HM Revenue & Customs

Tax and Administrative Treatment of Short Term Business Visitors from Overseas Branches

Consultation document
Publication date: 14 May 2018
Closing date for comments: 6 August 2018

Subject of this consultation:	This consultation is about the tax and administrative treatment of Short Term Business Visitors (STBV) from foreign permanent establishments ("overseas branches") of UK companies.
Scope of this consultation:	At Spring Statement 2018 the government announced it will consult on ways "to simplify the tax treatment of STBVs from the foreign branch of a UK company, to ensure the UK is an attractive location to headquarter a business." This consultation is not a commitment to making changes. Consultation responses will help to inform the government's future decision on whether to change the rules for STBVs from overseas branches of UK companies.
Who should read this:	The government would like to hear views and evidence from any stakeholder with an interest in the tax and administrative treatment. This includes the representatives of UK companies, STBVs and tax professionals.
Duration:	14 May 2018 to 6 August 2018.
Lead official:	Nicholas Chipperfield, HMRC
How to respond or enquire about this consultation:	By email to: incometax.structure@hmrc.gsi.gov.uk By post to: STBV Consultation HM Revenue and Customs Income Tax Policy Team Room 3E/14, 100 Parliament Street LONDON SW1A 2BQ
Additional ways to be involved:	HMRC and HM Treasury officials will welcome meetings with interested parties where they will materially add to an emailed or written submission. Requests for meetings should be sent to the email or postal address provided.
After the consultation:	A summary of responses will be published in Summer 2018.
Getting to this stage:	This consultation follows the government's announcement at Spring Statement 2018.
Previous engagement:	This is a stage 1 policy consultation.

Contents

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1. Introduction

1.1 At Spring Statement 2018 the government announced it would consult on ways to simplify the tax and administrative treatment of short term business visitors (STBV) from overseas branches of UK companies. This consultation will explore opportunities to reduce administrative cost and burden to help make the UK a more attractive place to headquarter and do business.

1.2 This consultation is inviting views and evidence on whether changes to the rules would be welcomed and are necessary. Consultation responses will help to inform the government's future decision on whether to change the rules for STBVs from overseas branches of UK companies.

Background

1.3 The employees of companies with offices across multiple countries are sometimes required to travel abroad on business. This can result in double taxation of the employee's earnings, with liabilities arising in the country they are visiting and in the country they are resident for tax purposes. In these circumstances, employment taxes can be withheld in two countries at the same time.

1.4 The UK has Double Taxation Agreements (DTA) with many countries to ensure an individual will not pay tax twice on the same income. The precise terms of the agreements vary, but they usually work by relieving the individual's income from tax in the one country or by providing a foreign tax credit in the other. An individual whose earnings have been double charged to tax will usually need to make a claim for Double Taxation Relief (DTR). DTR is available to individuals who are resident in a country with which the UK has a DTA.

1.5 In the UK an administrative easement is available to UK companies with STBVs arriving from their overseas subsidiaries. The UK company can apply to relax their obligation to operate Pay As You Earn (PAYE) on the relevant earnings of an individual who is:

- tax resident in a country with which the UK holds a DTA;
- coming to the UK to work for a UK company for less than 183 days in any twelve month period; and
- economically employed by a non-resident entity.

1.6 There is no equivalent easement for UK companies with STBVs arriving from an overseas branch. This means that a UK company with an STBV from an overseas branch will incur costs and administrative burdens that a UK company with an STBV arriving from an overseas subsidiary may not.

2. Policy Objectives

2.1 The government announced at Spring Statement 2018 that it will consult on ways to simplify the tax and administrative treatment of STBVs from overseas branches. In pursuit of this objective the government will consider:

- attractiveness of the UK;
- reducing administrative costs and burdens;
- cost to the UK Exchequer; and
- information and reporting.

Attractiveness of UK

2.2 The government wants to ensure the UK is, and remains, an attractive place to headquarter and do business. As part of this commitment, the government will seek opportunities to reduce administrative costs and burdens on UK businesses wherever possible.

2.3 This government supports UK companies operating with overseas branch structures and is consulting on ways to simplify the tax and administrative treatment of their STBVs.

Cost to UK Exchequer

2.4 Changes must provide the UK Exchequer with value for money. Proposals will be costed and evaluated to help inform the government's future decision.

Information and reporting

2.5 A commitment to reducing administrative costs and burdens on UK business cannot be at the expense of necessary information and reporting requirements.

2.6 Any information and reporting requirements tied to changes will be necessary to ensure that rules are applied correctly and that appropriate business records are maintained.

3. Short Term Business Visitors

What is a STBV?

3.1 STBVs are individuals who are not resident in the UK for tax purposes, but who make business trips to the UK. Whether an individual is UK resident usually depends on how many days they spend here in the tax year. The Statutory Residence Test (SRT) determines an individual's UK residence status[1].

3.2 When a STBV comes to the UK to work for a UK company, the company must operate PAYE on the individual's earnings in the normal way. The UK company is treated in the UK as the STBV's employer, even when the STBV continues to be paid by an overseas entity. The UK company is responsible for recording and reporting the STBV's earnings and making deductions of PAYE.

3.3 An STBV will normally be required to pay tax on their worldwide income in their country of tax residence (the "home country"). An individual's worldwide income will include the earnings that have been taxed in the UK whilst working here.

3.4 Individuals can usually make a claim to DTR if they are taxed on the same income in more than one country. DTR is available where the UK holds a DTA with the individual's home country.

Example 1 – STBV normal rules

Mr 'A' is non-UK resident for tax purposes. He is employed by 'Y', an overseas subsidiary of 'X'. X is a UK resident company. Mr A is required by his employer to travel to London and work in 'X' for a period of 45 calendar days.

Mr A continues to be employed and paid by Y. X is responsible for recording and reporting Mr A's UK earnings and making PAYE deductions.

Mr A is also required to pay tax on his worldwide income in his home country. His earnings whilst working in the UK are double charged to tax.

The UK and Mr A's home country hold a DTA. Mr A may make a claim to DTR.

STBV arrangements

3.5 HM Revenue and Customs (HMRC) permit UK companies with STBVs from overseas subsidiaries to enter into short term business visitor arrangements (STBVAs). These arrangements, also known as "EP appendix 4"[2], relax the requirement on the UK company to operate PAYE on the STBVs earnings. This eases the administrative costs and burdens associated with operating PAYE.

[1] Statutory Resident Test guidance: https://www.gov.uk/government/publications/rdr3-statutory-residence-test-srt
[2] Employment Income Manual – EP Appendix 4: https://www.gov.uk/hmrc-internal-manuals/paye-manual/paye82000

3.6 These arrangements also relieve the individual of the need to pay UK tax on their earnings or file a Self-Assessment (SA) tax return. STBVs under these arrangements are not taxed twice and will not need to make a claim to DTR.

3.7 HMRC may grant a STBVA where an STBV is:

(a) resident in a country with which the UK has a Double Taxation Agreement under which the Dependent Personal Services / Income From Employment Article (Article 15, or the equivalent) is likely to be competent;
(b) coming to work in the UK for a UK company or the UK branch of an overseas company; or is
(c) legally employed by a UK resident employer, but economically employed by a separate non-resident entity; and is
(d) expected to stay in the UK for 183 days or less in any twelve month period.

Example 2 – STBVA

Ms 'B' is non-UK resident for tax purposes. She is employed by 'W', an overseas subsidiary of 'Z'. Z is a UK resident company. Ms B is required by her employer to travel to London and work in Z for a period of 45 calendar days.

Ms B continues to be employed and paid by W and meets all conditions for a STBVA. Z applies to HMRC for an STBVA. HMRC accept the application and Z is not required to operate PAYE on Ms B's relevant earnings whilst working in the UK.

Ms B is not double charged to tax and will not need to make a claim for DTR.

3.8 The administrative easements provided in STBVAs are not available to all UK companies with STBVs. For example, STBVs resident in countries with which the UK does not have a DTA fail STBVA condition (a) and are ineligible.

3.9 STBVs from overseas branches are also ineligible for STBVAs. This is because the application of a STBVA is dependent upon Article 15 (or equivalent) of a DTA being applicable. Under Article 15(2) of the *OECD Model Tax Convention*[3], a STBV's earnings should be taxed exclusively in the individual's home country where:

(a) the recipient is present in the UK for a period or periods not exceeding in the aggregate 183 days within any 12 months; and
(b) the remuneration is paid by, or on behalf of, an employer who is not a resident in the UK; and
(c) the remuneration is not borne by a permanent establishment which the employer has in the UK.

[3] OECD Model Tax Convention: http://www.oecd.org/tax/treaties/1914467.pdf

3.10 HMRC considers that a STBV from the overseas branch of a UK company fails condition (b) of Article 15(2), because an overseas branch is not a separate legal entity, but is part of the UK company. The employee is remunerated by their legal employer, which for overseas branch staff is the UK resident company. Therefore, any claim to a STBVA in such circumstances will be denied.

3.11 This will also apply where the UK company has made an election for exemption for profits or losses of foreign permanent establishments under section 18A Corporation Tax Act 2009.

PAYE special arrangements for STBVs

3.12 At the Summer Budget 2015, the government introduced a PAYE special arrangement to simplify PAYE procedures for UK companies with STBVs ineligible for STBVAs. These arrangements are detailed in the *PAYE Manual* at PAYE81950[4] (PAYE operation: international employments: PAYE special arrangement for short term business visitors).

3.13 Under this arrangement, the UK company can operate an annual PAYE scheme for qualifying STBVs and does not have to report to HMRC in real time. These arrangements can only be used for STBVs with 30 or less UK workdays in the tax year.

3.14 HMRC does not require an STBV under a PAYE special arrangement to submit a SA return, unless they have a UK tax liability on other income.

Example 3 – PAYE special arrangement for STBVs

Mr 'C' is non-UK resident for tax purposes. He works in an overseas branch of 'W'. W is a UK resident company. Mr C is required to work in the London head office for a period of 25 UK workdays (33 calendar days).

W applies to HMRC for a PAYE special arrangement for STBVs. HMRC accept and W operates PAYE on an annual basis for Mr C and other qualifying STBVs.

Mr C is not required to file a SA tax return. Mr C is required to pay tax on his worldwide income in his home country. His earnings whilst working in the UK are double charged to tax.

The UK and Mr C's home country hold a DTA. Mr C may make a claim to DTR.

3.15 PAYE81950 has been replicated in Annex A for convenience.

Tax and administrative treatments of STBVs

3.16 There are different tax and administrative treatments for STBVs, depending on whether the individual can be included in a STBVA, a PAYE special arrangement or is

[4] PAYE81950 – PAYE special arrangement for STBVs: https://www.gov.uk/hmrc-internal-manuals/paye-manual/paye81950

treated and taxed under the normal rules. The key differences for UK companies and individuals are set out below:

	Normal rules	STBVA	PAYE special arrangement for STBVs
PAYE	• UK company must operate PAYE for STBVs in the normal way	• There is no requirement for UK company to operate PAYE for eligible STBVs	• UK company may operate PAYE on an annual basis for eligible STBVs
Self-Assessment	• Individual is required to file a SA	• Individual is not required to file a SA return for relevant earnings	• Individual is not required to file a SA return for relevant earnings
Double Taxation Relief	• Individuals will need to make a claim to DTR	• Individual will not need to make a claim to DTR	• Individuals will need to make a claim to DTR

National Insurance Contributions

3.17 A liability to National Insurance is determined separately from tax and is not in scope of this consultation. There are existing exceptions to National Insurance contributions (NICs) that may apply to individuals visiting the UK.

Q. 1 How many of your staff/your clients staff visited the UK from overseas branches in the 2016-17 tax year? For each visitor:

a) What was the length of the visit?
b) Which country did the individual visit from?

4. Proposals for Change

4.1 We are inviting the views of stakeholders on ways to simplify the tax and administrative treatment of STBVs from overseas branches. We are particularly interested to hear from the representatives of UK companies with STBVs from overseas branches.

4.2 The sections below set out two broad policy options aimed at realising improvements for UK companies:

1. Extending the PAYE special arrangement UK workday rule
2. A new tax exemption for STBVs from overseas branches.

Extending the PAYE special arrangement UK workday rule

4.3 As set out in Chapter 2 of this document, the PAYE special arrangement is an administrative easement that exists for STBVs ineligible for STBVAs (because they work in an overseas branch of a UK company or their home country does not have a DTA with the UK). The current arrangement has a strict limitation on the number of UK workdays allowed in the tax year.

4.4 The government is considering extending the UK workday rule from 30 to 60 UK workdays. This is expected to mean more STBVs will qualify for the PAYE special arrangement and a greater number of UK companies and individuals can benefit from the arrangement's administrative easements. The easements mean the:

- UK company can operate PAYE on an annual basis for STBVs covered by the arrangement and does not have to report in real time; and
- STBVs are not required to file a SA return for their relevant earnings.

4.5 The associated reductions in administrative process are expected to realise small cost savings for UK companies and affected individuals.

4.6 Under this proposal, we will intend that all other conditions and features of the PAYE special arrangement will continue unchanged. UK companies will still be required to deduct and pay tax to HMRC and individuals will need to make a claim to DTR where they are eligible to do so.

4.7 We expect this proposal will have a £nil cost for the UK Exchequer.

Q. 2 Do you agree that the PAYE special arrangement is an effective simplification of PAYE procedures for STBVs? Please explain why you think this is the case.

Q. 3 Did you/your client apply for, or operate, a PAYE special arrangement in the 2016-17 tax year? If so:

a) How many STBVs benefitted from the arrangement?
b) How many STBVs had to be excluded from the arrangement?

i. **What was the reason for exclusion?**

Q. 4 Do you think an extension of the 30 UK workday rule will make a worthwhile difference to you or your clients?

Q. 5 How many STBVs could have benefitted from the PAYE special arrangement in 2016-17 if the 30 UK workday rule had been:

a) **60 days or less?**
b) **90 days or less?**
c) **120 days or less?**

Q. 6 Do you experience any problems when applying for or operating PAYE special arrangements?

Q. 7 What changes, if any, would you make to improve PAYE special arrangements for you or your clients?

A new tax exemption for STBVS from overseas branches

4.8 The government is also considering an option to introduce a new and specific tax exemption for STBVs from overseas branches. The intention is to align the effective tax treatment of STBVs from overseas branches to those eligible for STBVAs.

4.9 A new tax exemption would:

- prevent double taxation of the individuals earnings; and
- remove the requirement on the UK company to operate PAYE

4.10 We expect this proposal will have a cost for the UK Exchequer

Q. 8 Do you agree that a new tax exemption will help align the effective tax treatments of STBVs from overseas branches to those eligible for STBVAs?

Q. 9 Do you think a new tax exemption will help reduce the administrative burdens on UK companies with STBVs from overseas branches?

Q. 10 Do you have any objections to the introduction of a new tax exemption for STBVs from overseas branches of UK companies?

<u>Conditions</u>

4.11 The tax exemption would need to be restricted to individuals and circumstances in a similar way to STBVAs. Conditions for the new tax exemption could require that the individual is:

(a) resident for tax purposes in a country with which the UK has a Double Taxation Agreement under which the Dependent Personal Services / Income From Employment Article (Article 15, or the equivalent) is likely to be competent;

(b) working in a foreign permanent establishment of a UK company and coming to work in the UK for the UK company for a short term or temporary basis; and

(c) expected to stay in the UK for 183 days or less in any twelve month period.

Reporting requirements

4.12 HMRC requires employee information to be reported in a Full Payment Submission (FPS) every time an employer pays an employee through PAYE. The tax exemption would remove the UK company's obligation to operate PAYE for eligible STBVs. This will mean HMRC would not receive employee information on qualifying STBVs in the usual way.

4.13 Alternative information and reporting requirements will need to be introduced to ensure HMRC receives necessary employee information. The requirements could broadly follow the reporting requirements on UK companies with STBVs on STBVAs.

4.14 The STBVA application and reporting requirements are detailed in the *PAYE Manual*. PAYE82000 (PAYE operation: international employments: EP Appendix 4: criteria for short term business visitors) has been replicated in Annex B for convenience.

Q. 11 Are there any other conditions that would be needed to ensure a new tax exemption is targeted and effective?

Q. 12 Are there any circumstances that should be excluded from a new tax exemption?

Q. 13 Are there any circumstances in which the outlined conditions could be abused or misused?

Q. 14 Should a new tax exemption require that a reasonable rate of tax is paid by the STBV in their country of residence?

Q. 15 Overall, which of the two options listed at 4.2 would deliver the government objectives most effectively? Please elaborate.

5. Questions

Q. 1 How many of your staff/your clients staff visited the UK from overseas branches in the 2016-17 tax year? For each visitor:

a) **What was the length of the visit?**
b) **Which country did the individual visit from?**

Q. 2 Do you agree that the PAYE special arrangement is an effective simplification of PAYE procedures for STBVs? Please explain why you think this is the case.

Q. 3 Did you/your client apply for, or operate, a PAYE special arrangement in the 2016-17 tax year? If so:

c) **How many STBVs benefitted from the arrangement?**
d) **How many STBVs had to be excluded from the arrangement?**
    i. **What was the reason for exclusion?**

Q. 4 Do you think an extension of the 30 UK workday rule will make a worthwhile difference to you or your clients?

Q. 5 How many STBVs could have benefitted from the PAYE special arrangement in 2016-17 if the 30 UK workday rule had been:

d) **60 days or less?**
e) **90 days or less?**
f) **120 days or less?**

Q. 6 Do you experience any problems when applying for or operating PAYE special arrangements?

Q. 7 What changes, if any, would you make to improve PAYE special arrangements for you or your clients?

Q. 8 Do you agree that a new tax exemption will help align the effective tax treatments of STBVs from overseas branches to those eligible for STBVAs?

Q. 9 Do you think a new tax exemption will help reduce the administrative burdens on UK companies with STBVs from overseas branches?

Q. 10 Do you have any objections to the introduction of a new tax exemption for STBVs from overseas branches of UK companies?

Q. 11 Are there any other conditions that would be needed to ensure a new tax exemption is targeted and effective?

Q. 12 Are there any circumstances that should be excluded from a new tax exemption?

Q. 13 Are there any circumstances in which the outlined conditions could be abused or misused?

Q. 14 Should a new tax exemption require that a reasonable rate of tax is paid by the STBV in their country of residence?

Q. 15 Overall, which of the two options listed at 4.2 would deliver the government objectives most effectively? Please elaborate.

6. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 1 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

How to respond

A summary of the questions in this consultation is included at chapter 5

Responses should be sent by 6 August 2018, by email to:

incometax.structure@hmrc.gsi.gov.uk

or by post to:

STBV Consultation
HM Revenue and Customs
Income Tax Policy Team
Room 3E/14, 100 Parliament Street
LONDON
SW1A 2BQ

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC's GOV.UK pages. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act, General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue & Customs.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation (GDPR).

Your Data

The data

We will process the following personal data:
Name / employer / job title / email address / postal address / phone number

Purpose

The purpose(s) for which we are processing your personal data is:
Public consultation on: *Tax and Administrative Treatment of Short Term Business Visitors from Overseas Branches*

Legal basis of processing

The legal basis for processing your personal data is that the process is necessary for the exercise of a function of a Government Department.

Recipients

Your personal data will be shared by us with HM Treasury

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your Rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.

- You have the right to request that any inaccuracies in your personal data are rectified without delay.

- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.

- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.

- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact Details

The data controller for your personal data is HM Revenue & Customs. The contact details for the data controller are:

HMRC
100 Parliament Street
Westminster
London
SW1A 2BQ

The contact details for the data controller’s Data Protection Officer (DPO) are:

DPOHM Revenue & Customs
9th Floor, 10 South Colonnade
Canary Wharf
London E14 4PU

Annex A: PAYE81950

Pay As You Earn (PAYE) special arrangement for Short Term Business Visitors (STBV)

This arrangement has been agreed under Regulation 141 of the Income Tax (PAYE) Regulations 2003. This regulation allows HMRC to make arrangements for the collection of tax in respect of PAYE income, if the normal operation of PAYE is considered 'impracticable'.

The arrangement is contractual agreement between the employer and HMRC.

Why has the agreement been made?

The agreement was introduced following an Office of Tax Simplification report that recommended that there should be more simplification of PAYE procedures for STBV.

Who does it cover?

UK based employers who operate internationally in many different countries. Many of these countries will be covered by a Double Taxation Treaty with the UK, but not all. These employers may also have branches overseas. It will often be normal business practice to require non-resident employees to come into the UK to work for them and a liability to UK PAYE will arise.

However, in the majority of cases these non-resident employees will only work in the UK for a short period of time usually no more than a few days or weeks. There can be a significant employer burden in monitoring employee movements and keeping all the records that are required so that PAYE can be reported in real time. If the employees are eligible for personal allowances, then in most cases there is ultimately no UK tax liability.

The existing rules require HMRC to ensure compliance and make repayment of tax that these non-resident employees have paid. This arrangement allows the employer to return the information at month 12. This means that employees with no overall liability do not need to have tax deducted and apply for repayments through Self Assessment.

Non-resident directors of the UK Company must not be included in this arrangement.

What does it cover?

Relevant payments of PAYE income and / or taxable benefits in kind provided to the STBV for the tax year that the agreement is signed and any subsequent tax years until it is either terminated or reviewed.

The UK employer will total all relevant payments made by both the UK employer and home country employer to the STBV for UK workdays in the year and pay the tax due to HMRC. This will take into account Personal Allowances where appropriate, based on the tax tables at month 12 of the relevant tax year. If the employee is covered by

employer tax equalisation arrangements the tax must be grossed up within the calculation.

If the UK employer provides a benefit in kind to a STBV, they are not required to prepare a Form P11D in respect of that benefit. However, they must include the cash equivalent of the benefit and any other benefit provided by the home country employer (calculated in accordance with relevant sections of the Income Tax (Earnings and Pensions Act 2003) within any month 12 calculations they are making for the PAYE income paid to these employees.

If the employer bears the tax on the provision of the benefit in kind, the amount of the tax must also be grossed up within the calculation.

The arrangement only applies to STBV whose UK workdays in the tax year total 30 days or less. This limit will not be relaxed and the employer will not be able to pay any tax via other methods, such as PAYE Settlement Agreement. The employer must include any 30 UK workdays plus STBV in their regular or EP Appendix 6 payroll.

The 30 UK workdays does not include those days on which the duties performed were incidental. Guidance on incidental duties is in the Employment Income Manual (EIM) at EIM40203.

Employers have to determine whether days of travel to or from the UK are to be counted as UK workdays. Employers may apply the rule of thumb at EIM77020. However, where the STBV undertakes UK work other than travel on the particular day, overseas workday should be replaced by half UK workday and half overseas workday.

Annual PAYE scheme

HMRC will set up an annual PAYE Scheme to account for the tax on the payments made and the cash equivalent of any benefits provided to these STBV.

The UK employer must report the relevant payments made and / or benefit in kind for the UK workdays provided to one or more STBV in that tax year on an RTI return. This must be delivered to HMRC by 19th April following the end of the tax year. The return will be made using an approved method of electronic communications.

Only one scheme is allowed per employer for the STBVs covered by this arrangement and pooling of these PAYE schemes is not allowed.

Payment of tax

Tax is due on the payments made and benefits provided by the 22nd April following the end of the tax year if payment will be made by an approved method of electronic communications. If other payment methods are used the due date is the 19th April.

Interest will be charged on any tax due which is not paid by the relevant due date.

Employers can make a payment on account if they wish to do so but must not file the FPS until month 12.

Grossing up

The employer must gross up the tax liability on the benefits in kind unless they recover the tax from the employee. A gross up of tax on PAYE income will only be required where the STBV is covered by employer tax equalisation arrangements.

Late filing penalties and late payment penalties

If the employer has not made a return by the 19th April following the end of the tax year in which the relevant payments were made or the benefits in kind were provided, they will be liable to a late filing penalty under paragraph 6C or 6D of Schedule 55 to the Finance Act 2009. This will be on the same basis as if the return for these STBV were an RTI return under regulation 67B of the PAYE Regulations.

If tax has not been paid over by the due date, the employer will be liable to a late payment penalty under paragraphs 6 to 8 of Schedule 56 to the Finance Act 2009, as though the payment due were a payment within item 2 in the Table in paragraph 1 of that Schedule.

Ending the agreement

Both the employer and HMRC can terminate the agreement.

The employer is entitled to cancel the arrangement by giving HMRC written notice of the cancellation. This will take effect from a date agreed by the parties or in the event that the parties cannot agree, the earlier of the end of a period of 3 months from the date of issue of the notice or the 6th April following the tax year in which the cancellation notice is given.

If the employer terminates the agreement the PAYE Regulations will apply to the relevant payments and form(s) P11D must be prepared in respect of benefits in kind provided to STBV by the UK employer from the date that the cancellation notice takes effect.

If there is
•a major change to legislation which has material effect on the arrangement;
•any change to a material fact which was a relevant factor in HMRC's decision to enter into the arrangement; or
•any operational difficulty which arises as a result of operating this arrangement

HMRC can review the arrangement and where it considers it appropriate it can cancel it by giving a cancellation notice in writing. Again, this will take effect from a date agreed or if not agreed, the earlier of the end of a period of 3 months from the date of issue or the 6th April following the tax year in which the cancellation notice is issued.

Again, following HMRC cancellation, PAYE Regulations will apply to the relevant payments and form(s) P11D must be prepared in respect of benefits in kind.

How do employers apply for an agreement?

The agreements will be authorised by the International Section within Specialist Personal Tax. The application (see copy of the arrangement below) can be downloaded and sent to the address on the agreement.

This is a copy of the arrangement that will be agreed by the employer and HMRC Arrangement in respect of Short Term Business Visitors (STBV)

Self Assessment

HMRC does not expect employees under this arrangement to submit SA returns unless they have another UK tax liablility.

National Insurance contributions

The arrangement is agreed under the authority of the PAYE Regulations and there is no equivalent legislation for National Insurance. Any STBV who has a Class 1 NICs liablility cannot be included and any Class 1 NICs must be paid within the relevant earnings period.

Any requests to review this decision should be referred to Specialist PT.

Annex B: PAYE82000

Conditions

STBVAs must only be applied where individuals are:

- Resident in a country with which the UK has a Double Taxation Agreement under which the Dependent Personal Services / Income from Employment Article (Article 15 or the equivalent) is likely to be competent;
- Coming to work in the UK for a UK company or the UK branch of an overseas company; or are
- Legally employed by a UK resident employer, but economically employed by a separate non-resident entity;
- Expected to stay in the UK for 183 days or less in any twelve month period.

Provided that it can be shown that for specifically named employees whose presence in the UK is 60 days or more, the UK Company or branch will not in fact ultimately bear the remuneration specified.

Where agreement is reached and in all other aspects the employee falls within the guidelines, then that part of the remuneration not ultimately borne by the UK Company or branch can fall within this arrangement. See also the three 'Notes: Definitions' below regarding employees receiving some remuneration that is ultimately borne by the Company or branch and some which is not.

These arrangements will not apply where the expense of the remuneration is passed on to another UK Company or branch and not recharged overseas.

For those whose presence in the UK is 59 days or less, it is only necessary to show that the employees were paid via a non-resident employer's payroll.

This arrangement must not be applied where individuals are employed by a UK resident employer including an overseas branch of a UK resident employer except where the individuals are sent abroad to work for a separate non-resident entity and return to perform duties in the UK solely for that non-resident employer. Such individuals are not covered by the 60 day rule.

Notes: Definitions

- Where used in this arrangement, the term remuneration has its widest possible meaning and includes salary, wages, benefits, allowances and expenses
- Where an employee otherwise falling within this arrangement receives remuneration borne by companies in different countries then

1. Remuneration not ultimately borne in the UK - falls within this agreement
2. Remuneration ultimately borne in the UK - does not fall within this agreement unless the presence in the UK is for 59 days or less and those days do not form part of a longer period (see below) or HMRC Office has

agreed a dispensation for it. It is therefore possible for an employee falling within this arrangement to also have a PAYE liability. If otherwise appropriate this PAYE liability can be met using modified PAYE procedures as described in EP Appendix 6, PAYE82002

- 'Ultimately borne' means the company finally bearing the cost after all recharging of any nature

Although employee remuneration ultimately borne by the UK Company (except in b above) is not normally covered by this particular arrangement, the OECD commentary provides examples of situations where the UK Company would not be regarded as the economic employer and treaty exemption may therefore apply, including where the employee is present for 60 days or more. Employers may request agreement from HMRC for specified circumstances where these arrangements may be applied and PAYE deductions need not be made. Failing such agreements, a separate claim for treaty relief should be made by the employee. This further relaxation is initially for a trial period and may be withdrawn.

Notes: Double Taxation Treaties

- Some Double Taxation Treaties (for example that with Italy) specify 183 days in a tax year. When looking at residents of those countries therefore this is the test to apply and not the 183 days in any twelve month period now more commonly used
- The Double Taxation Manual (DT1920 to DT1924 inclusive) is relevant to this arrangement and should be consulted initially in cases of doubt
- Full Payment Submissions do not need to be completed for EP Appendix 4 employees

Notes: Method of counting days spent in the UK

The method of counting days should follow the OECD commentary 'days of physical presence' method. Under this method, the general principle is that any day during any part of which, however brief, the person is present in the UK counts as a day of presence for the purposes or computing the 183 day period. As such

- Any part of a day, day of arrival, day of departure, and all other days spent in the UK such as Saturdays, Sundays, national holidays, holidays before during and after the period of work, short breaks (training, strikes, lock-out, delay in supplies), days of sickness (unless they prevent the individual from leaving and that individual would otherwise have qualified for the exemption) and death and sickness in the family should be included in the calculation
- Days spent in the UK in transit in the course of a trip between two non-UK points should be excluded from the computation
- Days during which the taxpayer is a resident of the UK and not treaty resident abroad should not be included in the calculation. The conditions in the treaty are for remuneration derived by a resident of a Contracting State

in respect of an employment exercised in the other Contracting State and does not apply to a person who is resident and works in the same State

For example, if a person is a resident of the UK but is hired by an employer in another State, moves to that State where they become resident and is subsequently sent to work for a short period in the UK by his employer, we would only include days in the UK after the taxpayer became a resident of the other State for the purposes of computing whether they had exceeded 183 days in the UK. Days in the UK when the taxpayer was a resident of the UK should not be included.

Similarly if a non-resident taxpayer is seconded to the UK for a short period by their employer and subsequently moves to and becomes a resident of the UK, days in the UK after they became a resident here should not be taken into account for the purposes of the calculation of the 183 days.

Notes: 60 day rule

Employees resident in a Double Taxation Agreement country who remain on the foreign payroll may be treated as employed by a foreign employer where they are present in the UK for a period of less than 60 days (counted as above) and that period does not form part of a more substantial period of presence in the UK. In such cases, therefore, treaty relief may apply if the other conditions for it are met. The rule also applies where the employee's remuneration costs are borne by the UK branch or permanent establishment of a foreign employer. The rule does not apply where the employee's presence in the tax year is for less than 60 days but it is part of an actual or anticipated longer period of 60 days or more, which need not be continuous and must take into account past visits and expected future return visits to the UK. Tax Bulletin 68 provides further information.

General principles of an EP Appendix 4 arrangement

1. It applies where there would otherwise under PAYE regulations be a requirement on the part of the host employer, UK branch or legal employer to make PAYE deductions
2. It only applies to employees who have not become UK resident for tax purposes or if UK resident, are treaty resident in the treaty partner country
3. In all cases involving short-term assignment of employees to the UK, the employer will put in place some form of internal reporting system to keep as accurate as possible a record of employees visiting the UK on business. It is expected that this system will have the following minimum requirement
    *Employees will periodically report days spent in the UK on business to the central point controlling this arrangement
    *Employees should not spend more than 30 days intermittently in the UK in any 12 month period without reporting to that central point
4. All records that are kept under this arrangement are within Regulation 97 IT (Pay As You Earn) Regulations 2003 and so must be retained for the time limits that apply and produced for inspection
5. Where liability is subsequently found to arise on payments of PAYE income made to an employee, the employer will be expected to pay the tax that ought to have been deducted from or otherwise paid in respect of each

payment. Late payment of PAYE tax will attract interest in the usual way. Late filing and late payment penalties will not apply where HMRC accepts that the employer backdated the PAYE and filed the FPS as soon as could be reasonably expected following a change in circumstances preventing an employee from being included in this arrangement

6. Should it become apparent that PAYE is not being applied in the case of employees who do not satisfy the relevant criteria, HMRC reserves the right to insist that PAYE be operated strictly for all employees from day 1
7. Any employee who cannot fulfil the conditions set out below should have PAYE operated from day 1
8. The treatment for NICs purposes of employees coming to the UK is covered in the CWG2 Employer Further Guide to PAYE and NICs

The time limits given in EP Appendix 4 are administrative only and are over-ridden by any legislative time limits. For example if a taxpayer needs to complete a Self Assessment return then the normal rules relating to Self Assessment apply.

Visitors to the UK covered by the 60 day rule for 1 – 30 days

No requirements for either employer or employee to fulfil other than where the period is part of a longer period of 60 days or more.

Visitors to the UK covered by the 60 day rule for 31 – 59 days

For an employee who spends no more than 59 days in the UK during the tax year, PAYE can be disregarded provided it is confirmed that:

1. There is no formal contract of employment with the UK employer
2. The 59 days do not form part of a more substantial period. (See DT1922 and above regarding the 60 day rule.)

All visitors to the UK note covered by the 60 day rule for 1 – 90 days and other visitors to the UK for 60 – 90 days

For an employee in the UK for not more than 90 days in the tax year, PAYE can be disregarded provided that the employer supplies the information below by 31 May following the end of the tax year:

- Full name of employee
- Last known UK and overseas addresses of employee
- Nature of duties undertaken
- Date commenced
- Date ceased
- To which country a tax return covering worldwide income is submitted

And confirms that the UK Company does not:

* Ultimately bear the cost of the employee's remuneration

* Function as the employee's employer during the UK assignment. (See DT1922 for further information)

Visitors to the UK 91 – 150 days

For an employee in the UK for a period of 91 days but not exceeding 150 days in the tax year PAYE can be disregarded provided that:

1. All of the information requested for visitors up to 90 days is provided and in addition
2. In the case of non-US citizens and Green Card holders, the employee provides a statement from the overseas Revenue authority confirming residence in the other state for tax purposes throughout the period in the UK. This statement should be passed to the HMRC Office by 31 May following the end of the relevant overseas tax year. This arrangement is only provisional until the relevant certificate is received.

In the case of US citizens and Green Card holders it will only be necessary for the employee to provide evidence of continuing residence in the US. (See DT19861A for further information.)

Visitors to the UK 151 – 183 days

Applications will be made on a named individual basis for authority to include the employee in this arrangement. The application will be made as soon as it can reasonably be anticipated that the employee will be present in the UK for more than 150 days. The application will include

1. All of the information requested for visitors up to 90 days and confirmation that the statement from the overseas Revenue authority will follow by the relevant 31 May
2. A statement by the employee giving reasons why he/she considers himself/herself to be treaty resident in the treaty partner country by reference to the appropriate article in the Double Taxation Treaty

Helpsheet HS302 provides more information about dual residence generally and the tests to be applied to determine the country of tax residence.

HMRC will consider the circumstances and will:

1. Notify the employer that the individual can be included in the Appendix 4 arrangement, or
2. Authorise code NT and issue a Self Assessment tax return, or
3. Confirm that PAYE should be applied and issue a Self Assessment tax return