



SHORT TERM BUSINESS VISITORS FROM OVERSEAS BRANCHES

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ICAEW welcomes the opportunity to comment on the *Tax and Administrative Treatment of Short Term Business Visitors from Overseas Branches* published by HMRC on 14 May 2018.

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EXECUTIVE SUMMARY

1. We welcome HMRC's proposals to:
 - a) extend the PAYE special arrangement UK workday rule from 30 to 60 days, and
 - b) create a new tax exemption to align the income tax treatment for short term business visitors (STBVs) from overseas branches to those eligible for STBV agreements (STBVAs).
2. We also recommend extending the 14 days after the end of the tax year filing deadline for submission of year-end real time information reporting for the PAYE special arrangement, preferably to coincide with the PAYE settlement agreement deadline of 1 October with payment of tax on 19/22 October.
3. Harmonising the administrative and tax treatments for all STBVs would significantly ease compliance for international businesses and enable more accurate reporting, and would make the treatment of STBVs align more closely with our *Ten Tenets for a Better Tax System* (summarized in Appendix 1). In the interests of encouraging cross-border economic activity, we recommend that this package be introduced as soon as possible.

MAJOR COMMENTS

4. We welcome HMRC's proposals to simplify the tax and administrative treatment of STBVs from branches.
5. Presently, the work that employers have to undertake to account for tax on STBVs from overseas branches is extensive. In most cases the work is disproportionate to the amount of tax at stake as any personal tax liability is covered or much reduced by the personal allowance.
6. We therefore welcome both the proposed extension of the PAYE special arrangement UK workday rule from 30 to 60 days and the creation of a new tax exemption to prevent double taxation of STBVs' earnings and remove the requirement on the UK company to operate PAYE.
7. We also believe that the UK by taking forward these proposals will encourage certain other countries, which have in recent years adopted a harder line in this area, to reciprocate similarly. Thus, implementing both these proposals will give rise to wider, international benefits for multinational businesses.
8. We recommend that both measures be introduced as a matter of priority, i.e. from April 2019, and trust that any necessary legislation can be accommodated in Finance (No.3 Bill) 2017-19.
9. We also recommend extending the filing deadline for submission of year-end reporting for the PAYE special arrangement.
10. The current deadline allows only two weeks after the close of the fiscal year to analyse relevant travel data, gather necessary employee and compensation data, and prepare and submit the full payment submission (FPS) to HMRC. Particularly for large companies, where they may be reporting significant numbers of employees and obtaining data from (possibly multiple) overseas companies, a two-week timeframe is insufficient.
11. A relaxation of this reporting deadline as part of a package of simplification would further reduce compliance burdens and be welcomed by business, and, we believe, would not incur significant exchequer cost.
12. It would also make the treatment of STBVs comply more closely with our *Ten Tenets for a Better Tax System* by which we benchmark the tax system (summarized in Appendix 1), especially Tenets 1: Statutory, 3: Simple and 4: Easy to collect.

ANSWERS TO CONSULTATION QUESTIONS

Question 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?**

13. No comment.

Extending the PAYE special arrangements UK workday rule

Question 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.

14. The special arrangements are an effective simplification of the PAYE procedures. Having to use PAYE real time information (RTI) for STBVs is very burdensome as it is difficult to operate in practice. The 30 day limit is too short. If it becomes apparent that an employee will exceed the 30 day limit, the employer must account for tax using normal processes and re-compute PAYE in retrospect. As RTI requires reporting on or before the date of payment, the employer would, in cases like these, be non-compliant despite having taken reasonable steps. In respect of STBVs who exceed the 30 day limit, there is also a tax return filing requirement, which typically necessitates using an external adviser, which can make it costly and burdensome for business.
15. Where tax has to be paid for STBVs who exceed the 30 day time limit, this must be accounted for via PAYE RTI. Given the amount of data that has to be collected and analysed, the 19/22 April RTI deadlines for making RTI submissions and paying tax for these individuals are too short. It is necessary to obtain and fully analyse travel data (including stripping out incidental duties) which is not complete until 5 April, gather relevant compensation data including on benefits-in-kind and expenses (potentially from multiple countries all over the world which may have reporting systems different from the UK), prepare calculations of reportable income and make the submission to HMRC. It is difficult for businesses to operate these payrolls with confidence, even where they are doing their best to be compliant with the rules, particularly at a time of year when there is significant other administration to be dealing with, including closing down the prior year payroll, annual STBV reporting and the start of P11D preparations.

Question 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?**

16. No comment

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

17. Such an extension to 60 UK workdays would make a very worthwhile difference to UK businesses and be welcomed as a significant easement.

Question 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?

18. We do not have the data to answer this question.

Question 6: Do you experience any problems when applying for or operating PAYE special arrangements?

19. No comment.

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

20. Please see our answer to Question 4.

21. As noted in our answer to Question 2, having to report under RTI within 14 days of the year-end in respect of STBVs who do not meet the 30 day criterion is too short owing to the practical difficulties of collating and analysing the necessary data in time. We recommend extending the deadline for submission of year-end reporting for the PAYE special arrangements to coincide with submitting PSAs (on which the deadline for paying tax is 19/22 October) (falling which the P11D deadline). This would give time for businesses to collect all the necessary data and correctly analyse it for reporting to HMRC after run-of-the-mill payroll year-end obligations have been completed

A new tax exemption for STBVs from overseas branches

Question 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 STBVs?

22. Yes we do. Extending the tax exemption to those visiting from a branch of a UK company in a treaty country would address the current income tax imbalances in treatment between STBVs from branches and STBVs from other companies and reduce burdens on UK businesses.

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

23. Yes we do. Operation of payroll for STBVs is an administrative burden on business and impacts a significant number of stakeholders within the business, including for example Finance, Human Resources and Payroll.

24. Tracking international business visitors is a significant task. Employers must ensure that their processes are robust to avoid potential penalties for failure to operate PAYE appropriately. Where there are no branches in the company structure, there will be no requirement for a payroll. Where there are visitors from overseas branches, employers are currently required to operate a payroll and determine if that individual should be added to payroll as soon as they arrive in the UK or if they qualify for the annual PAYE special arrangement. This is not necessarily simple to work out.

25. Significant international coordination is required to obtain necessary information to operate the payroll, possibly including interaction with a number of different countries' payroll teams or third party providers in order to understand and calculate the correct amount of income to process through the payroll, potentially for multiple months across the year.

26. It is often necessary to engage a professional adviser to assist with reporting each year, as well as dealing with potential tax return filing requirements in both home and host countries in order to avoid double taxation on the employee. If the costs of UK tax must be grossed up,

this results in additional compliance and cost for the UK company in order to protect the employees from the impact of UK tax and remove any possible advantage or disadvantage of visiting from any particular country.

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

27. No. We support the proposal and favour its introduction as soon as possible.

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

28. We recommend that, in the interests of consistency and hence simplicity, the reporting requirements for STBVs from branches should be the same as for the existing class of STBVs.

Question 12: Are there any circumstances that should be excluded from a new tax exemption?

29. We are not aware of any circumstances which should be excluded from the proposed exemption.

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

30. We are not aware of any circumstances in which the outlined conditions could be abused or misused.

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

31. We consider that the exemption should not be reliant on a reasonable rate of tax being paid in the employee's home country. It would mean that employees from countries which have no or low rates of income tax would be excluded from the exemption. This would discriminate unfairly against companies with branches in those countries and unreasonably discourage employers from bringing relevant expertise to the UK from those countries.

32. Such a rule would introduce further burdens on businesses. For example, how would 'reasonable' be defined and what evidence would employers be obliged to obtain to arrive at a decision? In the UK, tax paid ranges from 0% where income is below the personal allowance to an official top rate of 45% (46% in Scotland) if the marginal rate imposed by the withdrawal of personal allowances at £100k is ignored. How would UK tax rates benchmark against 'reasonable'?

33. As noted in our answer to Question 11, in the interests of consistency and hence simplicity, employer obligations for STBVs from branches should be the same as for existing STBVs.

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

34. We support early implementation of both a tax exemption for STBVs from overseas branches and extending PAYE special arrangement UK workday rule to 60 days.

35. A new tax exemption for STBVs from overseas branches should be viewed as a priority.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).