

**JOINT EXPATRIATE FORUM ON TAX AND NICS: 14 JANUARY 2013**  
Left Hand Side Auditorium, 1 Horse Guards Road, London SW1A 2HQ

**Chair: David Richardson (HMRC) and Philip Paur (Deloitte llp)**  
**Secretary: Elisabeth Adams (HMRC)**

**MEETING NOTE**

**1. Membership of Forum**

1.1 Some members had expressed concern at the size of the Forum, which was felt to inhibit round-table discussion, and views were invited from members for immediate discussion or after the meeting.

1.2 Some options were mooted to reduce the size of the Forum by voluntary resignations; limiting representation to 1 representative per organisation; and having virtual members who would receive Forum papers but would not attend meetings. Some concern was expressed that representation from smaller organisations should be ensured and some members felt that limiting membership to 1 per organisation would hinder discussion. Members were reminded that representatives of organisations should feed back on Forum issues to their members.

Action Point: Members were invited to submit their views to Philip Paur and Elisabeth Adams.

**2. Note of September meeting and Q and A log**

2.1 The action points from the last meeting were either substantive items on the agenda for this meeting, dealt with as post meeting notes on the September note or covered in the Q and A log.

2.2 Some members were concerned that practical problems in the interpretation of article 14(2) of the US/UK Double Taxation Agreement previously raised remained. HMRC commented that this was still a developing area as they are not aware of any cases where a final decision had been reached through the mutual agreement procedures (MAP) but would feedback members' concerns.

2.3 HMRC confirmed that individuals who ceased to meet the Self Assessment (SA) criteria following a return to the UK need only telephone or write to HMRC to be removed from SA. HMRC would make further enquiries if members had practical examples of individuals who had experienced problems with this approach.

### **3. Statutory Residence Test (SRT) consultation and online tool**

- 3.1 HMRC provided an update. New draft legislation had been published on 11 December which took on board many of the concerns expressed during the previous consultation. The response document<sup>1</sup> published alongside the legislation explained the changes that had been made and the reasons for doing so.
- 3.2 HMRC outlined the main changes that had been made. Following concerns expressed about the definition of 'home', changes had been made to add indicators to the legislation to provide more precision and the second automatic residence test had been changed to add a minimum presence rule. Draft guidance had also been published with some examples of particular scenarios to explain how HMRC expects the legislation to operate. No major change had been made to the legislative definition of available accommodation although the reference to accommodation 'belonging' to a close relative had been replaced with reference to the 'home' of a close relative. Again draft guidance on various scenarios was expected to provide greater clarity on the operation of the test.
- 3.3 Members were appreciative that comments had been taken on board and considered that the legislation had moved forward. Some concern was still expressed that some individuals who come to the UK for only 3 months but have no home abroad will be resident in certain circumstances.
- 3.4 No direct changes had been made to the rules that determine whether travel and training comprise work, but, partly in recognition that these rules could cause individuals to register further UK workdays, the number of allowable UK workdays for an individual working full time abroad has been increased from 20 to 30. Some members again expressed their concern that 3 hours travelling time was not sufficient for many individuals travelling from a temporary workplace abroad to reach home once they had arrived in the UK and suggested that UK work should only count from when an individual arrived at their UK base. HMRC considered that this would be operationally difficult and that the current policy fitted most circumstances. They reminded members that being resident still depended on breaching the increased day count.
- 3.5 Several changes to the test of Full Time Work Abroad (FTWA) had been made, including an increase in allowable UK workdays from 20 to 30; application of the significant break rule as for Full Time Work in the UK (FTWUK); acceptance that parenting leave reduces the period over which 35 hour test is applied; and treatment of gardening leave as, in

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<sup>1</sup> [http://www.hm-treasury.gov.uk/d/consult\\_responses\\_statutory\\_definitions\\_of\\_tax\\_residence\\_reform\\_of\\_ordinary\\_residence\\_responses.pdf](http://www.hm-treasury.gov.uk/d/consult_responses_statutory_definitions_of_tax_residence_reform_of_ordinary_residence_responses.pdf)

most circumstances, work (covered in guidance). In addition, to be classed as FTWUK, the period over which an individual must work full-time had been increased to 365 days as preferred by respondents to the consultation.

- 3.6 It was suggested it would be easier to define Full Time Work by determining the hours worked in any location, rather than having to keep a detailed record of where work is actually done. This is because of the administrative problem of recording hours. Members were asked to provide written evidence of such problems.
- 3.7 No significant changes had been made to the legislation concerning International Transportation Workers or to the legislation regarding exceptional circumstances and draft guidance on the latter had been published.
- 3.8 A simplification had been made to the Overseas Workday Relief eligibility rules. Relief would be available to all non-doms who have been not resident in the 3 tax years prior to their year of arrival. Relief would be available for the year of arrival and the 2 following tax years.
- 3.9 HMRC advised that the consultation on the draft legislation and guidance will close on 6 February and invited comments from members to be made as soon as possible. The Budget statement is on 20 March and the Bill is expected to be published a week or so later.
- 3.10 Some comments were received on the structure of the draft guidance and there was a request for clarification of whether the guidance will ultimately cover everything that HMRC6 covers now, including the impact on individuals' tax liability, or whether instead that will be done through links to other guidance. HMRC was grateful for suggestions and would welcome further comments.
- 3.11 HMRC provided an update on the online tool which was still in development and subject to system and user testing. HMRC would be looking for a small number of volunteers to test the tool. HMRC were aiming for the tool to be available by 6 April but that would be subject to any further significant changes in policy or legislation. HMRC confirmed that the tool would not include split years. The status of the tool was set out in the response document published in December; its output will be 'binding' where individuals have correctly interpreted the test and input the correct data into the tool. It will still, of course, be open to HMRC to query the data entered.

Action Point: Members wishing to be involved in testing the online tool should contact Elisabeth Adams

3.12 HMRC was asked whether a 'light touch' with regard to penalties would be taken during the first year of introduction of the SRT. HMRC confirmed that no special treatment would be necessary as in accordance with the accepted practice on penalties, individuals who have made their best efforts to comply will not be subject to a penalty.

#### **4. UTR Journey**

4.1 HMRC reported that the workshop held on UTR customer journeys had been useful and a number of ideas had emerged. A report of the workshop findings would be circulated. Some proposals such as those on National Insurance numbers and UTR numbers are not feasible but HMRC intends to proceed with the proposal not to issue tax returns to inbound expatriates who are low earners and certain business visitors with no remittance basis complications because of non residence or the availability of S828A ITA 2007. Employers will need to operate separate PAYE schemes for these employees with a reference in the EXP9000 range. Any members interested in operating such a scheme should contact Pam Hughes in HMRC PTI.

4.2 The use of email and shared workspace was also discussed. It was felt that shared workspace is a more secure environment to exchange information and a pilot scheme with one agent is proposed which will be evaluated after six months.

Action Point: HMRC to circulate workshop report with these minutes.

#### **5. SP1/09 consultation update**

5.1 HMRC provided an update on the consultation which had closed on 7 December 2012. Several responses had been received and a consultation meeting with members of the Forum had been held on 23 November 2012. Responses were being analysed and reported to Ministers who will make decisions about any significant changes.

5.2 Members raised serious concerns about the draft legislation and suggested that the current draft was inoperable. Detailed concerns were raised about the proposals for nominated accounts with several members requesting retrospective nominations. In particular, concerns were raised about whether an employee arriving in the country would be aware that they needed to make a nomination before they received their first payment of UK chargeable earnings. Some members also pointed out that they had raised concerns about the loss of flexibility caused by legislating SP1/09, and questioned whether it would, in fact, be ultra-vires for HMRC to continue operating it indefinitely.

5.3 HMRC explained that a further draft of the legislation would be published in the coming weeks, and that the intention is to hold a

further consultation meeting to give members an opportunity to discuss the changes from the previous draft with HMRC. HMRC also pointed out that it had been made clear when SP1/09 was introduced that it would need to be legislated as soon as practicable, otherwise it would be ultra-vires.

5.4 Concerns were also raised about the restriction to a single qualifying account. HMRC explained that the restriction was introduced in order to make the rules work mathematically, and not as a result of some underlying policy objective. HMRC commented that they welcomed any suggestions that would allow the rules to work correctly with multiple qualifying accounts.

5.5 HMRC thanked members for their comments on the outstanding issues, which would be considered further.

## **6. Compliance and procedural matters**

6.1 HMRC explained the background to the Short Term Business Visitor Arrangement (EP Appendix 4) which has been in place since the early 1990s. The arrangement is specifically for Short Term Business Visitors who come to the UK from countries with which the UK has a Double Taxation agreement, which includes an Employment /Dependant Personal services article. The introduction of the SRT means that some Short Term Business Visitors who visit the UK for less than 6 months may become resident in the UK when previously they would not have been resident.

6.2 HMRC has decided to allow employers to include resident Short Term Business Visitors within the arrangement where the visit(s) are for no more than 150 days in any 12 month period. Those Short Term Business Visitors who stay in the UK between 151 and 183 days may be entitled to exemption but for this small group, named applications must be made. This is a risk based approach which HMRC will monitor and review after the end of 2014/15. Where the employee has let his overseas property and his permanent home for the purposes of the treaty tie-breaker is likely to be in the UK, PAYE must apply. In uncertain cases HMRC will issue an NT code but require a Self Assessment return.

6.3 HMRC welcomes comments on the draft revised arrangement previously circulated and intends to publish the final arrangement by April 2013. It was suggested that as claims to treaty exemption ultimately depend on the application of the employment services article, the PAYE guidance should follow the OECD Commentary. HMRC insisted that the PAYE relaxation should continue to be denied to earnings borne by the UK employer. Any other claims should be made to HMRC separately.

6.4 HMRC confirmed that new agreements for existing arrangements would not be required but employers would need to take account of the revised wording. Employers who currently rely on the terms of the arrangement without HMRC agreement, will be encouraged to contact HMRC to “sign up”. Employers will need to have received HMRC agreement to use the arrangement from April 2013. As such they should not rely on previous Forum notes. The new arrangement will be publicised via a *What’s New Article* on the HMRC website.

6.5 HMRC was asked to publish suggestions for tracking methods for short term business visitors. HMRC is unlikely to prescribe the nature of record keeping which should be suitable to meet the particular needs of the business but will report back at the next meeting.

Action point: HMRC to publish the new arrangement by April.

6.6 HMRC requested feedback on the paper previously circulated concerning modified PAYE arrangements and payments on account. The problem arises where the employee has an underpayment of tax for 2 consecutive years. IT systems do not recognise the arrangement and reinstate payments on account and interest charges erroneously. HMRC proposes to issue the paper with new agreements. Feedback was requested within 2 weeks.

## **7. Real Time Information (RTI) project**

7.1 HMRC reported that the pilot scheme was on track. Revised FAQs were published on 13 December on Expat RTI issues. No questions were outstanding but HMRC would welcome any further questions. Revised EPP Appendices 6 and 7 were published on 21 December. Previously signed agreements do not need to be redone.

7.2 Some members had raised queries on RTI penalties and HMRC suggested that this should be discussed at the next meeting.

Action Point: HMRC to provide an update on RTI penalties at the next meeting.

7.3 HMRC proposed that another RTI subgroup meeting should be held in May. Members interested in attending should send their names to Elisabeth Adams.

Action Point: HMRC to arrange RTI subgroup meeting by the end of May.

7.4 HMRC was asked to confirm whether hash matching was working. HMRC confirmed that for employers paying their staff through the BACS system using their own Service User Number, “hash matching”

uses a code number that relates to each individual payment. The hash provides an additional level of assurance to the PAYE reporting. It is an automated process and it is a very quick and effective method of providing this additional level of validation. A proportion of non-matching is expected and a “no match” does not necessarily mean that RTI data is wrong.

7.5 Members asked if they could continue to operate NT tax codes while waiting for the code to be allocated by HMRC. HMRC advised that employers operating NT without authority did so at their own risk. HMRC’s system to deal with and issue NT codes was robust with a good turn around. HMRC considered that any delay in receiving NT codes may be because the applications were made late. However, HMRC would investigate further if members could provide examples of any problems.

## **8. Any other business**

8.1 The Forum was advised that British American Business would be submitting a request to the US authorities to consider simplified information reporting requirements for UK pension schemes with US members following indications that the US would be sympathetic to requests. At a meeting in December a Commissioner of the US Internal Revenue Service indicated a willingness to receive requests from other countries following the simplified information reporting requirements concerning pensions that had been agreed for Canadians.

## **9. Date of next meeting**

9.1 The next meeting will be held on 11 April 2013 at 11am in the Auditorium, 1 Horse Guard’s Road, London SW1A 2HQ.