

## PAYE guidance on Appendix 5: Net of foreign tax credit relief

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### The Appendix 5 arrangement

This arrangement only applies to employers who are required to deduct foreign tax in addition to UK PAYE from the salaries of employees who are sent to work abroad. Its aim is to give provisional relief for double taxation to employees who must pay both UK tax and foreign tax from the same payments of earnings. The arrangement is in place due to the taxing rights of the country concerned or otherwise two amounts of tax would be deducted from the employee's gross pay. The arrangement is **not** statutory; it was devised under HMRC's care and management powers to save employers, employees and HMRC time and work by dealing with the issue of double taxation through the payroll. However, whilst the employer operates the scheme through payroll, the claim to double taxation relief is the employee's.

Remember Appendix 5 was agreed prior to employers being required to submit returns and information to HMRC electronically. HMRC does not claim that Appendix 5 is a perfect fit for automated payroll systems and there are no plans to develop it given the relatively modest number of employers that use the scheme. It is up to employers to decide whether they wish to operate the scheme and ensure that they can comply with its requirements.

The CWG2 Employer Further Guide to PAYE and NICs, advises employers to contact HMRC if they wish to operate the scheme and HMRC has to agree that you can use it. The Employer Technical Team (EP Appendix 5 Application), Customer Operations National Insurance Contributions and Employer Office, Gilbridge House, High Street West, Sunderland, SR1 3HL, are responsible for authorising employers to operate these arrangements.

### Does Appendix 5 apply?

In some situations, such as where an employee is abroad for less than 6 months for example, no overseas tax may be due. This is because the employee will usually have personal protection under the terms of many Double Taxation Agreements (DTA).

However, DTA protection may not always be available on the basis that the employee works in an overseas country for less than 183 days. The relevant DTA and the other authority should be consulted, because the 183 day protection may not be available for example if the contractual employer has a permanent establishment in the overseas country or the DTA says so.

If these circumstances apply or if no DTA exists, overseas tax is due from day 1. The overseas country may also impose withholding at source obligations on the employer so that they have continuing UK PAYE / NIC responsibilities as well as those arising in the overseas country.

So it is in specific circumstances or where the 183 days period is exceeded **but the taxpayer remains UK resident**, that HMRC will sanction the relaxation of some PAYE requirements under Appendix 5.

### What tax does Appendix 5 apply to?

Appendix 5 only applies to UK PAYE that should be deducted from an employee's pay using their UK tax code and UK tax tables. In simple terms it is a matter of deducting the amount of foreign tax that the employee is liable to pay from their existing UK PAYE liability and there is specific information and examples below. All other PAYE and National Insurance requirements must still be carried out

by the employer. There can be no question of abandoning PAYE altogether for the duration of the overseas contract.

Appendix 5 should not be used for any other contract or situation without the prior agreement of HMRC and it is not available if the employee's overseas tax is paid by the employer, because if this happens, the employee would not be liable to pay two amounts of tax.

### **Does the employer have to operate Appendix 5?**

No, the employer does not have to operate Appendix 5 if they do not want to or if they only have a small number of employees who are liable to foreign tax.

Arrangements can be made to give the employee advance Double Taxation Relief through their PAYE code and the employee will have to apply to HMRC.

### **Initial employer responsibilities under Appendix 5**

Once HMRC has agreed that an employer can use the Appendix 5 arrangements they will write to the employer to

- Request the name and National Insurance number of each employee included in it
- Ask the employer to provide a regular update of any changes in the number of employees included. The frequency of these updates will be agreed between HMRC and the employer so that we have an up to date record of which employees are included.
- The employer's HMRC record will be updated to confirm that they are operating an Appendix 5 arrangement. Although the arrangement will be operated through the employer's payroll, the employee must also undertake to provide details of any foreign tax that has been refunded to them when requested by HMRC.

### **The employee's payroll record and Appendix 5**

- For employees on overseas work liable to foreign tax deductions, UK PAYE should be calculated in the normal way using the issued tax code and existing UK tax tables. The employee's tax liability is confirmed by what their code and the tax tables confirm it is. This is the tax the employee is liable to pay in law, it is just that some of it may be paid to an overseas tax authority
- Credit can only be given under Appendix 5 for foreign tax actually payable on and deducted from the employee's wages and paid to the overseas authority. If the foreign tax for the pay period is higher than the UK PAYE figure, then the employee will not pay any UK tax in that pay period.
- Credit is given on the UK payroll by reducing the amount of UK PAYE deducted from wages by the amount of foreign tax deducted from gross wages in the same UK tax year. The agreement does not prescribe how the employer's payroll will achieve this, as long as the correct amount of UK and foreign tax is calculated and any UK tax is paid over at the correct time.
- Foreign tax will normally be set off against UK PAYE in the same pay period before the employer pays any UK PAYE remaining due to the Accounts Office. However, credit can be given retrospectively in the same tax year where pay was double taxed prior to HMRC agreeing the arrangement

- The credit available under this agreement is restricted to the amount of UK PAYE deductible from the employees' wages. Any net UK PAYE tax remaining due after any offset is to be returned on the employer's RTI submissions [Data Item 68]. If the foreign tax due exceeds the UK PAYE figure, then in simple terms no UK tax will be due for that pay period.

### **Can Appendix 5 operate when the employee is on a cumulative or non-cumulative code?**

Yes, the arrangement can work in both these situations and employers should operate the code issued by HMRC.

Some examples of how Appendix 5 works for both cumulative and non-cumulative codes are provided on page 6 of this document.

### **What happens if a refund is due to the employee as a result of a coding change?**

Any UK PAYE refunds due during the tax year because of a change of code number must be restricted to the net UK PAYE deducted from the employee and actually paid to HMRC during the year and this will be the 'net' UK tax after any deduction. The employee can only be repaid UK tax that they actually paid to the UK Exchequer. The employee cannot be repaid overpaid foreign tax through the UK tax system, because that tax will not have been paid to the UK originally.

### **Does Appendix 5 affect National Insurance?**

No. National Insurance is calculated as normal on the employee's gross pay.

### **Does Appendix 5 affect the employee's pension contribution?**

No. Any employee pension contribution that is operated through payroll on a net pay arrangement will be deducted as normal prior to establishing the employee's taxable gross pay for PAYE purposes. It is this figure that the tax code and tax tables will apply to determine the UK PAYE figure in the usual way, prior to any offset for foreign tax being made.

### **Does Appendix 5 affect other deductions that are made from the employee's net pay?**

HMRC is not responsible for the policy or legislation that applies to these other deductions. Appendix 5 is only relevant to tax, so any deductions that are due from the employee's net pay will presumably be made as normal after any UK and foreign tax figures have been worked out.

If any of these deductions, such as an Attachment of Earnings Order, have to be calculated on a percentage of the tax figure that the employee is liable to pay for the pay period, then the total tax that is legally due for the pay period is the UK PAYE figure determined by the employee's tax code and the tax tables prior to any offset under Appendix 5. This is the total amount of tax that the employee is due to pay and should pay; it is just where Appendix 5 is operating only some of this total will be paid in the UK due to the upfront relief that Appendix 5 provides for.

### **Employee redeployed, no longer overseas**

The employer should notify HMRC of any employees who cease to work overseas but continue in the same employment in the UK or another location. Whilst you will have submitted details on your FPS, we will need to know if the employee is no longer liable to foreign tax [or if they have become remained overseas and become non-resident?]

If the employee's existing tax code is being operated on a cumulative basis then it should be operated on a Week1/Month 1 basis on the first payment after the employee is redeployed back to

the UK, so that HMRC can work out the correct code going forward and so that no refunds are issued in the meantime.

### **Employee leaves employment or dies**

If an employee who has been given credit under this system leaves the employment, or dies, the employer should submit the final full payment submission for the employee showing the date of leaving or death as appropriate and showing the code as if it had been operated on a Week 1 / Month 1 basis.

Again, this is so that HMRC can work out the correct code going forward but is usually the case that a cumulative code for these cases cannot normally be restored in-year. Repayments will also not usually be made until the end of the tax year when the employees overall pay and tax position can be confirmed.

### **What code is entered on the leaver's P45?**

Any P45 issued to a leaver should be completed as if the tax code has been operated on the Week 1 or Month 1 basis, showing the net UK tax deducted. The employee may not be under Appendix 5 at the new employer. So the Week1/Month 1 code should ensure that any new employer does not operate the code on a cumulative basis and repay tax based on the UK tax tables and which the employee never paid to the UK.

### **Should anything else be issued to the employee?**

A statement of the overseas tax deducted, for which credit has been given against UK PAYE, should also be issued to the departing employee and it should contain

- The Total Taxable Pay to date
- The Total Taxable Pay subject to UK Tax and foreign tax
- The Total Foreign Tax paid
- The amount of UK PAYE that has been offset by the foreign tax

### **Changes to the number of employees covered by Appendix 5**

Employers should keep HMRC up to date with any changes to these arrangements at intervals that will be agreed when authorisation is first given. If any employee leaves or dies HMRC will not necessarily require an update immediately. As long as the details above are issued to an employee who leaves, the employer can tell HMRC at the next agreed update or at the year end.

If the employer decides to send HMRC an update when the employee leaves or dies they can do so and it should contain the information they have provided to the employee. There is no set format for this information and HMRC does not produce a return. It should be sent to

HMRC  
Edinburgh Group  
EP Appendix 5 Team  
Spur A  
Grayfield House  
5 Bankhead Avenue  
Edinburgh  
EH11 4AE  
Version 1.0  
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### **At the end of the tax year**

The introduction of PAYE reporting in real time does not change the application of Appendix 5, where the employee is liable to pay foreign tax as well as UK PAYE.

Employers should have included any net UK tax deducted on their Full Payment Submissions throughout the year and any errors should have been corrected before the end of the tax year. If not corrected on the last FPS or by 19 April, the employer will have to submit an Earlier Year Update (EYU).

At the end of the tax year the employer must send HMRC in Edinburgh a statement showing

- The name and NINO of each employee included in the arrangement
- The amount of income subjected to both PAYE and foreign tax
- The total foreign tax deducted
- The amount of foreign tax deducted and remitted to the overseas authority which was set off against that employees UK PAYE deductions due (foreign tax credit relief)

The employer should also provide evidence that the foreign tax has been paid.

### **Foreign tax refunded by the overseas authority**

Exceptionally, the overseas authority may subsequently refund the foreign tax paid. If this happens the employee or employer should tell HMRC and the employee's liability for that tax year will be reviewed to remove the foreign tax credit relief given.

	Tax Month Number		Taxable Pay in this Period		Deductions from Net Pay	Tax Deducted or Refunded	Taxable Pay to Date		Total Tax to Date		Employee Contributions Payable this Period	Total of Employer's Contributions Payable in this pay period
<i>Data Item</i>	45	55	58		58B	68	41A		41B		86B	86A
<b>Non-Cumulative tax code</b>	<b>Month</b>	<b>Tax code</b>	<b>Pay for month</b>	<b>UK tax per tax tables</b>	<b>Foreign tax</b>	<b>UK tax deducted</b>	<b>YTD pay</b>	<b>UK tax due per tax tables</b>	<b>YTD UK tax</b>	<b>YTD foreign tax</b>	<b>EES</b>	<b>ERS</b>
	1	1000L wk1/mth1	£3,000	£433	£500	nil	£3,000		nil	£500	£280.44	£322.51
	2	1000L wk1/mth1	£3,000	£433	£200	£233	£6,000		£233	£700	£280.44	£322.51
	3	1000L wk1/mth1	£8,000	£2,334.91	£2,500	nil	£14,000		£233	£3,200	£429.34	£1,012.51
	4	1000L wk1/mth1	£3,000	£433	£200	£233	£17,000		£466	£3,400	£280.44	£322.51
<b>Cumulative tax code</b>	<b>Month</b>	<b>Tax code</b>	<b>Pay for month</b>	<b>UK tax per tax tables</b>	<b>Foreign tax</b>	<b>UK tax deducted</b>	<b>YTD pay</b>	<b>UK tax due per tax tables</b>	<b>YTD UK tax</b>	<b>YTD foreign tax</b>	<b>EES</b>	<b>ERS</b>
	1	1000L	£3,000		£500	nil	£3,000	£433.00	nil	£500	£280.44	£322.51
	2	1000L	£3,000		£200	£166.20	£6,000	£866.20	£166.20	£700	£280.44	£322.51
	3	1000L	£8,000		£2,500	-£166.20	£14,000	£3,005.55	nil	£3,200	£429.34	£1,012.51
	4	1000L	£3,000		£200	nil	£17,000	£3,340.86	nil	£3,400	£280.44	£322.51
<b>Mixture of Non-Cumulative &amp; Cumulative tax codes</b>	<b>Month</b>	<b>Tax code</b>	<b>Pay for month</b>	<b>UK tax per tax tables</b>	<b>Foreign tax</b>	<b>UK tax deducted</b>	<b>YTD pay</b>	<b>UK tax due per tax tables</b>	<b>YTD UK tax</b>	<b>YTD foreign tax</b>	<b>EES</b>	<b>ERS</b>
	1	1000Lwk1/mth1	£3,000	£433	£500	nil	£3,000		nil	£500	£280.44	£322.51
	2	1000L CUM	£3,000		£200	£166.20	£6,000	£866.20	£166.20	£700	£280.44	£322.51
	3	1000L CUM	£8,000		£2,500	-£166.20	£14,000	£3,005.55	nil	£3,200	£429.34	£1,012.51
	4	800Lwk1/mth1	£3,000	£466.40	£200	£266.40	£17,000		£266.40	£3,400	£280.44	£322.51