JOINT EXPATRIATE FORUM ON TAX AND NICS: 8 OCTOBER 2013
Auditorium, 1 Horse Guards Road, London SW1A 2HQ

Chair: Mark Nellthorp (HMRC) and Philip Paur (Deloitte LLP)
Secretary: Elisabeth Adams (HMRC)

MEETING NOTE

1. Notes of July meeting and Q and A log

1.1 Minutes of the last meeting were agreed by the members.

1.2 With regard to the operation of the employment services treaty article (Article 15 OECD) for short-term business visitors, members discussed the answer to q.1of the Q & A log. Some were unable to follow the reasoning for the 60 day rule not operating in relation to a branch of a branch of a UK resident corporate entity.

Action point: HMRC to clarify whether a branch of a branch would be considered to satisfy the 60 day rule if, in example 2, the overseas employee of an overseas employer comes to work in the UK branch.

1.3 With regard to the Statutory Residence Test (SRT), members thought it would be helpful to have more guidance on the treaty residence position of individuals as the treaty might provide a different answer. For instance, an individual who has gone abroad might not meet the sufficient hours test in the third automatic overseas test but have retained sufficient UK ties to remain resident under the SRT. However, if he or she is simultaneously resident in the UK and treaty resident in the overseas country residence has to be separately tested for treaty purposes.

Action point: Members to provide examples for HMRC to refer to the Tax Treaty team to be dealt with under the OECD agenda item at the next meeting in January.

1.4 Members noted the answer to q.2 and q.3 concerning gardening leave and significant breaks and that the Statutory Residence Test was a substantive item on the agenda.

1.5 In relation to q.5 of the Q&A Log, members queried why foreign service relief on termination payments is restricted for days worked in the UK where the individual is UK resident under the SRT but treaty resident abroad (and income for that period would be treaty exempt under Article 15(2)). They also asked how foreign service relief is calculated in circumstances where transitional relief applies after 5 April 2013.

Action point: Questions for consideration by HMRC - any further examples of uncertainty to be provided by members.

1.6 A member asked why it is that where foreign service relief is calculated by apportionment relief is allowed by reference to days worked abroad over a 365 day denominator.

1.7 Members also asked HMRC to include in RDR3 more examples of what constitutes a permanent home or centre of vital interests for treaty purposes as the notes in Helpsheet HS302 do not provide sufficiently detailed guidance.

Action point: Members to provide examples for HMRC to consider under the discussion of the proposed OECD treatment of termination payments carried forward to January meeting.

2. Statutory Residence Test (SRT), guidance and online tool (Tax Residence Indicator)

Guidance

2.1 HMRC said that final versions of the SRT guidance (RDR3) and changes to the Overseas Workday Relief (RDR4) had been published on the HMRC website on 28 August 2013.

2.2 HMRC confirmed that the guidance note; Residence, Domicile and the Remittance Basis (RDR1) had also been published on the HMRC website on 3 October 2013.

2.3 HMRC reminded members that the updates to the Residence, Domicile and Remittance Basis Manual (RDRM) were still on target to be finalised in the last quarter of the calendar year.

2.4 HMRC explained that there is a wider programme of on-going work surrounding HMRC guidance, which is being migrated to the Gov.UK website. Current activity is focussed on housekeeping the HMRC webpage.

2.5 Members said it was not clear what activities would invalidate the exemption for transit through the UK. HMRC explained that while working in the UK or seeking the company of friends or relatives would invalidate the exemption, the exemption is not lost if the individual uses his personal electronic media for leisure purposes while awaiting his flight connection, or simply bumps into acquaintances at the airport. HMRC noted that the RDR3 guidance already contained examples.

2.6 Members were also concerned that interpreting the SRT for unrepresented taxpayers could be difficult - particularly when looking at the rules for full-time working in the UK (FTWUK). They suggested that further examples could be added to the RDR3 guidance.

2.7 Forum members were reminded that given the stand alone guidance RDR 3 and RDR4 would soon be consolidated into the work underway in updating RDRM so the preferred approach would be to include new examples into the manual.

2.8 HMRC suggested that this could be considered separately at a sub-group meeting together with the various scenarios in relation to transit days, FTWUK and case 5 of the split years where an individual could be simultaneously UK resident and FTWA.

Action point: HMRC to liaise with Philip Paur to set up meeting to discuss outside of full forum meeting.

Tax Residence Indicator

2.9 HMRC published the current pilot version of the Tax Residence indicator (TRI) in May after it underwent voluntary testing by EPF members. This produces accurate results that reflect the final legislation now enshrined in the Finance Act13 except that it does not contain functionality dealing with full time work, death and split years.

2.10 The next iteration of the TRI was scheduled for September and good progress has been made. However, in order to ensure sufficient time has been allowed for robust testing, the launch is now aimed towards the end of the year. HMRC will keep forum members informed on the progress.

2.11 HMRC expects to publish a final version of the TRI to include functionality around the full time working tests, death and split years in the spring.

Reviewing the SRT

2.12 HMRC stated that following the passage of the SRT legislation, there were no plans for further changes to the residence rules but would keep them under review, as with any other tax policy. The legislation will be kept under review both in terms of its effect on Exchequer yield and taxpayer behaviours and administrative burdens on individuals and employers. HMRC will continue to work with advisers, employers and representatives in this and other forums to discuss in depth areas of concern and review guidance as necessary. Particular attention would be paid to returns filed for 2013/14, when these became available.

3. Special Mixed Fund Rules

Split years

3.1 Members had expressed concern that existing employment accounts could not be nominated as qualifying accounts in many cases where an employee came to the UK part way through a year as the account will have contained more than £10 when the first employment payment was credited to the account in the year. HMRC had no plans to alter the legislation to permit nomination in these circumstances but would listen to concerns. However legislation was a limited option as there was always competition for space in a Finance Bill so evidence that this caused widespread practical difficulties would be needed.

Split payments

3.2 Members wanted reassurance that overseas workdays relief is still possible where the employer pays remuneration from the company's UK bank account to a foreign bank account of the employee. HMRC has always said a remittance does not occur in these circumstances. Members were concerned that this assurance may be undermined by HMRC's more recent analysis that the employee's remuneration is held in a mixed fund with the company immediately before it is paid to the employee's personal account. HMRC confirmed the mixed fund rules did not determine whether a remittance had been made and that a remittance could not occur before the money was credited to the individual's overseas account.

3.3 Members had put forward two examples of the special mixed fund rules for HMRC to consider at short notice and HMRC would provide the detailed answers in writing.

Action point: HMRC to respond in writing to the examples and if there were still concerns arrange sub meeting for further discussion.

Repayments of overpaid PAYE

3.4 HMRC had circulated a note in 2011 explaining that the existing non-statutory practice could continue whereby remittances arising as a result of repayments of overpaid PAYE to non tax-equalised employees were disregarded.

FAQs

3.5 HMRC confirmed that these had been issued last week and now available on the website. There had been a number of difficulties with publishing including numbering which had been overcome by altering text to remove references to numbers and adding further links to bullet point to improve navigation.

4. Offshore employment intermediaries consultation

4.1 HMRC provided an update on the proposed changes to the legislation concerning offshore employers. They explained that this would now

amount to a strengthening and clarification of the existing rules. They also explained the revised record keeping and return requirements would only apply to those who were placing temporary labour with end clients.

4.2 HMRC then outlined briefly their revised proposal for offshore employers of workers in the oil and gas industry working on the UK Continental Shelf.

4.3 HMRC confirmed that the consultation response document for the offshore employment intermediaries measure was expected this week. The draft regulations for the NICs changes will be published in draft in mid-November and all of the tax legislation will be published in draft on 10 December with the other draft Finance Bill Legislation.

4.4 The draft response document has now be published and can be accessed on the internet at: https://www.gov.uk/government/consultations/offshore-employment-intermediaries

5. National Insurance Contributions update.

5.1 HMRC provided updates for forum members regarding EPM Appendix 7A & B simplified filing for employers of certain internationally mobile employees after the end of the year without incurring penalties. Forum members asked for this to be expanded to include in particular those employees who are non-tax equalised.

5.2 HMRC confirmed it had thoroughly reviewed the position in its development of RTI but had found no case to expand the current arrangements for non-tax equalised employees. The cost of expanding non-standard and non-digital solutions for a much larger group is a significant obstacle. It is also counters HMRC aim of stripping out unnecessary non-digital, bespoke processes. Furthermore, it also harder to justify special arrangements and concessions for a larger group on policy ground and is likely to carry a legal risk. HMRC has previously asked the Forum to provide an estimate of the numbers affected. This is necessary to make a compelling case for change by justifying the extra costs.

5.3 HMRC had also been made aware of the difficulties with RTI faced by non-UK employers based in other EU states who have no UK presence. It was suggested that they struggle to comply with RTI. HMRC responded that its own estimate of the numbers of employers affected was somewhat lower than those suggested by members. It had considered the position in when RTI was introduced. There had been strong preference to require digital and online filing.

Action point: Members were asked to forward evidence of the particular difficulties employers were facing and the numbers involved directly to Mark Frampton/Jo Walker (PTC P&P) who will review both these points with HMRC stakeholders.

6. Real Time Information update

6.1 HMRC thanked members for providing feedback to the draft FAQs that had been circulated on 2 September 2013. The updated FAQs had been issued on 3 October 2013 with a 'What's New' message. This alerted customers using the EP Appendix 5 and 6 to the additional/ revised content. The FAQs will be reviewed periodically and members should direct any further questions to Brian Peters or Pam Hughes.

6.2 HMRC confirmed that an update on RTI penalties would be provided at the next meeting. They provided a summary of some headline figures:

- 1.6million schemes on board that represented almost 90% of all schemes.
- Of this, 98% were run by large employers and 88% were SME schemes.
- Since 6 April more than16 million Full Payment Submissions have successfully been received.
- 167,000 letters were issued to non-joiners on 3 September, followed by 20,000 hits on the HMRC website.
- HMRC's standard costing model has initial costs to employers on RTI implementation of £120m with year-on-year savings of £300m
- Emerging research indicates a positive response to RTI.
- A report was published on 26th September on issues around employers' difficulties in reconciling charges. The main sources of difficulty were misunderstanding, error or transitional issues as employers joined RTI.
- As a result a troubleshooting guide for employers is to be published, along with guidance on how the charge is calculated with simplified diagrams.
- Guidance on when an employee leaves or retires has been updated.

6.3 HMRC's online survey of RTI users at close on 30 September 2013 had received 24,500 responses. These will be analysed and the plan was to have this work completed by December.

6.4 HMRC reminded members that users of the EP Appendix 6 arrangements should reapply using either the August 2012 or current RTI wording by 31 October 2013 if not already done. HMRC thought the majority of users had already applied.

6.5 HMRC provided an update on some of the specific expatriate RTI issues that have either been reported directly or PTI have identified for members to note.

6.6 EP Appendix 5 - Question 48 has been updated to advise employers to contact their software developers to update their software if this does not currently allow foreign tax credit relief to be taken into account. HMRC proposes to limit the use of EP Appendix 5 to those employers who have compliant software from 6 April 2014.

6.7 EP Appendix 6 - Although the new quarterly payer signal does work the link with the quarterly payment frequency does not. An interim manual fix

has been put in place and colleagues in DMB have been identifying affected employers not already included on HMRC's list. A permanent solution is not expected before the next meeting but members will be informed when this has been done.

6.8 EP Appendix 7A and 7B - HMRC has identified that some schemes have been put into RTI in error and a small number for which charges have been raised. Work is in progress to correct this issue and members will be updated on this as soon as possible.

6.9 Members raised concerns over the issue of demands as Accounts Offices were taking an aggressive approach and not very sympathetic.

Action point: HMRC to follow this up and report back.

6.10 Expatriate employers have not reported any other particular RTI issues to PTI.

7. Pensions

7.1 Members had raised three questions in connection with this item, which are to be explored in a sub-group meeting.

7.2 The first concerned the apportionment of the employer contribution to an overseas pension scheme that resulted where some of the employee's income received in the year, but prior to an employer pension contribution, was charged as specific employment income. This is the so-called "TE/EI" problem. It resulted in an inadvertent disguised remuneration PAYE charge on the employer. Members thought that the scope of the problem was greater than HMRC considered it to be.

7.3 The second problem related to the transfer of funds from an overseas pension scheme to another such scheme, but one which is not a Qualifying Overseas Pension scheme. An unauthorised payment charge arises if the employee was UK resident in the previous five years.

7.4 The third related to Asian Provident Funds which contain a pension component. Such funds appeared not to meet the tax condition to qualify as "overseas pension schemes" for UK purposes. Where this is so, and the employer contributions continue to be paid while the employee is in the UK, the whole of the contribution is subject to PAYE under the disguised remuneration rules.

7.5 Members were concerned that the approach is not consistent and considered there was scope for more meaningful discussions around flexibility with HMRC specialists.

Action point: HMRC to arrange separate discussions before Christmas and interested members to nominate themselves for this meeting through either Elisabeth Adams or Jyoti Mistry.

8. Compliance and procedural matters

8.1 Members have asked whether PTI has changed its policy in relation to the granting of extensions in deadlines for providing information and documents requested as part of Section 9A and employer compliance checks.

8.2 HMRC's confirmed the policy is to use its powers under Schedule 36 FA2008. This has not changed. However, some teams in PTI have been reminded of the need to issue the information notices after the deadline has passed. HMRC will always listen to customers and allow extensions where there is reasonable excuse. PTI's normal practice is to allow 40 days in the initial enquiry letter (60 days where large amounts of documents and information is requested) and then contact the agent where we have contact details. It is therefore important to include up to date contact details on SA tax returns to enable PTI to contact the agent). A formal notice will normally include a further 40 days deadline. Customers or their agents are encouraged to contact HMRC if they will have difficulty meeting the initial enquiry letter deadline as soon as possible. We will always listen and where we are satisfied that there is reasonable excuse will offer a suitable extension. **These timeframes are specific to PTI.**

Accountancy Fees

8.3 HMRC intends to review the levels of benefits in kind which HMRC would not enquire into for tax equalised employee tax return preparation costs met by employers. HMRC advised members that the levels were last reviewed in February 2011; the statement is reproduced for the purpose of these minutes.

10 February 2011 statement
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 enquiries which should be reported in full. 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

HMRC is now seeking information from members to ascertain the average increase in the level of fees charged since December 2010 before considering the appropriate levels of tax return preparation fees which will not be enquired into for 2012-13 Tax Returns. This information should be sent to Pam Hughes by 27 December 2013 so that HMRC can report back at the January 2014 meeting.

Tax Equalisation and non PTI enquires

8.4 HMRC has also been approached about enquires involving tax equalisation undertaken outside of PTI. This affects employees outbound from the UK whose remuneration is tax equalised. As a consequence the income reported at Box 1 in the employment pages does not reconcile to the P60 and a S9A enquiry may result from this. Customers are advised to include in the white notes space a note that tax equalisation is relevant. This however will not in itself stop an enquiry being opened where the pay on the tax return is less than that on the P14. Agents may wish to provide a more detailed explanation of the apparent mismatch which will be considered as part of HMRC risk assessment processes.

2012-13 SA tax returns

8.5 HMRC reminded members that the busy Self Assessment deadlines were looming and members were asked to remind their colleagues of the importance of checking whether they have the SA Unique Taxpayer References and have the required 64-8 authority for clients now rather than in January. The deadline for notifying HMRC of liability for 2012-13 has now passed (5 October 2013). As in previous years, PTI will process forms 64-8 and forms SA1 received by 27 December 2013 but cannot guarantee to do so for any received afterwards before 31 January 2014. To help prioritise the requests for 2012-13, it would be helpful if all requests are clearly marked 2012-13. All requests need to include the correct date of birth of the customer and PAYE scheme reference. It would also be helpful to add whether the individual has had tax deducted from his earnings so that P14 details do not need to be checked.

Inbound Expatriate Clients

8.6 Post Meeting Note: an Information Bulletin for Agents acting for Inbound Expatriate Clients was circulated to members on 30 October 2013. A copy can be found at Appendix A

9. Any other business

9.1 HMRC was asked to confirm whether there are any changes to the Composite Payments Scheme. HMRC confirmed no changes made and existing references and spreadsheets can be used in January 2014.

9.2 Members said there appeared to be issues with tax codes. The issue is not relevant to this forum; however relevant HMRC members will be consulted.

10. Date of next meeting

10.1 The next meeting will be held on 29 January 2014 at 2pm in the Auditorium, 1 Horse Guard's Road, London SW1A 2HQ.

Appendix A

INFORMATION BULLETIN FOR AGENTS ACTING FOR INBOUND EXPATRIATE CLIENTS

Payment on Account (POA) – Modified schemes

Although Payments on Account are not required for individuals included in an EP Appendix 6 Scheme, there is no automatic facility to remove them from the statement where the Tax Return is filed online.

It is therefore important to contact us separately each year to inform us of the names and Unique Taxpayer References for individuals who have underpayments of tax on their Self Assessment record.

Agent ID/Code

The agent code shown on the 64-8 will determine the office that has on-line access to view Statements of Account through the online portal.

Extra security checks are required where a different agent code is used to file a Tax Return.

Using the correct agent code will remove the need to submit an R38 in [most] cases and as such reduce delays in issuing repayments to nominees.

64-8's (Assignees without National Insurance numbers or UTRS)

In order to process a 64-8 we require the following information:

- Employers name and PAYE reference.
- The date on which the assignment commenced.
- Full name, date of birth and address.
- The advisors name, reference number and telephone number. This will enable us to contact you if we need further information.

Submitting all of this information with the 64-8 will enable us to process the form without delay.

Please note that we only process 64-8's for inbound assignees and they should be sent to the address below. Other forms 64-8 s are processed by the Central Agent

Authorising Team. To avoid unnecessary delays please send the forms to the correct office.

The Expat Team in Personal Tax International

This team deals with the tax and National Insurance Contributions (NICs) of foreign employees who are either seconded to work in the UK or retain a relationship with a linked overseas employer while working here. If your client does not fit this criteria please contact the normal Contact Centre by using the 'Agent priority line' on 0300 200 3311.

Our Contact Details

Tel: 03000 533148

Fax: 03000 531121

Address: HMRC Personal Tax International
Operations
S0733
PO Box 203
Bootle
L69 9AP

Issued 30 October 2013.

HM Revenue & Customs Joint Forum on expatriate tax and National Insurance contributions Q & A Log: introduction

These logs contain answers prepared by HM Revenue & Customs (HMRC) staff in response to questions raised by members of the Forum.
Where possible these answers will refer to guidance published elsewhere. The responses given in these logs are not expected to be comprehensive or provide a definitive answer in every case. If you have a specific query about a particular case you should contact HMRC in the normal way.
HMRC base these answers on the law as it stood at date of publication and will incorporate answers given into the appropriate guidance manuals where necessary. HMRC will publish amended or supplementary guidance if there is a change in the law or in the department's interpretation of it. HMRC may give earlier notice of such changes through a Revenue & Customs Brief or press release. Taxpayers and their advisors should check that the answers given in this log have not been superseded by amended or supplementary guidance.
Subject to those qualifications readers may assume the answers apply in the normal case; but where HMRC considers that there is, or may have been, avoidance of tax the answers will not necessarily apply.
Neither this log nor its publication affects any right of appeal a taxpayer may have.

Expats Forum: Q & A Log – 8 October 2013

No	Question	Answer
1.	**Short term business visitors** With reference to the previous question and answer given in July i.e. 'Some of my UK employees were assigned to a separate foreign legal entity overseas, but continued to hold contracts of employment with the UK Company. Some of those employees subsequently returned to the UK as short term business visitors working for and at the expense of that foreign employer. Can Article 15(2) (b) be satisfied in these situations' could HMRC: (i) expand the answer to explain the word entity and (ii) if an overseas branch of a UK parent company is regarded as an overseas entity.	Who the employer is for the purposes of double taxation arrangements is a question of fact that needs to be determined first and the consequences for applying the double taxation arrangements then follow accordingly. In the United Kingdom we look at substance over form so the fact the contract of employment may be held by, say, a service company in the United Kingdom does not prevent their 'employer' for the purposes of the double taxation arrangements being an overseas entity. If the 'employer' is a non UK resident entity then it is possible for Article 15(2) (b) to be satisfied if the individual carries out duties for that employer in the United Kingdom. If the overseas employer has a branch in the UK Article 15(2)(c) would need to be considered If the employee is genuinely working for the overseas employer whilst in the UK we would expect any recharges between the companies to reflect that position. (i) By entity HMRC means something capable of independent existence such that it can be one of the parties to a contract of service in its own right. Which country(ies) law(s) should be used to determine the point will be dependent on the facts of any particular case. However, for partnerships with a majority interest in one of the contracting States, paragraph 6.2 of the commentary on the employment income Article may be relevant. (ii) Branches are not a separate entity to the company. They are simply a location where the company's business is conducted. As such, an overseas branch of a UK company is not capable of being a non-UK employer for the purposes of applying paragraph 2(b) of the employment income Article in DTAs that follow the OECD model

No	Question	Answer
		Convention. The existence of the branch may, however, be relevant for paragraph 2(c) of the Article. Clarification of branches for the purposes of paragraph 2(c) may be best dealt with by examples. Assume in each case that the duties are performed in the same overseas territory as the branch / company and the services in each country are provided to the branch or company in that territory. <u>1. Employer is UK resident company with overseas branch</u> (a) UK resident employee with a few overseas workdays. If the costs of the overseas workdays can properly be attributed to the overseas branch, Article 15(2)(c) prevents exemption in the other territory, which may tax the earnings for workdays there. The UK will allow FTCR. (b) Non UK resident employee with a few UK workdays. As the employer is UK resident, Article 15(2)(b) prevents exemption in the UK which may tax the earnings for UK workdays. The 60 day rule does not apply as the employee works for a UK resident employer, even if that is for the overseas branch. The other territory deals with relief for double taxation. <u>2. Employer is overseas resident company with UK branch</u> (a) UK resident employee with a few overseas workdays. As the employer is resident in the other territory, Article 15(2)(b) prevents exemption there. The other territory may tax earnings for workdays there. The UK will allow FTCR. (b) Non UK resident employee with a few UK workdays. If the costs of the UK workdays can properly be attributed to the UK branch, Article 15(2)(c) prevents exemption in the UK which may tax the earnings for UK workdays. However, the 60 day rule may apply even if the costs are recharged to the UK. The other territory deals with relief for double taxation.

No	Question	Answer
		HMRC made a statement on the 60 day rule in Tax Bulletin 68.
2.	**SRT- Garden leave** HMRC's guidance suggests that periods spent on garden leave count as working for the purpose of SRT.(2.13 of RDR3). Presumably this means that HMRC regards time spent in the UK whilst on garden leave as UK work for the purposes of SRT, but how does this interact with s38 ITEPA 2003 regarding periods of absence from work? Garden leave is a period of absence, just as holidays are periods of absence, which would suggest that any remuneration paid for any garden leave period should in line with s38 only be taxable to the extent that duties would have been performed in the UK had there been any. Please can HMRC confirm this, or explain any alternative view of the law it holds?	The question implies that any remuneration paid in respect of any gardening leave period should, in line with s38 ITEPA 2003, only be taxable to the extent that duties would have been performed in the UK had there been any. This is not correct. The effect of s38 in your scenario is that general earnings (remuneration) for a period of gardening leave will be treated as general earnings for duties performed in the UK unless it can be established that, but for the gardening leave, the general earnings would have been general earnings for duties performed outside the UK. HMRC accepts that instances where an individual's employer instructs them to stay away from work, for example serving a period of notice while remaining on the payroll, can count as 'work' for the purposes of the Statutory Residence Test because these days can be regarded as falling under the definition of work at paragraph 26(2). For completeness, HMRC does not consider these to be days on which more than 3 hours work is done, so the question of the location of a deemed workday (and therefore the application of s38) does not arise. An individual's physical location for the purposes of the day counting/days of presence rules embedded in the SRT is a matter of fact. For example - midnights spent in the UK by someone who is contracted to work overseas but who has been placed on 'garden leave' and who returns to the UK will count as UK days of presence for the purposes of the 90 day limit at paragraph 14(d) of Schedule 45 FA 2013.
3.	**SRT -Significant breaks** The SRT law is explicit that reasonable periods of absence on holiday and parenting leave will not represent significant breaks for the purposes of the FTWA and FTWUK tests. It makes no such exception for garden leave, despite the fact both holiday and garden leave have the potential to fall within the definition of work (para 26(2) Sch 43 FB)	We are happy to confirm that where an individual's employer instructs them to stay away from work, for example while they serve a period of notice while remaining on the payroll (i.e. 'gardening leave') those days will not count towards a significant break for the purposes of the Statutory Residence Test. This point is spelled out at paragraph 2.13 of the SRT guidance (RDR3) on page 32. More specifically HMRC takes the view that, for the purposes of paragraph 28(2), days

No	Question	Answer
	because any value received for them (such as holiday pay) would be taxable as employment income. Can HMRC confirm that it will not regard time spent on garden leave as representing a significant break, or in what circumstances it will take this view?	spent on 'gardening leave' are akin to annual leave. These days do not therefore count toward a significant break because they will satisfy paragraph 29(1)(b) & (2)(b) provided that more than 3 hours' work would normally have been performed.
4.	**ISAs** Could HMRC clarify if individuals otherwise so entitled may invest in an ISA during the overseas part of a split year?	Under the new Statutory Residence Test (SRT), the investor is either resident or not resident for the whole tax year. Their residence status cannot change within a single tax year so, even in the overseas part of a split year the investor is still UK resident. Therefore an ISA investor can open and subscribe to an ISA (if they are UK resident) in the overseas part of a split year as the year is not split for this purpose.
5.	**Foreign Service Relief** Can HMRC clarify on what basis it can make enquiries into prior years which are considered closed by the individual and the agent when reviewing foreign service relief claims?	Enquiries into foreign service relief typically flow from the termination of an individual's employment and HMRC's consideration of the payments received by the individual upon termination. Where all or part of the period of employment constitutes foreign service, and the payment is made in connection with the termination of the individual's employment, an exception or a reduction may be due. As part of our enquiries into claims to foreign service exception or reduction, we consider the calculation of the period considered to constitute foreign service. In the vast majority of cases an individual's residence status throughout his employment is inextricably linked to whether the exception, or how much of a reduction, is due. This is information relating to the current year exception or reduction and so it is important to consider an individual's residence status in earlier years. That is not to say that the residence position in those earlier years is being challenged as part of that process, but rather the residence status is being considered for the purpose of considering the calculation of relief. Only where the provisions of s29, s34 and s36 TMA 1970 apply would HMRC seek to raise an assessment in respect of an earlier year, or seek access to documents or information in conjunction with Paragraph 21 (6) Schedule 36 FA 2008. One such scenario would be where the documents provided as part of the review into the payment received upon termination, typically the contract of employment or letter of secondment, indicate that the individual's self assessed residency position for an

No	Question	Answer
		earlier year may be incorrect. Only if the above provisions apply would HMRC seek to raise a discovery assessment in relation to the earlier year in which the incorrect residence status was self assessed. The consideration of documents and information obtained during the course of a review, and whether it has any bearing on years outside the review, is a standard approach. It is not unique to payments upon termination or claims to foreign service exception or reduction.
6.	**<u>Foreign Service</u>** Can HMRC confirm how "foreign service" is calculated for the purposes of S413 and S414 ITEPA 2003 in relation to service from 6 April 2013?	Section 413 provides exception from and s.414 a reduction from a potential charge to tax under Part 6 Chapter 3 ITEPA (payments and benefits on termination of employment etc) if that charge relates to an office or employment that includes certain periods of foreign service. The amount of foreign service is calculated by reference to the entire period from the commencement of that employment to the relevant date, which is the date of the termination (or change) in question. For the purposes of s.413, "foreign service" means service to which subsections (2A), (3), (4) or (6) applies. Subsection (2A) relates specifically to service in or after the tax year 2013/14 and such service will be "foreign service" – (a) to the extent that it consists of duties performed outside the UK for which the earnings are not caught by s.15 or if caught by s.15 would not be chargeable under that section if the employee made a claim under section 809B ITA 2007(claim for remittance basis) for that tax year), or (b) a deduction is allowable under Part 5 Chapter 6 (deductions from seafarers' earnings). For example, suppose an individual (E) commenced employment in the US on 1 October 2014 and remained in that employment until he was made redundant on 30 September 2019. Further suppose that E was assigned to the UK in January 2017 and that assignment continued until he was made redundant. During the period of UK assignment E performed some duties overseas. The foreign service is as follows: For 2014-2015 and 2015-2016: • E was not resident in the UK

No	Question	Answer
		• He performed none of his employment duties in the UK in either tax year. • Total service is 553 days all of which is foreign service. For 2016-2017: • E was resident in the UK and split year treatment applied. The UK part of the tax year commenced on 10 January 2017. • Total service in the overseas part was 279 days. • He had 5 UK workdays in the overseas part of the tax year, the earnings for which s15 ITEPA applies. Service on these days is not foreign service. • He had 6 overseas workdays in the UK part. • As he was not domiciled in the UK and met the requirement of s26A (1) (a), service on the overseas workdays in the UK part of the tax year is foreign service. • Total service is 365 days. Foreign service is 280 days. (279 - 5 + 6) For 2017-2018: • E was resident in the UK. He had 50 overseas workdays. • As he was not domiciled in the UK and met the requirement of s26A (1) (b), service on the overseas workdays is foreign service. • Total service is 365 days. Foreign service is 50 days. For 2018-2019: • E was resident in the UK. He had 25 overseas workdays. • As he was not domiciled in the UK and met the requirement of s26A (1) (c), service on the overseas workdays is foreign service. • Total service is 365 days. Foreign service is 25 days. For 2019-2020: • E was resident in the UK. He had 35 overseas workdays up to the date he was made redundant. • As this was not one of 3 tax years following 3 consecutive tax years of non residence he did not meet the requirements of s26A, Service on the overseas workdays is not foreign service. • Total service is 178 days none of which is foreign service. The total service from 1 October 2014 to 30 September 2019 was 1826 days of which

No	Question	Answer
		908 is foreign service. Transitional Provisions There are transitional provisions that apply in relation to individuals whose service in employment commenced before 6 April 2013 and who were resident but not ordinarily resident in the UK at 5 April 2013. In those circumstances, foreign service must be calculated for 2013-14, 2014-15 and 2015-16 where appropriate by reference to the rules applicable to such service in relation to the tax year 2012-13.
7.	**<u>Tax refunds</u>** When a tax refund is wired to the employer such as in tax equalized cases, HMRC often does not include full information about the employee and it is very difficult and time consuming for the employer to identify the relevant individual. Sometime HMRC just put initials and not even the full surname. When a tax return is filed and note that the refund to go to the employer is there anywhere you can add a comment to ask HMRC to include a reference?	HMRC does advise the banks as to who the money relates to but it is the banks who are not adding that information on the bank statement so their customer is aware. Customers need to check with their bank to ensure the full information received from HMRC is shown on their statements.