

## **JOINT EXPATRIATE FORUM ON TAX AND NICS: 23 JUNE 2011**

### **MEETING NOTE**

#### **1. Statutory residence test and non domicile taxation: consultation**

- 1.1 The Government had published two consultation documents on 17 June on the introduction of new statutory rules to define tax residence and on proposed reforms to the taxation of non domiciled individuals. HMT explained that the proposals in both consultation were intended to send a very clear message that non-domiciled individuals are welcome in the UK and that the Government wish to encourage them to come, work and invest here. However, the Government thinks it is right that non-domiciles who have been in the UK for a long time should make a greater contribution than the current £30,000 charge and should instead pay an increased charge of £50,000 to reflect their closer connection to the UK.
- 1.2 The consultation on non-domiciled taxation also proposed a new incentive to encourage non-doms to invest in UK businesses and a series of technical simplifications to the current rules. The Government would be willing to listen to proposals for other simplifications, provided they met the following conditions:
  - they delivered genuine and material benefits;
  - they had no significant cost to the Exchequer; and
  - they were straightforward to legislate.
- 1.3 The objective of introducing the statutory definition of tax residence was to provide individuals and their agents greater clarity by putting the rules on a simpler, statutory footing. It was not the aim to change individuals' residence status but to deliver broadly the same outcome although, because the current rules are not always clear, this could not be guaranteed in all cases.
- 1.4 The new test was also intended to be simple to operate and a prototype online tool was published alongside the consultation document to demonstrate the simplicity of the test.
- 1.5 The Government was keen to hear views on both consultations. The plan was to hold a series of initial meetings with all the main representative bodies to hear views and concerns, followed up by a

series of more detailed discussions as necessary. HMT would also liaise with the chairman to convene a subgroup of the Expats Forum.

- 1.6 The consultation period ends on 9 September, and the Government would publish its responses to the views expressed in the autumn. Draft legislation would be published later in the year which would itself be the subject of a full 12-week consultation. Following a final announcement, the legislation would be included in the 2012 Finance Bill.

## **2. Note of February meeting and Q&A log**

- 2.1 HMRC reported a significant improvement in processing A1 certificates of coverage, although the difficulties were not wholly resolved. The current aim was to process applications within 21 calendar days by mid November. In the meantime, HMRC provided a contact point for members of the forum to use whenever any urgent cases arose.
- 2.2 HMRC confirmed that the principle established by *Duke of Roxburghe's Executors v CIR* 20 TC 711 only extended to remittances which arose as a consequence of bank error and did not encompass other situations when a remittance was made inadvertently.
- 2.3 HMRC also stated that they did not believe it was possible for a remittance to occur as a consequence of inadvertently clicking the SA online website. This was questioned and HMRC agreed to investigate further.
- 2.4 There were a number of issues on the log relating to the interaction of disguised remuneration and overseas pension schemes. HMRC would be publishing guidance on disguised remuneration in the near future and would review the guidance in this area. HMRC also confirmed updated draft guidance on overseas pension schemes and the restrictions of the annual allowance would be circulated with the minutes of the meeting.

## **3. Operational and Compliance Matters**

### Preventing unnecessary SA returns

- 3.1 HMRC said they had developed an informal process for preventing assignees who have left the UK from having to complete an SA return which will become necessary when the new penalty regime comes into

effect on 31 October. This consisted of a new form which either individuals or their agents and employers should complete and send to PTI Manchester. Alternatively, a letter providing the same information would be accepted.

- 3.2 If HMRC receive the required information by 23 August, they will try to close all the SA records and remove the filing requirement for 2010/11.

#### HMRC post codes

- 3.3 HMRC stressed the need to use the correct post codes when writing to compliance and operational teams to ensure that matters are dealt with promptly.
- 3.4 For items intended for Expat Compliance and items for Trinity Bridge House, the correct postcodes are M3 5BW and M3 5BG respectively. No other postcodes should be used.

#### Letters of offer

- 3.5 Delays can sometimes occur in letters of offer reaching the CAR PTI teams from agents because the letters do not currently include the office reference number. HMRC are planning to improve this process but in the interim members of the forum were asked to include the HMRC reference in the footer space of the letter.

#### P46 Expat date of birth

- 3.6 HMRC said that their IT systems require various items of information from an employer when they tell us that an employee has commenced working. One mandatory item is the employee's date of birth. HMRC have been seeing instances where employers do not know the employee's date of birth and enter one at random. This both causes tracing problems and can result in duplicate records.
- 3.7 In addition, where a record is set up with an incorrect date of birth the employee will not pass our security questions when they try to make contact with HMRC. This creates delays and HMRC are unable to accept a correct date of birth by phone or deal with their query, as a result of which they have to put their query in writing.
- 3.8 Forum members were therefore encouraged to provide a correct date of birth when notifying HMRC of new employees.

### Employer late payment penalties – modified PAYE agreements

- 3.9 There is no formal process for an employer to notify HMRC that they have five or fewer employees. This can affect employers who make remittance payments to HMRC on a quarterly basis and those with a valid Appendix 6 arrangement in place.
- 3.10 Following the introduction of late payment penalties in 2010-11, employers will receive a warning letter during the year where HMRC identifies that the employer is paying late.
- 3.11 Where an employer with a valid EP Appendix 6 arrangement receives such a letter they should contact CAR PTI Manchester who will reset the record to a quarterly payer. If an individual or agent is approached by debt management teams, they should inform them that any payment made in accordance with an agreed Appendix 6 arrangement will not be subject to penalties under schedule 56 of Finance Act 2009.

### Employer intervention campaigns

- 3.12 HMRC explained that their employers intervention teams were undertaking projects in the following areas:
- incentive plans;
  - home country payments;
  - short-term business visitors; and
  - partnership working

These projects are planned to last at least twelve months.

## **4. Real time information (RTI) project: treatment of foreign employees**

- 4.1 HMRC reported that the timetable for implementing RTI remained unchanged and that, as no exemptions were envisaged, expatriate employee schemes will be included in the system roll out. The strategic objective set out in the consultation documents for employers to provide data to HMRC through BACS remained, but the Government Gateway and EDI would be used for the initial introduction of RTI.
- 4.2 Under the planned timeline, the system would be piloted from April 2012/13 with 300 volunteer employers who are currently being

selected. From April 2013 onwards, small and medium employers would be added to the pilot. By Oct 2013, all employers would be brought within RTI. HMRC stressed that any employer who anticipated difficulties in meeting these deadlines should get in touch.

- 4.3 When the strategic BACS solution was implemented, the employer would submit information via the BACS channel even when the actual payment was made via another channel.
- 4.4 HMRC stressed that a key issue was data quality. This was particularly an issue for expat employees who had no NI number. In such cases, the employees would need to be identified by their name, gender and date of birth and employers would be encouraged to ensure they held accurate data on their employees.
- 4.5 HMRC confirmed that modified PAYE schemes for expat employees would continue under RTI. Employers would continue to provide estimates in year which would be reconciled at the year end through SA.
- 4.6 HMRC also conformed that once RTI was implemented, NI settlement returns would be made in the same way as they are currently.

## **5. Forum subgroups: feedback**

### International NICs issues

- 5.1 HMRC apologised for previous delays in progressing outstanding international NICs issues but reported significant progress as a result of a subgroup held on 25 May. They also suggested that the subgroup could be reconvened to address any other NICs issues which might arise.
- 5.2 HMRC explained that the subgroup considered three separate issues, and all would require legislative change to fully resolve. They said that making changes to NICs was considerably more difficult than changes to the rules for tax since they could not be done in an annual Finance Bill. However, scope might exist for reducing the difficulties under the umbrella of the consultation on integrating tax and NICs which was announced at Budget 2011. However, HMRC warned that the integration project had many competing priorities and that only the most significant issues would engage the interest of Ministers.

- 5.3 HMRC said that the hypo tax issue could only be fully resolved by amending Regulation 52: this was something which they had always resisted because of the risk it would create for significant loss of revenue, but they were still prepared to consider doing so if a strong enough case could be made.
- 5.4 HMRC were not attracted to the proposed extension of Appendix 7B arrangements to NICs since it was already an extra-statutory concession and could not be widened without changes to primary legislation.
- 5.5 HMRC had urged members of the subgroup to help build a compelling case for change, including quantifying any costs involved, which they can take to Ministers. With this in view, the subgroup had been asked to provide a series of scenarios demonstrating the difficulties of the current rules by the end of July and HMRC undertook to reconvene the subgroup soon thereafter.

#### Full-time work abroad (FTWA)

- 5.6 HMRC had published a statement on 31 March clarifying that they would generally accept that an individual could work in the UK for fewer than 10 days in a year and still claim to have made a break with the UK because they are working full-time abroad. Where they worked for more than 10 days, whether they could be treated as working full time abroad would be determined by the specific facts in each case.
- 5.7 HMRC gave further clarification on this point and confirmed that the 10-day limit referred to substantive duties in UK and did not include incidental duties.
- 5.8 HMRC agreed to provide a written statement on individuals forced to return to the UK as a result of recent political unrest in the Middle East as exceptional circumstances with the minutes of the meeting.
- 5.9 Post meeting note: HMRC's written statement is contained in the annex to this note.

#### Employee share schemes and in-year penalties

- 5.10 A subgroup to consider the application of in-year penalties to individuals paid through employee share schemes was held on 31 March. The feeling was the imposition of penalties was unreasonable

as payroll departments are often unable to obtain complete information about their employees' income in sufficient time for monthly PAYE calculations.

- 5.11 HMRC reported that, whilst they cannot provide a blanket exemption from penalties, they would consider not imposing a penalty where there is a reasonable excuse for any late payment. They agreed to provide an example of what would be considered a reasonable excuse which might arise as a result of circumstances beyond an employer's control. HMRC advised any illustrative example should be read with the caveat that every case will be judged on the facts.

**ACTION POINT:** HMRC to provide the forum with an example of reasonable excuse and subsequently term update its guidance in this area.

- 5.12 In the longer term, HMRC are considering amending the relevant PAYE regulations as part of the autumn 2011 consultation and agreed to provide an update at the October meeting.

#### Repayments of overpaid PAYE

- 5.13 A subgroup held on 18 May to consider HMRC guidance which states that NOR employees who overpay PAYE will not be treated as having made a remittance of foreign earnings where the repayment is mandated to a UK-based employer. This is long standing guidance but is not consistent with the wider definition of a remittance introduced in 2008, and therefore would need to be withdrawn from a future date.
- 5.14 Withdrawal would have no effect on tax equalised employees, as overpaid PAYE is not an employee's earnings, but it would have a real effect on employees paid gross. The subgroup explored the feasibility of using section 690 directions to solve the problem, but it was felt that the process for seeking such directions is insufficiently flexible, but cannot be changed without amending the legislation.
- 5.15 HMRC suggested that it might be possible to amend section 690, or seek an alternative solution, as part of the consultation on non dom taxation. This could be explored more fully during consultation.

#### **6. Disguised Remuneration**

- 6.1 HMRC said they were currently updating FAQs on disguised remuneration to reflect the changes made to the legislation as

amended at the Public Bill Committee stage of Finance Bill and hoped to circulate them at the start of July, after which they would be subsumed in comprehensive guidance.

- 6.2 It was the intention to publish draft Regulations after Royal Assent on non-UK pension schemes at the end of June.
- 6.3 The point was raised whether HMRC felt the PAYE implications of the new rules would be feasible for foreign employers as payments made since April 6 2011 deemed to be 30 days after Royal Assent. HMRC replied that employers should only have to account for PAYE under the new legislation where they have been using the types of arrangements the new anti-avoidance rules are intended to apply to.
- 6.4 It was argued that the legislation could potentially catch innocent arrangements such as joint ventures which are not subject to the group company and LLP exclusions. HMRC could not rule out the possibility of collateral impact but stressed that this is unavoidable. However, they believed that this should be minimal as the legislation has been targeted as carefully as possible.
- 6.5 HMRC were asked whether the NICs Regulations would come into effect at the same time as the PAYE commencement date. HMRC confirmed that the intention is still that the NICs Regulations should come into effect around the same time as the PAYE date but are still working through the precise timings of the NICs Regulations.

## **7. AOB**

- 6.6 HMRC said they had identified over 400 returns which contained provisional figures. They were currently exploring the basis of these figures and would send a note to the forum members confirming the box entries for which provisional figures had been used. They stressed that actual figures should be provided without unreasonable delay after the original return has been submitted.
- 6.7 In addition, there were a significant number of dual residency cases where the certificate of residence in the overseas country had not been provided as requested in the return notes. HMRC would be contacting agents to request submission of the certificates.
- 6.8 The forum expressed their concern at the difficulty in finding a contact point within HMRC regarding outbound expatriates for whom Local

Compliance had responsibility. CAR PTI would approach Local Compliance to see if they could find a suitable contact on issues specific to the outbound expat population.

**ACTION POINT:** HMRC to provide the forum with a contact point for outbound expats.

## **Annex: HMRC statement on Full Time Work Abroad**

In March of this year HMRC issued a statement clarifying the position on UK duties for those who are not resident because they are working full time abroad. We have now been asked about the impact of such duties on those who are not resident because of full time work abroad and who have returned to the UK temporarily because of the political situation in the Middle East.

The following applies to those people who have returned to, or remained in, the UK following FCO advice and relates to those countries where HMRC has confirmed that exceptional circumstances apply. This is Tunisia, Libya, Egypt, Syria, Bahrain and Yemen.

2010/11 – because the issues in those countries arose towards the end of the tax year, HMRC will accept that individuals who are temporarily brought back to the UK, and who have the intention of returning to their employment abroad, will not have their residence status affected by the duties undertaken in the UK during the period of exceptional circumstances.

2011/12 – given the much longer period that exceptional circumstances may potentially apply for this year, duties in the UK may mean that those affected are no longer working full time abroad. During 2011/12 we would expect that the statement on full time work abroad made on 31 March 2011 would in general apply to UK duties and that HMRC will therefore:

- Normally not consider any case where UK duties were undertaken in fewer than 10 days
- Look at other cases in light of their facts and circumstances.

HMRC said that if anyone felt that this approach would lead to unfairness or hardship for people who have had to return temporarily to the UK because of the political situation abroad, they should let them know so that they can consider the position further.