JOINT EXPATRIATE FORUM ON TAX AND NICS: 29 April 2014
Auditorium, 1 Horse Guards Road, London SW1A 2HQ

Chair: Mary Aiston (HMRC) and Philip Paur (Deloitte LLP)
Secretary: Owen Price (HMRC)

MEETING NOTE

1. Introductions

1.1 Mary Aiston was attending her first Expats Forum since replacing David Richardson as Director of Specialist Personal Tax. All attendees introduced themselves. The co-chairs explained that as some HMRC attendees would be required to take part in Parliamentary committee proceedings, the agenda might be subject to change.

2. Note of January meeting and Q and A log

2.1 The minutes of the January meeting have now been published on the gov.uk website. The action points from the previous meeting were reviewed and a rundown of the Q&A log was given. A question on the special mixed fund rules is currently awaiting a response from HMRC and it was noted that a question on UK tax charges and transfers of pensions to the US also required a response from HMRC.

3. Self Assessment: Residence, remittance basis and split years (SA109)

3.1 HMRC wanted to clarify any misapprehension caused by the SA109 and notes and the subsequent guidance that the CIOT had published in Tax Adviser following discussions with HMRC on this issue. HMRC had specifically approved the article prior to publication, but had not intended to imply that individuals claiming non-residence under the Statutory Residence Test (SRT) by virtue of working full time abroad who did not provide information considered not to be relevant to their claim would be open to an increased risk of enquiry. This was not the case.

3.2 HMRC explained that as the SRT is new and that parts of it are complex there was a higher risk that errors would be made. HMRC operates a risk based approach to compliance and that it is reasonable that its compliance activity will initially focus on the complex areas of the SRT, e.g. full-time working. HMRC's risk assessing process will develop over time as the risks around the SRT become clearer. HMRC made clear that no particular group of individuals was being targeted.

3.3 HMRC was aware that some agents and taxpayers felt that the SA109 asked for unnecessary or duplicate information. HMRC explained that this additional information was useful because it would allow HMRC to consider whether the claimed residence status was correct even though the basis of the claim was incorrect, e.g. an individual who failed to be automatically non-resident might not have sufficient UK ties or days of presence to be resident, and vice versa. HMRC made clear that an individual had no obligation to answer question other than those they believed to be appropriate to their circumstances.

3.4 HMRC acknowledged that the 2013-14 SA109 is not perfect but explained that the window of opportunity for making changes was very small. HMRC has taken on

board stakeholders' comments in respect of the 2013-14 form and that they will use the information to inform the 2014-15 form and guidance notes. HMRC confirmed its commitment to listening to the views of stakeholders but cannot guarantee to implement every change suggested.

3.5 HMRC re-iterated that ultimately individual taxpayers were responsible for entries they make on their Self Assessment returns and completing the sections of the SA109 that they believe to be appropriate to them. Any entries made can be clarified or expanded upon via an entry in the free entry white space at box 39. The following points were addressed in discussion:

- HMRC is relaxed regarding the criteria used in making entries in boxes 6 and 7. Either split year relevant dates or dates of physical arrival and departure can be entered and the information can be qualified/ explained in Box 39 to assist a reviewer. HMRC said entry of physical dates of arrival and departure will support day-count tests. Boxes 6 and 7 will be changed in future years. HMRC confirmed that boxes 6 and 7 are not appropriate where an individual is resident in the UK under the first automatic UK test (183 days test) in consecutive years. In these circumstances as the individual has not arrived or departed and this should be explained in Box 39.
- HMRC said that it is up to the individual to decide which of the boxes are appropriate to complete and use a white space note to qualify the information provided. Returns will be risk assessed for enquiry based on the entries made on the front page of SA109 in conjunction with other entries made on the return.
- HMRC confirmed that where an individual remits prior year relevant foreign earnings but is not benefiting from overseas workdays relief in the current year Box 5 should not be ticked and Box 39 should be used to explain the situation.
- When a taxpayer is completing Box 12 for split years and there are different ties for the UK/overseas parts, the taxpayer should explain in Box 39 which tie is relevant to which part. For split years and boxes 10 and 12, HMRC is only looking for information in relation to the overseas part of the year.
- If an individual has a UK and an overseas workday on the same day, that day should be entered (twice) in each of Boxes 13 and 14. The taxpayer should explain the entries in Box 39.
- When recording split year information, all relevant cases should be disclosed in Box 39 but there is no need to identify all relevant dates where multiple cases potentially apply (subject to the statutory order of priority) – only the date the individual considers applies need be recorded.

4. Compliance and procedural matters

Short-term business visitors: the 60 day rule

4.1 HMRC provided an update on the outstanding issues from the previous meeting.

4.2 HMRC has arranged for EP APP4 (PAYE82000) to be amended to so that the guidance on the "60 days rule" published in Tax Bulletin 68 applied only to visitors present for "less than 60" days. The rule treats individuals as employed abroad for Article 15 treaty purposes where individuals are paid by a foreign employer but the

attributable costs are recharged to the UK employer. TB68 and EP APP4 contradicted each other in that EP APP4 referred to 60 days where as TB68's 60 day rule is for less than 60 days. This anomaly has also been addressed.

4.3 There were concerns from some attendees that despite the draft changes recently circulated by HMRC to Forum members, EP APP 4 still did not adequately reflect the extent to which Article 15(2) treaty relief is available, by HMRC's own account, e,g, as set out in Q&As. HMRC agreed to revisit the draft changes and to re-circulate to Forum members within the next two weeks.

Action Point – HMRC to amend draft guidance and re-circulate to Forum members.

4.4 As an example of the alleged disparity described at 4.3 above, Forum members suggested that EP APP4 should also be formally extended to cover individuals assigned to UK branches of foreign employers where the 60 day rule applies. HMRC agreed to consider this further.

<u>OECD Commentary on Article 15(2) Example 6 (paragraphs 8.26 & 8.27)</u>

4.5 HMRC is willing to consider ways of reducing the PAYE burden on employers where it is clear that relief will ultimately be due following submission of a valid treaty claim. HMRC does not however consider an extension to EP Appendix 4 is the best way of doing this. Significant numbers of EP APP4 users are unlikely to be affected by example 6.

4.6 Where EP APP4 is not available, individuals themselves are entitled to make in year provisional claims where appropriate. Code NT will be issued where HMRC is satisfied that exemption is likely to be due.

4.7 To enable further consideration of the matter, HMRC was keen to hear from Forum members:

- the extent to which multi national businesses operate along functional lines as described in the example and typically how many days per annum such visitors would spend in the UK. For example in bands 1 to 10 days, 11 to 30 days or longer.
- Information that businesses could supply as part of a report of these visitors, which would demonstrate to HMRC that the circumstances of the visit or visits, business structure and accounting arrangements accord with example 6.

4.8 HMRC would welcome comments on example 6 issues and any other comments on EP Appendix 4 by 31 May 2014.

Action Point – Forum members to provide examples to Pam Hughes.

<u>Repayments where treaty claim made after contract settlement or determination</u>

4.9 HMRC confirmed it does not want to recover tax under PAYE from employers as

part of compliance checks where the employee does not have a UK tax liability. As such HMRC has a published practice in its guidance manuals at PAYE54145 and COG908130 to accept less than the full legal liability from the employer where it can be demonstrated that the employee's final tax liability is less.

4.10 HMRC will allow employers a reasonable amount of time to arrange for Short Term Business Visitors (STBVs) to make treaty claims where appropriate, before recovering PAYE as part of a check.

4.10 Once a Regulation 80 Determination (R80) is final and conclusive HMRC would not normally allow the employer to revisit their tax liability outside of any appeal period, even if it is on the grounds that the employee (STBV) for whom income tax was paid does not have any UK tax liability (because he has since made a claim under the Employment article of a relevant DTA). Similarly once a contract settlement has been agreed there is normally limited scope to revisit it.

4.11 HMRC will however in these particular circumstances, provided the employer can satisfy HMRC that there is no UK liability for the employee (s), consider making a repayment to the employer. The employer will need to demonstrate that the employee has made a valid claim and as such would have been within the terms of the EP Appendix 4 Agreement. Employers must contact HMRC Personal Tax International within a reasonable period but always within 4 years following the end of the year of assessment. This time limit will be strictly applied and repayment will not be made outside of the 4 year period.

4.12 Significant numbers of EP Appendix 4 applications have been received recently. It is suggested that applicants compile and submit their 2013-14 reports before the 31 May deadline in anticipation of the application being accepted.

EP Appendix 5

4.13 HMRC had circulated copies of the letters that have now been issued to all known EP Appendix 5 users. HMRC will be contacting those employers throughout the year to review progress ready for April 2015. There will be no further extensions to allow employers to use the arrangements without suitable software.

EP Appendix 6

4.14 The revised wording will be published at the end of May, incorporating the need to include the Late Reporting Reason code if a submission is made after the 5th of the month. Forum members asked HMRC to bear in mind that this situation often occurs at scheme level rather than payment level.

Accountancy Fee Benefit

4.15 Following on from the previous meeting, HMRC has received little information from members on which to base the review of the benefit levels that would not be challenged as part of compliance checks. HMRC has therefore taken a view to increase the levels for 2014-15 benefits in kind to £275 for one return and £700 for a home and host country return. The next review will be in April 2016. Members were reminded that the amounts are applied to fully tax equalised

employees and are for tax return preparation fees only. Further benefits in kind should be reported where employers also bear the agent's fees for dealing with Section 9A enquires.

Shared Workspace

4.16 The limited pilot has been successful. HMRC will provide further feedback at the next meeting.

Tax Codes

4.17 Following on from the previous meeting, HMRC advised that there is no facility to prevent the automatic coding of expenses. HMRC advised agents to phone or write to HMRC to advise that expenses should not be coded. HMRC also advised agents to include a note with form SA1/64-8 if taxpayers were not entitled to the personal allowance.

4.18 HMRC has been notified of a small number of individuals where tax code NT has not been correctly carried forward to 2014-15. The matter is being investigated. Emails can be sent to Pam Hughes who will arrange for codes to be updated.

5. CGT & Non Residents

5.1 At the Autumn Statement, the Chancellor announced that from April 2015 the Government plans to levy Capital Gains Tax on non residents disposing of UK residential property. HM Treasury explained that this policy aims to increase fairness and to align the UK's tax treatment of non residents with other countries.

5.2 A consultation document has been published and HMRC has circulated this to all Forum members. The consultation document can be found at https://www.gov.uk/government/consultations/implementing-a-capital-gains-tax-charge-on-non-residents Working groups will be set up in the summer to examine the proposals in detail.

5.3 Forum members raised scenarios in which expats working abroad need to dispose of their British residence. They queried what would happen in the absence of main residence election and whether main residence relief would remain available. HMRC confirmed that the ability to make an election that a British property is a taxpayer's main residence is likely to disappear but that no decision has been taken on what might replace it or what modifications would be required to the 'absence' rules.

5.4 Forum members also sought clarity on rebasing. HMRC confirmed that there was no intention to tax gains made up to April 2015 but options around rebasing would need to be considered as part of the final design.

5.5 Forum members raised concerns around withholding, particularly in cases where a capital loss was claimed and cases where a company owned the property. HMRC confirmed that an accurate return would replace a withholding tax liability; and where ATED-related CGT applies it is likely to take priority over the new charges.

5.6 One member challenged the logic of denying a personal allowance to a non-resident (an idea being consulted on, see below) while allowing them a CGT annual exemption on disposals of residential property

Action Point – Responses to the consultation document and requests to join the working groups to be sent to capitalgains.taxteam@hmrc.gsi.gov.uk

6. Non Residents and Personal Allowances

6.1 At the Budget the Chancellor announced that the Government would consult on restricting personal allowances for non residents. HM Treasury explained that the policy is at a very early stage and that a consultation document would be published within the next 6 weeks. HMT stressed that the idea was at a very early stage and that no Ministerial decisions have currently been made.

6.2 HM Treasury explained that most non residents are entitled to claim a personal allowance and that as the personal allowance has increased substantially over the last few years the system has become potentially unfair. HM Treasury highlighted the relative generosity of the UK personal allowance and pointed out that many other countries already restrict their personal allowances for non residents.

6.3 HM Treasury is aware that any decision on this would affect non resident landlords, retired pensioners and employees on short term assignments but they are keen to understand which other groups will be affected.

6.4 Forum members felt that it may be better to restrict rather than remove the personal allowance completely because a small deminimis amount is beneficial to both HMRC and employers. HM Treasury emphasised that they were keen to design a process that would minimise the burden on employers and that they would take comments such as this on board.

7. NICs & International employees & host employers

7.1 Mark Frampton explained that since the last meeting detailed guidance has been uploaded to the HMRC website. In particular at:

http://www.hmrc.gov.uk/news/news240314.htm
http://www.hmrc.gov.uk/manuals/nimmanual/nim33700.htm
http://home.active.hmrci/ESMmanual/ESM2039.htm

7.2 He announced that there will be detailed assistance for agents with some of the practical and technical issues that have come out of implementation of the new regulations. An Agent Technical Note will be published in the next few weeks.

8. Pension Changes - QROPS

8.1 The Chancellor announced at Budget that there would be more flexibility when people came to access their pensions. International schemes were not mentioned in the Budget but there were two areas where this announcement would have an effect: (i) the definition of 'overseas pension schemes' (OPS) and 'recognised

overseas pension schemes' (ROPS) and (ii) the UK tax charges on non-UK schemes, particularly the equivalent of the unauthorised payments charge and surcharge.

8.2 There are provisions in the definition of OPS and ROPS intended to ensure that these schemes are broadly similar to UK registered schemes. In particular there is a provision that requires 'UK' funds to be used to provide an income. This provision is being considered as part of the consultation so if forum members had any comments they should respond to the consultation on *Freedom and choice in pensions* at:
Pensions.Consultation2014@hmtreasury.gsi.gov.uk

8.3 As far as tax charges are concerned, for overseas schemes they apply in the same way as those charges (in particular the unauthorised payments charges and surcharge) apply to registered pension schemes. This means that if a payment such as a larger lump sum becomes an authorised payment for registered schemes that will automatically feed through to payments made by overseas schemes and the unauthorised payments charge will not apply to that kind of payment when made by an overseas scheme out of 'UK' funds.

9. AOB

9.1 A forum member raised a scenario in which a taxpayer resident in the UK suffers withholding on income taxed in another country and the foreign tax is expected to differ from the final liability. How should the individual complete their Self Assessment return? HMRC agreed to provide a written response.

10. Date of next meeting

10.1 The next meeting will be held in the Auditorium on 7 July 2014 at 1:00pm.

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 – 29 April 2014

No	Question	Answer
1.	**Sort Term Business Visitors : EPM 5 & 6 users**	HMRC has been advised that some software developers have been unable to update their products for EP Appendix 5 but are looking to do so before 6 April 2015. HMRC has therefore decided to extend the period during which employers may operate EP Appendix 5 without compliant software until 6 April 2015. This is a final extension. From 6 April 2015, EP Appendix 5 will only be available where the employer is able to report UK tax paid after the foreign tax credit relief has been deducted in the data items Total Tax to Date and Tax Deducted or Refunded. Some employers know that their current software will not be updated in 2014-15 and do not intend to change their provider. Those employers may have already made arrangements for employees to apply for tax codes with estimated double taxation relief from 6 April 2014. These employers are encouraged to apply the new tax codes and not revert back to EP Appendix 5 for 2014-15.
2.	**TRNs and RTI** **It seems some HMRC officers are suggesting that a Temporary Reference Number (issued where there is no NI number) should be included in RTI reporting, it can't be a requirement clearly but if it is a 'helpful to have' where should it be reported, as it clearly isn't a NINO.**	If a National Insurance number (NINO) is not available, then employers should complete the personal details as fully as possible, primarily, forename and surname, date of birth, gender and also address and passport number if available, and leave the NINO data field empty. Under no circumstances should a Temporary Reference Number be included. The RTI data schema specifically does not require the NINO field to be completed.
3.	**Dual Contracts** **With regard to dual contracts, will the new regulations be equally applied across the board and over rule from day 1 any and all**	Where an individual meets the dual contract tests, the new legislation will apply to income from an overseas employment that arises in 2014/15 and subsequent tax years, regardless of when they began their dual contract arrangements.

No	Question	Answer
	individual existing agreements that may have been used previously?	A tax charge will not apply to income that is attributable to a period in which the dual contracts criteria are not satisfied, and will not arise in relation to tax years before the legislation takes effect.
4.	**Foreign Tax Credits On Shares** If there is a foreign tax credit attached to shares and the shares are gifted to a spouse does the FTC transfer?	HMRC's view is that where a transfer between spouses at a deemed price that gives rise to no profit/no loss position then the imposition of such a deemed price means that the full amount of the income taxed in the other fisc has not been brought into account for UK tax purposes on this disposal. As such, the foreign tax paid will be still available when any disposal by the spouse takes place.
5.	**Statutory Residence Test (SRT)** Can HMRC provide the revised wording for the caveat that applies to the Tax Residence Indicator (TRI)?	The revised wording which will appear on the next version of the TRI is as follows: Your residence status can only be decided by reference to established facts and circumstances. You can use this tool retrospectively or to predict what your residence status will be in future years, however HMRC will not be bound by the results where the information you provide does not accurately reflect your facts and circumstances.
6.	**Withholding Tax** An individual who is resident in the UK also suffers withholding in another country. The withholding in that other country is such that it will exceed the final foreign tax liability and will eventually be reclaimed when tax returns are filed in the other country. The other country, however, will not make the refund by the time the individual has to file his SA tax return. On the individual's self assessment tax return can the individual claim credit for the withholding that will be refunded but hasn't been and may not be refunded for some time. The reason for refund could for example be because the withholding is on more than the earnings for duties performed in the other country. Could be on worldwide earnings or on UK earnings for example.	Foreign tax credit relief should be calculated and claimed on the basis of the minimum foreign tax on the income sourced in the treaty partner country. This will be the amount of foreign tax due on earnings for duties performed in that treaty partner country after taking into account all available reliefs and deductions. As such the claim on the Self assessment tax return should not include amounts of foreign tax which will be subsequently refundable or foreign taxes paid in the treaty partner country on earnings for duties performed outside the treaty partner country. TIOPA 2010 /S33 and INTM61100 refers.