

International Business Review

Working in the UK - expatriate tax matters

Coming to work in the UK can be a rewarding experience, both culturally and financially, for a foreign national. The tax and social security implications of an assignment are, however, important details that should be addressed prior to the commencement of the assignment.

For both the employee and the employer, there can be potentially expensive pitfalls if the UK tax aspects of the assignment are not considered. Thankfully, with some careful planning, there are opportunities to minimise UK tax where temporary assignments are concerned, and planning for longer term assignments can be equally rewarding. We set out below some of the key areas that need to be considered.

Accounting for PAYE

PAYE (pay as you earn) refers to the UK arrangements for income tax to be deducted at source by an employer from payments to employees.

An employee will be subject to PAYE if the individual works for a UK resident employer, or a UK establishment (branch) of a foreign employer, or even if salary is paid through a paying agent resident in the UK. Where the employee remains employed by an overseas employer but is seconded to a UK entity, the UK entity is regarded as a 'host employer' and is obliged to operate PAYE on the employee's salary regardless of where the salary is actually paid. Failure to deduct and account for PAYE can result in serious consequences for the defaulting employer with hefty interest and penalties that may be imposed by HM Revenue & Customs (HMRC).

Residence

Broadly speaking, an individual's residence position determines how employment income is taxed in the UK. When an individual comes to work in the UK, serious consideration should be given to the intentions reflected in visa applications, tenancy agreements, assignment terms and various other documentation indicating how long the individual intends to

remain in the UK, as much of the UK tax rules as applied to foreign nationals are governed by intentions. Generally speaking, there are three different scenarios that determine the UK tax liability of a foreign national and these are as follows:

Expected UK assignment of less than two years

If an assignee spends less than 183 days (any day present in the UK at midnight) in the UK in a tax year, the assignee is generally considered non-resident for that year. This means that their earnings are only taxable in the UK to the extent that these relate to the income attributable to the days spent working in the UK. Whether the assignee is paid in the UK or offshore, or whether amounts paid offshore are remitted to the UK is generally irrelevant.

However, if the individual spends 183 days or more in the UK during a tax year, the individual will be considered resident but not ordinarily resident. Again, this means that the assignee will only be taxable in the UK on days spent working in the UK, subject to certain conditions. Unlike a non-resident assignee, the earnings attributable to non-UK workdays will only escape UK tax if the relevant proportion is paid outside the UK and not remitted to the UK. For example, if an assignee's annual salary is £100,000 and the assignee spends 10% of his workdays in the year working outside the UK, provided £10,000 is paid offshore and remains offshore, this will escape UK tax.

This can provide a considerable tax saving for assignees, especially those that are paying tax at 50% (the UK's highest rate of tax for individuals). In addition, for assignments of up to two years duration the additional tax advantages of "detached" duty relief (see later paragraphs) may also be available.

Expected UK assignment of two to three years

The assignee will normally be regarded as resident but not ordinarily resident for the initial two to three year period. Earnings attributable to non-UK workdays may still be excluded from UK tax subject to the conditions as outlined in the above example. However, the advantages of "detached" duty relief may not be available for such assignments.

Expected UK assignment of three years or more

The assignee will normally be regarded as resident and ordinarily resident for the entire period of the UK assignment. This means that the individual is taxable in the UK on worldwide employment income and cannot exclude amounts from UK tax for non-UK workdays. If amounts of foreign tax have been paid on the earnings in a foreign country it may be possible to claim credit for such taxes up to the level of UK tax due on the same earnings. In rare cases, it is sometimes possible that dual contracts can be used so that the overseas employment is not taxable in the UK. However the rules are extremely strict in this area and the two employments must not be linked to each other in any way at all.

Domicile

Whereas residence determines how employment income is taxed in the UK, the taxation of personal income such as interest, dividends and capital gains is determined by an individual's domicile status. "Domicile" is distinguished from residence in that it does not necessarily refer to where one is physically located. Generally speaking, an individual is domiciled in the country that they consider to be their permanent home.

For non-UK domiciled individuals, personal income and gains arising outside the UK will only be liable to UK tax if remitted to the UK. The remittance basis rules are extremely complicated, so it is important that an assignee's affairs are structured correctly to keep such personal income offshore. Those who have been in the UK for seven out of the last nine tax years must pay an annual charge of £30,000 in order to maintain the benefit of the remittance basis.

Detached duty relief

Where the expected length of an assignment is less than 24 months, if certain conditions are satisfied, it is possible to exclude from UK tax employer provided travel, subsistence and accommodation which relate to the UK assignment. If the assignee personally funds the cost of any of these expenses a deduction against taxable income may be available. Again, this can provide substantial savings to the cost of an overseas assignment, provided affairs are structured in the correct manner.

Short term assignments

Where assignments are very short term, i.e. typically for less than six months, provided the assignee is not present in the UK for more than 183 days, it may be possible to exempt

earnings from UK tax by means of a double tax treaty. This will depend on the country from which the individual is seconded and whether a double tax agreement is in place with the UK. For this relief to apply, remuneration must be paid by (or on behalf of) an employer who is not resident in the UK and the remuneration must not be borne by a permanent establishment or fixed base which the employer has in the UK (i.e. an establishment in the UK that is chargeable to UK tax on its profits).

Where a short term assignee is exempt from UK tax under a double tax agreement, the UK company is not usually required to operate PAYE on the assignee's earnings, subject to certain conditions.

Social security (national insurance)

The UK has reciprocal social security agreements with several countries, including all EU countries and the United States. In these instances, seconded assignees can continue to contribute to social security costs in their home country and receive exemption from UK national insurance for both employee and employer contributions whilst still being entitled to the benefits that paying UK national insurance bring. To receive these exemptions a Form A1 (formerly E101) for EU countries or a certificate of coverage must be obtained from the home country. For countries where there is no reciprocal agreement there is a 52 week exemption that applies before national insurance contributions are due in the UK. Each case should be assessed individually as this is a complex area.

Tax equalisation

Tax equalisation is an arrangement common with multinational companies that may often assign employees around the world at short notice and for varying periods. The intention is to ensure that the individual has the same net take-home pay, wherever in the world the employee is working. This helps to alleviate the problem of host country tax rates and expensive living costs affecting whether an individual may be prepared to work there.

Under these arrangements any excessive UK taxes (reducing an employee's take-home pay below "normal" levels) are paid by the employer. The tax effect of such arrangements can become complicated and are beyond the scope of this review, however, we would be delighted to advise further on this area.

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