



HM Revenue
& Customs

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

Summary of Responses

29 October 2018

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1. Introduction

- 1.1. At Budget 2018, the Chancellor of the Exchequer announced improvements to the Pay As You Earn (PAYE) special arrangement for short term business visitors (STBVs). This announcement followed a consultation to consider ways to improve the tax and administrative treatment of STBVs from the overseas branches of UK companies.
- 1.2. The consultation set out to explore opportunities for reducing administrative costs and burdens to help make the UK a more attractive place to headquarter and do business, whilst considering whether those opportunities would provide the UK Exchequer with value for money.

Background

- 1.3. Employees of multinational companies are sometimes required to make short-term business trips between offices in different countries. This can result in the double taxation of the individual's earnings, with liabilities arising in both the country they are visiting and the country they are resident for tax purposes. Employment taxes may be withheld in both countries. In the UK tax is withheld under PAYE.
- 1.4. The UK's network of double taxation treaties generally prevents double taxation. However, under the standard Organisation for Economic Co-operation and Development (OECD) Model Tax Convention, which is used as a global standard for double taxation treaties, there are different tax outcomes and reporting requirements for STBVs from subsidiaries and branches.
- 1.5. For STBVs arriving from overseas subsidiaries, the UK provides an administrative easement called the Short Term Business Visitor Arrangement (STBVA). Providing the STBV is arriving from a country with which the UK has a double taxation agreement (DTA), the UK company can apply to HM Revenue and Customs (HMRC) for a STBVA. Under this arrangement, there is no requirement for the UK company to operate PAYE and the individual is not required to file a Self Assessment (SA) return to report their employment income. They are taxed on their employment income in their home country.
- 1.6. However, under HMRC's interpretation of the OECD Model Tax Convention, STBVs arriving in the UK from the overseas branches of UK companies are not eligible for a STBVA, because the branch is not considered a separate legal entity of the UK employer. To ease burdens, the government introduced a PAYE special arrangement in 2015 for STBVs with 30 or fewer workdays in the UK in the tax year. Under the arrangement, the UK company can operate an annual PAYE scheme and does not have to report payments to HMRC in real time. Again, the individual is not required to file a SA return.
- 1.7. Where the PAYE special arrangement is not available because the STBV has spent more than 30 workdays in the UK, the employer must operate PAYE throughout the tax year and the individual is required to file a SA return.

1.8. Recognising that the administrative burdens around the tax treatment of STBVs has been an issue for UK companies, this consultation invited views on ways to improve the tax and administrative treatment of STBVs arriving from the overseas branches of UK companies. It proposed two broad policy options for comment:

- Extending the PAYE special arrangement 30 UK workday rule
- A new tax exemption for STBVs from overseas branches

Overview of consultation responses

1.9. HMRC received 34 written responses from:

- 19 UK companies
- 8 professional service providers
- 7 representative bodies

1.10. HMRC and HM Treasury officials also met with 17 representatives from a range of stakeholders.

2. Responses

Short term business visits from overseas branches

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?**

- 2.1. The number of STBVs arriving from overseas branches varied considerably depending on the nature and size of the respondent's business, with a number of respondents receiving fewer than 5 branch STBVs in the year and one receiving over a thousand. Most advisers reported that a minority of their clients deal with STBVs from branches.
- 2.2. The STBVs of most respondents arrived from European Economic Area countries. However, some respondents with a regional focus had a large number of STBVs from other areas, including the Middle East (Kingdom of Saudi Arabia, United Arab Emirates) and Asia (Singapore, India, Hong Kong). Most visits were reported to last a few days, and over 90% were reported to be 30 days or fewer.
- 2.3. Respondents said that tracking the movements of STBVs and gathering details about their remuneration for tax purposes is administratively complex and costly. It involves gathering data from multiple sources worldwide, setting up specialist administrative systems and teams, and applying complex tax rules. Many engage professional advisers.
- 2.4. Many respondents thought that the administrative burden and cost to business is disproportionate compared to the amount of tax collected by the UK Exchequer. This is particularly evident when there is ultimately no tax due to the UK Exchequer because the STBV works in the UK for a short period and is entitled to a Personal Allowance (PA) that exceeds what they are paid. One respondent claimed that, of the STBVs arriving from foreign branches who were entitled to a PA, only about 2% of them had a residual UK tax liability.
- 2.5. A significant minority of respondents claimed that the existing tax treatment of STBVs made the UK a less attractive place to headquarter or do business, or that improving the treatment would increase its attractiveness.

Government Response

- 2.6. The global economy is increasingly connected, with workforces becoming more and more globally mobile. The government is committed to taking opportunities to make the UK an attractive place to do business. That is why the government is seeking to reduce administrative burdens and costs for all UK businesses, including those with a globally mobile workforce.
- 2.7. The government also recognises that branch structures are used for key commercial and regulatory reasons by a number of key business sectors. Applying tax rules accurately to STBVs in these structures is proving burdensome for some employers. These burdens should not play a role in decisions about whether branches or subsidiaries are used, or whether non-resident visitors come to the UK to do business.
- 2.8. The government is grateful to respondents for improving its understanding about the challenges of meeting employer obligations around STBVs and what can be done to improve the administrative environment for UK businesses and their globally mobile employees.

The PAYE special arrangement and extending the UK workday rule

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?

- 2.9. The majority of respondents agreed that reporting annually under the PAYE special arrangement is a helpful simplification to operating PAYE for STBVs from branches, although the degree to which it is thought to ease burdens varied, with a number saying that the scope of the simplification is limited. Most of the respondents had entered into PAYE special arrangements.
- 2.10. One professional services provider added “obtaining...information to report on an annual basis rather than a monthly basis significantly improves timely and accurate compliance”, which suggests that the arrangement helps taxpayers to pay the right tax at the right time.
- 2.11. For the vast majority of respondents who use the PAYE special arrangement, a small proportion of employees, usually fewer than 10%, were excluded from the special arrangement because they were in the UK for more than 30 workdays. Only one respondent reported that the majority of their STBVs from branches were excluded because they were in the UK for more than 30 workdays.
- 2.12. Several respondents said that it is difficult to predict at the start of the tax year whether some STBVs will exceed 30 UK workdays. Where they are expected to, they are excluded from the special arrangement from the start and PAYE is operated in real time. One adviser suggested that businesses often restrict travel to the UK by STBVs approaching the 30 workday limit to ensure that it is not exceeded.
- 2.13. Over half of respondents believed that an extension of the 30 UK workday rule would make a worthwhile difference, as it would allow them to use the arrangement for a greater number of their STBVs and ease concerns when STBVs approach 30 workdays in the UK. A majority of those said that an extension to 60 UK workdays will be adequate. Some suggested extending the UK workday rule to 90 days, a few favoured 120.
- 2.14. Other respondents said that an extension of the UK workday rule will not make a worthwhile difference, as it will not address the underlying problems of the special arrangement, such as the cost and administrative burden of operating PAYE, the short reporting deadline and the underlying difference in tax treatment between STBVs from branches and subsidiaries. One respondent also said that changing the rules will cause more confusion for overseas branch staff, who are now familiar with the rules.
- 2.15. Two respondents said that the extension of the UK workday rule will increase the cost to UK employers. One respondent explained that “the UK tax paid is an absolute cost to the employer. Any extension to the [UK workday rule]...may increase that cost..., as the increased income levels are likely to increase the effective tax rate significantly.”
- 2.16. Several respondents have chosen not to use the PAYE special arrangement because they do not believe that it is an effective simplification. Instead, these respondents operate PAYE in real time, or use alternative arrangements such as modified PAYE arrangements. They have done this because the special

arrangement requires PAYE reports to be finalised and submitted by 19 April following the end of the tax year.

- 2.17. The majority of respondents agreed that this 19 April deadline does not allow adequate time to collect, collate and report the necessary information to accurately operate PAYE. This is because the employer must confirm UK workdays, obtain compensation data (including benefits in kind and deferred compensation), apportion compensation, run payroll calculations and submit PAYE returns to HMRC, all within 14 days of the end of the tax year. This requires analysis of data from a range of sources. Most respondents agreed that this creates a lot of pressure for businesses during what is already a busy period.
- 2.18. Over half of all respondents recommended an extension to the PAYE special arrangement end of year reporting deadline. About half of those who recommended a date suggested 31 May following the end of the tax year, which would align with STBVA reporting requirements. Others suggested aligning the reporting deadline to the P11D reporting deadline on 6 July or the PAYE Settlement Agreement (PSA) deadline on 19 October. One suggested a deadline between October and December.

Government Response

- 2.19. The PAYE special arrangement is a welcomed easement to the PAYE reporting obligations where the STBVA cannot be used. However, the government recognises that there is room for improvement.
- 2.20. The arrangement is not available when the STBV spends more than 30 days working in the UK. It is difficult for employers to keep track of STBV movements when they are approaching this limit, and in some cases the employer may even be restricting their travel to the UK. The government firmly believes that administrative burdens should not discourage UK travel, and will look to extend the workday rule from 30 days or less to 60 days or less.
- 2.21. The government also understands that accurate reporting under the existing deadline of 19 April is not always achievable. The deadline is putting an unnecessary pressure on businesses at an already busy time, and the government will look to extend both the reporting and payment deadlines for the PAYE special arrangement to 31 May following the end of the tax year. This date will align with the reporting deadline for the STBVA.
- 2.22. Extending this deadline will allow companies more time to accurately report and pay the tax due, with no cost to the Exchequer. The change will be made in time for the 2020-2021 tax year.

A new tax exemption for STBVs from overseas branches

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?

2.23. Whilst recognising that it would come at a cost to the Exchequer, all respondents said they would welcome a new tax exemption for STBVs from overseas branches, believing that it would significantly reduce the administrative burden on employers. No respondents objected to an exemption.

2.24. Many also commented that they believed a new tax exemption would align treatment, saying it would “put overseas branches on a level playing field with subsidiaries and support the government’s objective of reducing the administrative burden and costs as well as improve the attractiveness of the UK.”

2.25. Some respondents felt that the tax exemption would make the UK a more attractive place to do business. One professional services provider included a quote from one of their clients, explaining that a new tax exemption would mean the client “would encourage staff from our European branches to travel as freely as they currently do to our other European locations.”

2.26. Whilst most respondents were confident that a new tax exemption would be a significant step forward in creating parity between branches and subsidiaries, some advised caution. The tax treatment of STBVs from subsidiaries is determined with reference to the economic employer principle and the ‘60 day rule’. Two respondents said that careful consideration will need to be given to this when designing the tax exemption to ensure that overseas branch staff are not treated more generously than subsidiary equivalents.

- 2.27. A few were clear that a single set of rules should apply to all STBVs, whether working in an overseas branch or employed by an overseas subsidiary. This would better align the two tax treatments. Likewise, some respondents said that the conditions of the exemption should be similar to those for STBVAs in order to align treatment and processing.
- 2.28. A dozen respondents thought that conditions for the exemption should replicate those of the STBVA. Several thought there should be a limit for the number of days to which it applies, with one respondent suggesting limiting the tax exemption to STBVs visiting for less than 31, or 61, calendar days. Another noted that the tax exemption may need to refer to recharge of employment costs to the UK and to where the STBV is economically employed. Most respondents didn't think that a new tax exemption would need any other conditions or exclusions to ensure it is targeted and effective.
- 2.29. None of the respondents provided any circumstances where a new exemption would in reality be abused or misused, as structuring the business in a certain way to exploit tax advantages would not be commercially beneficial. One respondent added that business travel is driven by business need, not by avoidance or tax planning.
- 2.30. All respondents said that a requirement that a 'reasonable rate' of tax is paid is a bad idea. Reasons given for this suggested that it would be difficult to determine what a reasonable rate of tax is, particularly when considering tax bandings and marginal rates. It was also suggested that foreign tax rates are a matter for the other jurisdiction.

Government Response

- 2.31. The government recognises that the contrasting tax treatment of STBVs from branches and subsidiaries creates different administrative obligations for some employers. However, this position is determined by the UK's double taxation treaties, which follow the OECD Model Tax Convention replicated across the globe.
- 2.32. A unilateral tax exemption on the employment income of STBVs would remove the underlying difference in tax treatment, particularly if this applied to STBVs from both branches and subsidiaries in the same way.
- 2.33. It would also remove the obligation for UK companies to operate PAYE on the remuneration of STBVs from foreign branches. This would reduce administrative burdens and costs, and would prevent UK companies from restricting business travel to the UK. It would particularly benefit key business sectors, including financial services and asset management.
- 2.34. However, the UK generally has the primary taxing right under DTAs where the STBV comes from a foreign branch. A tax exemption would mean that the UK would be unilaterally giving away its taxing right and its tax revenue to foreign jurisdictions without reciprocation.

2.35. Whilst the tax exemption might make the UK a more attractive place to do business, there is little evidence to suggest that it would influence the decision of multinational businesses to headquarter in the UK.

2.36. The government must consider its wider commitments to reducing the deficit. Such a tax exemption would only benefit a relatively small number of UK businesses, but would cost many millions of pounds each year. The government thinks this does not represent good value for money. The government will continue to consider the points raised by respondents to the consultation and will keep the area under review.

Summary

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

2.37. All respondents said that the tax exemption is their preferred option because it will reduce administration for both the employer and the STBV, and it would better align the treatment of STBVs from branches and subsidiaries. Most said they would welcome both options as improvements. Most also said that improving the PAYE special arrangement would go a long way to reduce the time and costs spent on administering tax for STBVs.

2.38. Other suggestions included:

- Improving reporting around PAYE special arrangements, for example by reducing the amount of information needed and improving reporting systems
- Removing PAYE reporting requirements where the STBV has no liability to UK tax, for example because they are entitled to a PA
- A de minimis UK workday rule, under which no reporting will be required
- Excluding benefits in kind and deferred remuneration in calculating UK employment income
- A new STBV settlement agreement, similar to a PSA
- Removing current restrictions on non-UK resident directors
- Issuing certificates as proof of tax paid under the PAYE special arrangement, as some STBVs experience difficulties claiming a foreign tax credit in their jurisdictions of residency
- Improving HMRC guidance for employers around the tax treatment of their globally mobile employees, including on incidental duties, foreign permanent establishments, short-term vs temporary work places, grossing up PAYE income, application of the economic employer principle to senior staff and the '60 day rule' for STBVAs

Government Response

The government proposed two options in this consultation. The government is grateful to the respondents for their alternative recommendations and suggestions. These will be considered as part of the government's long term thinking in making the UK an easier place to do business for employers with a globally mobile workforce.

3. Next steps

Budget 2018: improvements to the PAYE special arrangement

- 3.1. On 29 October 2018, the government announced that two changes would be made to the PAYE special arrangement to better ease the administrative burden of operating PAYE on STBVs from foreign branches.
- 3.2. Firstly, the UK workday rule will be increased from 30 days or less to 60 days or less. This will open up the PAYE special arrangement to a greater number of STBVs from branches, and it will reduce the need for employers to monitor or restrict business travel when STBVs approach the 30 workday limit.
- 3.3. Secondly, the existing PAYE reporting and payment deadlines of 19 April and 22 April will be changed to 31 May to allow employers more time to gather relevant information about their STBVs to operate PAYE accurately. It was clear that these deadlines are too restrictive to businesses and are making it difficult for them to comply with their obligations.
- 3.4. Both changes will be introduced from 6 April 2020.

Annex A: List of stakeholders consulted

Association of Independent Expatriate Tax Practitioners (AIETP)
Aviva plc
BAE Systems plc
BDO UK LLP
BlackRock
Blick Rothenberg
Catlin Insurance Company (UK) Ltd
Centrica plc
Chartered Institute of Payroll Professionals (CIPP)
Chartered Institute of Taxation (CIOT)
Citibank UK
Clifford Chance LLP
Confederation of British Industry (CBI)
Credit Suisse
Deloitte LLP
Dentons UK and Middle East LLP
Ernst & Young (EY) Consortia
Ernst & Young (EY) LLP
Grant Thornton UK LLP
Honda Motor Europe Ltd
Institute of Chartered Accountants of England and Wales (ICAEW)
Institute of Chartered Accountants of Scotland (ICAS)
KPMG LLP
Lloyd's of London
Lloyds Banking Group plc
London Society of Chartered Accountants
Mazars LLP
MS Amlin plc
PKF Littlejohn LLP
PricewaterhouseCoopers LLP (PwC)
Prudential plc
RSM UK Audit LLP
Sojitz Europe plc
Standard Chartered plc
The Investment Association
Throgmorton UK Ltd
3i Group plc