the appendix 8 arrangements to allow for relaxation of PAYE up to a higher number of days than the current 60 days, potentially up to 90 days
 - HMRC should introduce an equivalent of an EP appendix 6 for employees who are not tax equalised and remain on foreign payroll to allow UK PAYE to be done on an estimated basis in-year
 - HMRC should simplify the rules further and allow a relaxation of PAYE rules for all individuals coming to the UK for days under a determined threshold, such as 60 days

A.5 Specifically on cross-border corporate tax and partnership policy and administration, respondents felt:

- across the board, moving from subjective case-by-case tests toward objective tests would help facilitate automation and reduce administrative costs, both for business and for HMRC
- international action is required to clarify how employees choosing to work remotely in a separate jurisdiction to their employer would impact on the employers' corporate tax
- recognising international action will take time, HMRC could clarify how the existing rules around permanent establishment should be applied to employees working remotely in the UK for an overseas employer. The range of circumstances include:
 - how many days an individual may work here before triggering a permanent establishment, for example if an employee works here temporarily while on holiday
 - if a home office or temporary accommodation such as a hotel room or the house of a friend, are considered a 'fixed place of business' for an employer
 - whether back office functions, including HR and finance, are considered 'preparatory and auxiliary'
- HMRC could indicate where it is appropriate to use the cost-plus transfer price as the default methodology for the calculation of corporate tax for intracompany services. Where employers reasonably apply this method to calculate the corporate tax due, HMRC could go further to help reduce administrative burdens and risk for taxpayers
- businesses affected by employees working across the UK/Ireland border hoped that the UK government could discuss the issues of permanent establishment as well as payroll withholding for Income Tax and social security with Ireland to see if there is a way to simplify processes for companies and individuals in these circumstances

Annex B

Guidance improvements suggested by respondents

Domestic

B.1 On domestic hybrid working, respondents suggested:

- the government should clarify by way of policy and guidance the treatment of business travel and commuting for the hybrid working employee. This could include the development of an online tool, along the lines of the Check Employment Status for Tax tool
- the guidance regarding homeworking arrangements falling within homeworking allowance exemption should be clarified, with examples of contracts and practices that would fall within and those outside

International

B.2 On cross-border working, respondents proposed HMRC should provide clear easily accessible guidance aimed at both employers and employees bringing together all the different areas that need to be considered when individuals are working remotely abroad for a UK employer either short-term or longer-term. It would also be useful to have guidance in relation to individuals working remotely in the UK for overseas employers

B.3 Specifically on cross-border social security guidance, respondents proposed HMRC should update guidance with clear examples in the following areas:

- HMRC should improve the guidance available in relation to the various social security rules so that all employers and employees can easily understand the rules and work out which rules apply in their scenario. Decision trees may help with this
- where individuals come to the UK from non-agreement countries, HMRC could make clear in guidance that they will not pursue UK social security where an individual chooses to work in the UK for a short period of time
- guidance needs updating with examples for multi-state workers from non-agreement countries to show in which scenarios UK social security is due
- where the overseas employer hires an employee from the UK to work remotely in the UK, HMRC guidance needs to be clearer on when employer and employee social security liability arises and how the overseas employer can register for and pay the social security due

- B.4 Specifically on cross-border payroll guidance, respondents asked for the following steps to be taken:
- HMRC should improve guidance and examples on how the various PAYE schemes can assist employers with the correct PAYE reporting for hybrid workers
 - HMRC should provide a clear and simple online tool for employers to use to help them assess whether their employee's presence in the UK is creating a formal 'taxable presence' for PAYE purposes and clear guidance on when a PAYE obligation arises and the entities whom HMRC would allow to fulfil the PAYE obligation
 - HMRC should improve guidance on when the direct collection of PAYE liabilities from employees of foreign employers with no place of business can be used including examples and clear details of the process to follow.

Annex C

Results of the OTS survey

- C.1 The OTS received 425 completed responses to its Survey (399 were from employees and 26 were from self-employed individuals).
- C.2 The sample size for self-employed individuals is too small to draw any meaningful conclusions so the results have not been included below.
- C.3 The employee Survey results support what the OTS has heard throughout the consultation period but only represent the views of those who took the time to respond, so reliance cannot be placed on it being a fully representative sample of the employee population.

Hybrid and distance working survey

Qu.1 Are you an employee or self-employed, a contractor, or similar?

93.9% of total respondents said that they were an employee. Only 6.1% answered that they were self-employed, a contractor or similar.

The following questions therefore all refer to employee responses.

Qu.2 Approximately how big is your employer?

Over half of respondents who answered the question replied that their employer employed over 1,000 people (56.4%), followed by 27.3% who replied that their employer employed between 101 and 1,000 people. 10% of respondents replied that their employer employed between 31 and 100 people, 3.5% between 11 and 30 people and 2.8% of respondents said that their employer employed up to 10 people.

Qu. 3 Does your employer allow you to work remotely?

60.9% of total respondents to this question replied that they were allowed to work remotely some of the time but had to work from their employer's premises some of the time, whereas 19.8% of respondents said they were allowed to work remotely but choose to work from their employer's premises some of the time. 17.3% of total respondents said that they always work remotely, 1.25% replied that they could do their job remotely but must be in their employer's premises all the time and 0.75% replied that their job can only be done at their employer's premises.

Qu.4 Thinking back to before the pandemic, would your answer to the previous question be different?

76.2% of total respondents said that things had become more flexible for them since the pandemic, whilst only 2.8% of respondents answered that things have become less flexible. 9.5% replied that nothing had changed and for the remaining

11.5% it was not applicable as they were not in their current job before the pandemic.

Qu.5 If you were looking for a new job, how important would flexibility on where you work be?

70.4% of total respondents to this question said that they would be less likely to take a job if they could not work some of the time remotely and 18.3% said they would be less likely to take a job if they could not work all of their time remotely. Only 4.5% of total respondents said that they did not mind whether they get to work remotely or not and 6.8% said they have not thought about changing jobs.

Qu.6 Are there things that might make you want to work at your employer's premises now or in the future? (Please tick all that apply)

Of the total responses received to this question, the most common reason given was 'to see the people I work with' (75.4%), followed by to attend training or on-the-job learning from colleagues (57.2%) and to meet clients, suppliers, or others in person (51.1%). A quarter of responses received indicated that saving on bills was also a consideration (25.3%). 18.7% said there was no reason for them to work at their employer's premises and 2.5% replied that their job had to be done at their employer's premises. Of the 3% of responses ticked for 'Other', reasons cited included to improve mental health, to access specific IT only available in the workplace and to aid concentration and focus.

Qu.7 Have you chosen to work remotely overseas, in a different country to your employer, since the pandemic?

53.5% of total respondents to this question replied, 'no it's not something I'm planning', followed by 16.4% who replied that they would like to but know that their employer would not let them. 8.4% replied that they would like to do so but would need to get approval from their employer, 7.7% said that they had chosen to work overseas and had agreed it with their employer, whilst a further 1.5% said that they had chosen to work overseas but had not mentioned it to their employer. 6.1% said 'I plan to do some work whilst I'm overseas (for example, whilst on holiday) and 6.4% said they would like to, but they don't have the right to work in their chosen location.

Qu.8 If you have or are planning to work overseas, for approximately how long?

Of the 60 respondents who answered in the previous question that they were working overseas or planned to, a third replied that they were looking to work overseas for up to two weeks (33.3%). 23.3% replied that they have or planned to work overseas for over a month and up to six months and 20% replied over two weeks and up to one month. 18.3% answered that they have or are planning to work overseas for over a year and 5% replied that they have or are planning to work overseas for over six month and up to a year.

Qu.9 Does your employer have a policy for allowing (or restricting) short-term overseas remote work?

Of the total employee respondents who answered this question, 40.3% replied yes, 30.1% replied no and 29.6% did not know.

Qu.10 Can you tell us about your employer's policy for allowing (or restricting) short-term overseas remote work? (Please tick all that apply)

Of the total number of responses to this question, the most common response (38%) was that respondents cannot work overseas at all, followed by 25.3% which said 'I can work for 11-30 days' and 24.1% of responses indicated that employees were only allowed to work in countries where they have a right to work. 15.2% responded that they are not allowed to do certain things, for example, sign contracts and make significant decisions.

25.3% of total responses to this question were that 'My employer's policy has other restrictions'.

Reasons given included:

- the requirements to obtain independent advice about how working in a specific jurisdiction would affect the employer's tax affairs
- bans on certain countries due to concerns over cyber security, need for secure wifi, data access and protection, and similar
- only allowed in exceptional circumstances such as illness of a close relative or bereavement
- limits set by client contracts, including physical and legal restrictions
- must be a requirement of the role
- certain senior marketing decision making roles and those that relate to intellectual property or research and development have more restrictive policies to manage concerns relating to permanent establishment challenges
- must use premises of employer in other countries; own a property in the country; have children or partner based in that country; company logo must be on building being used to work remotely
- requires business case, considered on a case-by-case basis, requires review by HR and Legal

Qu.11 Are you aware of the tax, social security and immigration consequences of working overseas?

29.3% of total respondents to this question responded 'yes and I understand the implications', whilst 27% responded 'yes, but I don't fully understand the implications yet'. 15.9% replied that they 'haven't thought about it', whilst 27.8% said it was 'not applicable' as they did not intend to work abroad.

Qu.12 Has your employer helped you to understand the tax, social security and immigration consequences of working overseas?

Of the total respondents to this question, 41.4% replied 'no', 31.6% replied 'no, it's not necessary as I do not plan to work overseas' and 27% replied 'yes' that their employer had helped them understand the consequences.

Annex D

Scoping document

Hybrid and distance working review scoping document

Background

During the height of the pandemic, technology enabled those in certain sectors and jobs to work remotely. For most people, this took the form of working from home instead of in an office or other workplace. For some, this involved working in a different country to that where they were based. Whilst many are now returning to a fixed workplace, others are not; or are moving to hybrid arrangements.

Emerging evidence indicates that this includes employees working overseas for employers based in the UK, and conversely those doing work in the UK for overseas employers. These arrangements are different from traditional expatriate assignments, where individuals moved to a different country to work for a set period. Hybrid arrangements may typically involve an individual working in two or more countries, often in residential accommodation, where the location is chosen by the employee and not by the employer.

This potentially creates a range of tax and social security issues for both the employer and the employees, such as tax residence, cross-border taxing rights, and simple understanding of their rights and obligations. This raises potential new tax and social security issues, and even existing issues would now become relevant to less experienced employers and employees for the first time.

Scope of the review

The review will:

- be a high-level evidential review of the extent to which hybrid and distance working is likely to increase, whether this trend involves more overseas working, and whether the changes in working practices give rise to any new problems or challenges for employer and employee compliance
- bring together relevant research in this area to present a view of the trends
- conduct research to understand how employers and their policies and procedures are changing
- consider employees normally based in the UK spending time working overseas and overseas employees spending time working in the UK. This includes considering at what the point the UK could or should consider taxing those individuals

- identify ways in which developments in remote working may make complying with the tax system more complicated, and potential considerations for government in policy and operational terms
- identify opportunities these changes may offer to reconsider existing features of the tax system to make things simpler both for those directly affected and more widely
- focus on income tax, National Insurance and corporate tax
- look at the perspectives of employers and employees
- consider the trends in self-employed hybrid workers

Specifically, the review will consider the tax impacts of:

- working across international borders, including multiple countries
- allocation of primary taxing rights, and need for double tax relief
- taxation and social security where there are more than two countries involved
- accommodation, travel, and other expenses including consideration of who will be paying for these and the relevant tax treatment. This will include considering whether permanent workplace rules are clear for these new working practices
- short term business visitor rules, overseas workday relief rules and PAYE withholding considerations such as modified payroll
- pension contributions and share schemes
- the creation of permanent establishments for corporate tax
- where relevant, the above as they apply to remote working within the UK

Further guidance for the review

In carrying out this work, the OTS will be mindful of:

- the likely implications of recommendations on the Exchequer, the tax gap and compliance with the tax system generally
- the role and contribution of taxation advisers
- the implications of these changes in different sectors of the economy and different regions or nations within the UK
- examples of international experience or best practice and the work of the OECD in this area
- visas and rights to work and employment law

Annex E

Organisations consulted

E.1 The OTS has listed below the wide range of organisations and academics who gave their time to provide evidence to this report. The OTS is grateful to these organisations and academics and to the large number of individuals who gave their time to provide evidence either in writing or through the online survey. Except for academics whose work has been cited in this report, individual names have not been published here.

Acclivity Advisors

Airbnb

AK Employment Tax Services Ltd

Allied Joint Force Command Brunssum

Anglo American

Army Families Federation

Asda

Association of Accounting Technicians

Association of Investment Companies

Association of Taxation Technicians

Aviva

Azets

Baker McKenzie

Blick Rothenberg

CBI

Charity Tax Group

Chartered Institute of Payroll Professionals

Chartered Institute of Taxation

Cook, Dave, Doctoral Researcher, Anthropology, University College London

Crowe UK

De la Feria, Professor Rita, Chair in Tax Law, Leeds University

Deloitte
DHL
Diageo
Employment and Payroll Group¹
Employment Lawyers Association
Employment Taxes Industry Forum
Employment Taxes Working Group
EY
Federation of Small Businesses
Hft
HM Revenue & Customs
HM Treasury
Innovation LLP
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants of Scotland
Institute of Directors
KPMG
Lloyds Banking Group
Low Incomes Tax Reform Group
Maffini, Dr Giorgia, Director and Special Advisor on Tax Policy and Transfer Pricing,
PwC
Make UK
Ministry of Defence
Naval Families Federation
Ocado
Office for National Statistics
Orrick, Herrington & Sutcliffe (UK) LLP
PwC
RAF Families Federation
Remote.com
Rennuy, Nicolas, Senior Lecturer in Law, University of York

¹ For further details, see: Employment and Payroll Group - GOV.UK (www.gov.uk)

RSM UK

techUK

The Association of Independent Professionals and the Self Employed

The Coalition for a Digital Economy

The Investment Association

The RES Forum

Travers Smith LLP

UK Finance

UK Petroleum Industry Association Ltd

Vialto Partners

Vodafone