

JOINT EXPATRIATE FORUM ON TAX AND NICS: 10 FEBRUARY 2011

MEETING NOTE

1. Minutes of October meeting and Q&A Log

1.1 HMRC were asked for clarification on when agents should issue a letter notifying their client's return to the UK following the withdrawal of the P86.

Post meeting note: HMRC can confirm that, whilst there is no statutory time limit for notifying an employee's return to the UK, employers are asked to inform HMRC as soon as possible in their guidance at <http://www.hmrc.gov.uk/manuals/pommanual/PAYE81680.htm>. It will be in the employer's own interest to inform HMRC promptly, as they are required to operate an emergency tax code in the meantime.

1.2 HMRC said that NICs colleagues proposed setting up a sub group to take forward the issue of the extension of App 7B and the treatment of NICs on bonuses. They noted the strong desire of forum members to bring this matter to a conclusion as rapidly as possible.

ACTION POINT: HMRC to convene subgroup to resolve outstanding NICs issues

1.3 HMRC said that representatives of the PAYE real time information team were keen to involve the forum as the project develops. In particular, they would welcome any employer who would be willing to take part in a pilot scheme.

1.4 The only issue on the Q&A log confirmed that, where an employee has earnings from two companies in the same group and both are paid into the same bank account, they would generally be treated as SP 1/09 compliant. This was welcomed.

2. Operational and Compliance Matters

Composite payment scheme process

2.1 HMRC apologised for delays in issuing the spreadsheet for composite payments which was the result of data protection issues. Members of the forum were asked to contact PTI Manchester if they experienced any problems.

Section 690 Applications

2.2 HMRC said that s690 applications should continue to be sent to PTI Manchester rather than to the national teams.

Code 0T

- 2.3 HMRC announced that new PAYE coding instructions would be published to reflect revised Regulations coming into effect from April 2011. An article would be appearing in the February edition of the Employer Bulletin to cover this point.
- 2.4 Under these instructions, Code 0T will apply on a non cumulative basis:
- where a form P46 has not been completed by the employee before the first pay day;
 - where the employee starts to receive a company pension but continues in employment with the same employer; and
 - where payments are made after an individual has left the employment and form P45 has been issued.
- 2.5 The emergency code will continue to apply for seconded expatriate employees where a P46(Expat) has not been fully completed in accordance with Regulation 49(4).

Accountancy fees

- 2.6 HMRC thanked the forum for supplying details of the current level of accountancy fees. Based on this information, HMRC would continue not to enquire into benefits in kind reported for fees for preparing tax returns of £650 for UK and home country returns and £250 per head for UK only returns. This would only apply for fully tax equalised employees and does not cover the cost of section 9A enquires which should be reported in full.
- 2.7 The level of fees would be reviewed again in 2013/14 and HMRC would be seeking views from the forum at the end of 2012.

Tax equalisation packages and repayments of PAYE

- 2.8 Since the last meeting, HMRC had been giving further consideration to the issue of whether a repayment of overpaid PAYE should be treated as a remittance. This had proved to be a complex matter and HMRC proposed convening a subgroup to take this forward.
- 2.9 The point was made that it would be unfortunate if employees were penalised for operating PAYE properly and that the forum was looking for a practical and sensible solution.

ACTION POINT: HMRC to convene subgroup to resolve issues around repayments of PAYE

Dual contract record retention

- 2.10 HMRC had encountered problems with obtaining documentation on dual contracts and made a request that employers' records should be retained as this was causing delays for customers.
- 2.11 The point was made that such documentation was sometimes impossible to get in the case of a foreign employer. In such cases, HMRC had to make use of exchange of information procedures where available with relevant overseas authorities.
- 2.12 Members of the forum also reported that there had been some delays in issuing UTRs and P46 Expat, which was delaying the filing of Self Assessment returns. If this persisted it would create problems next year with the move towards automatic non-mitigable late filing penalties for returns filed after 31 January. PTI Manchester agreed to look into the reasons for these delays and report back to the forum.
- 2.13 They also asked whether it was possible for an IT solution to remove the need to file electronically where there was no UK sources/liability.

ACTION POINT: PTI Manchester to report back

3. Certificates of Coverage A1

- 3.1 HMRC reported that delays had recently been experienced in processing A1 certificates. This had been a consequence of new Regulations 883/2004 which came into force on 1 May and which created a significant training need for staff.
- 3.2 Since then further staff had been allocated who were now fully up to speed and HMRC hoped that the backlog would be steadily reduced and that their aim of processing all certificates within 21 days would be met. They agreed to provide a written update on this situation at the next meeting.

ACTION POINT: HMRC to provide written update on delays in processing A1 certificates.

- 3.3 Members of the forum found this reassuring and were urged to accompany urgent cases with a phone call to Insurability Teams in International Caseworker (NIC&EO).

4. Disguised Remuneration

- 4.1 HMRC said that, following publication of draft guidance in December, a subgroup meeting was held in January which proved useful in identifying issues. Although HMRC had been unable to provide written answers to all the questions raised at the subgroup in advance of the meeting, their plan was to publish a series of detailed FAQs on the

HMRC website which would pick up the main points made by the subgroup. It would also provide a clear indication of HMRC's thinking on the changes which might be necessary to the draft legislation.

Post meeting note: the FAQs were published on the HMRC website on 21 February at <http://www.hmrc.gov.uk/budget-updates/index.htm#17>.

- 4.2 The consultation period ended on 9 February and some clear themes emerged which HMRC were considering before going to Ministers.
- 4.3 Members of the forum felt that as far as expatriates were concerned there were problems with the definition of employee in an assignment context, tax loans and relocation expenses. HMRC indicated that they were considering whether there was a way of removing group companies from the definition of a relevant person without creating opportunities for avoidance. If this were possible, the issue around tax loans might cease to be a problem. Members of the forum agreed.
- 4.4 It was pointed out that relocation expenses would continue to be a problem even if group companies were excluded. HMRC confirmed they will give this matter further consideration along with other representations made during consultation.
- 4.5 HMRC confirmed that ESC A10 was still under consideration.

5. Employee Share Schemes

- 5.1 The imposition of PAYE late payment penalties as a consequence of employee share scheme events occurring in the PAYE month, but after the payroll cut-off date, was a long standing issue and HMRC had had internal discussions to understand the issues involved. Once they did so, they proposed a subgroup to seek to resolve the matter by the start of the tax year.

ACTION POINT: HMRC to convene a subgroup to resolve the employee share schemes issue by 5 April

6. HMRC6

- 6.1 The revised HMRC6 was published at the end of 2010. HMRC thanked members of the forum for their constructive feedback on the drafts. HMRC will be open to making further amendments if people find any material errors of fact in the published version.
- 6.2 A Q&A log on substantive issues had been circulated with the meeting agenda which HMRC aimed to have answered by start of April. They also pointed out that the guidance landing page had been revised to provide a link to the earlier version of HMRC6, since this guidance was

still relevant for liabilities up to 5 April 2011 (see <http://www.hmrc.gov.uk/leaflets/c9.htm>).

- 6.3 The issue of full time working abroad (FTWA) was still under active consideration and the aim was to resolve this as a matter of priority. Members of the forum, whilst relieved that FTWA was being considered, were concerned that HMRC did not fully appreciate the importance of this issue. Advisors with clients who intended to go abroad to work were in a difficult position and they were disappointed in the lack of any feedback from the subgroup last summer.
- 6.4 HMRC said they had only recently received legal advice which they needed to settle before proceeding further. However, they expected to be able to come back to the Forum on this by the start of April 2011.
- 6.5 HMRC were asked whether, if their position on FTWA changed, such changes would apply retrospectively. HMRC explained that generally changes were made prospectively, but in this case it is not entirely clear what the practice had been in the past, so they were unable to make a definitive statement before settling their legal advice. Nevertheless, they hoped to reach resolution quickly after confirming legal position.
- 6.6 The forum suggested there were some factual errors in the day counting examples in HMRC6. HMRC confirmed there had been no intention to change the approach to day counting.

ACTION POINT: HMRC to provide answers to the unresolved questions on the HMRC6 log by the start of April

7. Unrest in Egypt/Tunisia – ‘ exceptional circumstances ’

- 7.1 HMRC had liaised with the Foreign and Commonwealth Office (FCO) who had published advice that UK nationals in Egypt and Tunisia should leave unless they had a pressing need to remain there. They hoped to be in a position soon to make an announcement on whether this amounted to exceptional circumstances for the purposes of the 91 day rule in HMRC6.

Post meeting note: On 23 February HMRC clarified that the disruption caused by recent events in Egypt, Libya or Tunisia would be treated as exceptional circumstances and therefore covered by existing guidance in HMRC6. This would remain the case for the period that the FCO advice for each country remained in place.

8. Overseas Pensions

- 8.1 Draft legislation had been published on 9 December covering changes to the lifetime allowance and updating the earlier draft legislation published in October covering changes to the annual allowance. This

had confirmed that a reduced lifetime allowance of £1.5m would be introduced from 2012/13. Consultation on the legislation closed on 9 February and HMRC were considering the responses received.

- 8.2 Alongside this, the Government had published a separate formal consultation document on options to help individuals pay high tax charges arising as a result of the reduced annual allowance. The consultation closed at the end of January and the responses were being considered. The aim is to publish further draft legislation covering this aspect by the end of February.
- 8.3 HMRC had circulated draft guidance on the annual allowance changes covering the implications for overseas pension schemes before the meeting and welcomed any comments.
- 8.4 There was a discussion on a number of aspects concerning the draft guidance, including issues around:
- foreign currency exchange rates;
 - carry forward provisions where the member changes pension schemes;
 - non co-terminous pension scheme year ends;
 - providing reasonable estimates of pension savings amounts; and
 - the absence of explicit references to QROPS or DTAs.
- 8.5 HMRC agreed to consider these further. In particular, HMRC said that, since there was no statutory basis for making foreign currency conversion, any reasonable basis would be acceptable provided it was applied consistently. It would also look at expanding the guidance the other issues raised. A request was made for HMRC to accept estimated reporting of benefits by reference to the overseas scheme year ending in the UK tax year – particularly where, as is common, the overseas scheme uses a calendar year. The forum queried why a member of a foreign scheme was not allowed to carry forward unused relief from the previous three tax years if he had ceased to be an active member of the foreign scheme before coming to the UK.

ACTION POINT: HMRC to clarify the treatment of unused relief

- 8.6 HMRC also said they would welcome any other suggestions from members of the forum which might improve the guidance – such as using the existing guidance on US retirement plans in the Registered Pension Scheme manual.

9. Extra Statutory Concession (ESC) A12

- 9.1 ESC A12 provides double taxation relief to UK residents in receipt of alimony payments received from non residents under a UK court order

made before 15 March 1988. The concession is ultra vires, and HMRC are considering its withdrawal on the grounds that it is obsolete.

- 9.2 However, before doing so they requested any information from the forum which might indicate that the concession might need to be retained. There was no indication from the forum that this concession was still needed.

10. Scotland Bill 2010

- 10.1 HMRC said that the Scotland Bill had been published on 30 November and devolved a number of powers to the Scottish Parliament, including the power to set a Scottish rate of income tax. This would mean that Scottish taxpayers would pay an element of tax on their non-savings income direct to the Scottish Parliament at a rate to be determined. The tax would be first implemented in the tax year following the 2015 election.
- 10.2 This would entail significant changes to PAYE and SA systems and processes but HMRC stressed that the long lead-in times would enable them to be resolved before implementation. They also stressed that only the power to set the rate of tax was being devolved and that all other aspects of the tax system were reserved matters. This meant that there would be no impact on issues such as double taxation agreements and the remittance basis.
- 10.3 An individual will always be a Scottish taxpayer for a full tax year in which his sole or main residence is in Scotland. HMRC stressed, however, that split year treatment under ESC A11 would continue to be available to Scottish taxpayers entering or leaving the UK in the same way as it would for any other UK-resident taxpayer.

11. AOB

- 11.1 The forum sought clarification on why relief was available for errors arising from grossed-up income tax on remuneration paid to resident but not ordinarily resident employees for foreign workdays where there was no corresponding relief for errors in calculating NICs. HMRC undertook to deal with this issue as part of the planned NICs subgroup.

ACTION POINT: HMRC to clarify reasons for this discrepancy in the proposed NICs subgroup