JOINT EXPATRIATE FORUM ON TAX AND NICS: 8 July 2015

Chancellor's Room, HMRC, 100 Parliament Street, London, SW1A 2BQ
Chair: Mary Aiston (HMRC) and Philip Paur (Deloitte LLP)
Secretary: Jade Coppin (HMRC)

MEETING NOTE

1. Introductions

1.1 Introductions were given.

2. Note of February meeting and Q&A log

2.1 The minutes of the February meeting and action points were reviewed.

2.2 Updates on the action points.

PAYE RTI disputed charges process
2.3 HMRC recognised that this is causing problems. This is a complex issue which has been exacerbated by errors in some payroll software. HMRC are currently addressing particularly complex cases.

2.4 HMRC wrote to 11,000 people in August 2014 advising that an update would be provided.

2.5 HMRC are keen to move away from providing updates on a one to one basis and employers bulletins are being used to provide updates. HMRC acknowledged that not everyone may be registered to receive these.

2.6 HMRC apologised for the delay in progressing matters.

Standard letter to inbound assignees
2.7 Forum members previously suggested that a line should be included advising customers to share the letter with their agent. Another suggestion was to include prompts referring to situations where personal allowances are not due.

2.8 The final letter is expected shortly and will be shared with forum members.

Employment Related Securities
2.9 Philip Paur provided an update. The Employment Related Securities Forum has not met recently, however, HMRC has updated the guidance at ERSM20192.

2.10 Philip Paur invited forum members to send him any questions on restricted stock units and he will take these forward.

Online Filing Schemes
2.11 HMRC advised the ERS online filing scheme was currently down. HMRC assured forum members that penalties would not be charged by virtue of inability to file due to HMRC's system error. The key challenge for HMRC has been the size of the files that are being submitted. Further communications to follow.

2.12 The Q&A log was reviewed.

2.13 Forum members raised concerns about the length of time it takes HMRC to publish the Q&A log.

2.14 HMRC acknowledged forum members concerns. HMRC explained that it has been a challenging time particularly with a pre-election Budget, a general election and a Summer Budget. Due to purdah, pre and post Budget restrictions, HMRC has not been able to publish the Q&A log and minutes as quickly as hoped.

3. CGT & Non Residents

3.1 HMRC provided an update on developments since this measure was last discussed at the February forum.

3.2 At the last meeting the legislation was in draft form. The legislation was finalised and included in the Finance Bill.

3.3 HMRC are keen to hear forum members' feedback on the legislation and invite members to feedback via the forum secretary.

3.4 HMRC explained there is an interaction with temporary non-residence rules. The non-resident charge applies first. Section 10A TCGA 1992 continues to apply when a non-resident returns to the UK, with credit being given for tax payable when non-resident.

3.5 The main feedback that HMRC has received is regarding accessing returns. HMRC acknowledged that the return is cumbersome. HMRC are looking at ways to improve the layout of the return and digitalisation.

3.6 In respect of Private Residence Relief, HMRC explained that there are various changes to the published draft, particularly regarding the 90 day test. In particular, with regards to married couples and civil partnerships, time spent by one partner in the UK can count towards the other partner's total.

3.7 HMRC has received 658 returns declaring approximately £3.5 million of gains. HMRC's analysis is that in general the system appears to be working well.

3.8 Forum members asked what receipt is provided when a return is submitted and whether a copy of the information is subsequently returned to individuals to retain.

3.9 HMRC explained that the process is, to an extent, a manual one. Once the return is received HMRC will acknowledge receipt. However, a copy of the information submitted is not subsequently returned to the individual to retain. If a copy of the information is required this has to be manually copied and pasted by the person submitting the return, unfortunately this cannot be printed off.

3.10 Forum members raised questions on work abroad absence relief and specifically, incidental duties. There was discussion around full time work abroad and aligning this with the Statutory Residence Test rules.

3.11 HMRC confirmed that both HMT and HMRC had received representations on this and that the issues will be considered post Budget.

3.12 Forum members also raised questions around HMRC's interpretation of when an individual is prevented from residing in a property in consequence of the situation of his place of work and the need for further clarification on this.

3.13 HMRC invited forum members to put their questions to HMRC in writing, which would be replied to after discussion with the relevant technical team.

4. Pensions flexibility

4.1 The 8 July Q&A log was reviewed with specific reference to the questions and answers in respect of flexi access drawdown, uncrystallised funds and overseas schemes and amending the National Insurance Contributions Regulations.

4.2 There was further discussion regarding how flexi-access drawdown is created for overseas schemes given that it is a UK legislative concept. HMRC advised that drawdown has to be a designation/ring-fencing of funds so that it is clear they will be used for draw down.

4.3 A concern was that overseas scheme managers may not understand what the member is trying to achieve when they want funds designated for drawdown. HMRC confirmed that the funds just needed to be shown to be set aside in some way, ready to be accessed by the member. These ring-fenced funds would differ from the remaining funds because no more contributions could be added to them but they could still be invested. However, these issues were not new with the advent of flexibility as the possible use of drawdown for overseas pension schemes had been available before April this year.

4.4 HMRC advised they are currently looking at changing the definitions for overseas pension schemes to ensure that the definitions work in the correct way. HMRC invited forum members to contact Beverley Davies if they wanted to be involved in these discussions. Beverley Davies can be contacted at beverley.davies@hmrc.gsi.gov.uk.

4.5 One of the action points arising from the February meeting was in respect of the pensions subgroup. HMRC advised forum members that if they thought it would be helpful to have a further subgroup to let HMRC know via the forum secretary.

4.6 Forum members referred to a long standing issue about what pension scheme distributions are subject to Article 17 of the US/UK Tax Treaty, as opposed to falling under Article 18(1). This arose following the previous pensions subgroup and forum members indicated that HMRC's position did not seem consistent with the Treaty.

4.7 HMRC explained the difficulty is that HMRC's view and the US's view does not necessarily coincide. IRS rulings suggest that the US views a transfer from a plan recognised by the treaty as a US pension plan as a lump sum payment within Article 17(2). The UK view is that transfers fall within Article 18(1) of the treaty.

4.8 HMRC advised that if this difference of opinion regarding the treaty manifested itself in an actual case it would need to be resolved via the mutual agreement procedure.

5. HMRC Strategic Updates

Post and call handling
5.1 HMRC acknowledged that it has been a difficult 12 months and that HMRC's ambition is to answer calls and post much quicker than it is currently. HMRC is targeted to answer 80% of calls and to respond to 80% of post within 15 working days whilst, as an organisation, trying to modernise and make cost savings.

5.2 HMRC acknowledged that the tax system meant there were peaks and troughs and HMRC has been working flexibly to manage this. A new telephone system has been introduced which allows greater volume of calls to be answered. Web chats and scanning post have been implemented as HMRC moves to greater digitalisation. New members of staff have also been recruited specifically to cover peak periods such as evenings and weekends.

5.3 HMRC explained that the self assessment peak in January 2015 was a success, staff members were temporarily redeployed from other areas to cover the peak. HMRC acknowledged there are still improvements to be made.

5.4 HMRC provided an update in respect of Specialist Personal Tax.

5.5 Specialist Personal Tax deals with some very complex issues and as such there is not the same degree of flexibility. HMRC recommended forum members contact Specialist Personal Tax directly if they have been waiting for a response to correspondence for longer than 3 months.

5.6 HMRC advised forum members that quieter periods on the telephones are early in the morning between 08:30 and 09:30 or across lunchtime between 12:00 and 14:00. Forum members may wish to contact Specialist Personal Tax during these times where possible.

5.7 HMRC asked forum members, where possible, to have their client's National Insurance Number or Unique Taxpayer Reference ready prior to telephoning. Again, where possible HMRC requested that forum members use the online portal to review SA statements and when telephoning limit their questions to 4 clients at a time. HMRC acknowledged that this may not always be realistic but these are ways in which agents can help the department provide them with a better service.

5.8 Forum members explained that when HMRC telephones them it would be helpful if, in addition to the Unique Taxpayer Reference and client name, HMRC confirmed their client's employer.

Building our Future
5.9 HMRC explained that 'Building our Future' is the strategic vision for HMRC's future operating model.

5.10 HMRC's aim is to put the customer at the heart of what it does and to use digital approaches to help do this. Increasing digitalisation will modernise the system and enable the department to tailor its responses better. Data will also be used to pre-populate returns and better target compliance activity.

5.11 HMRC will continue to get smaller as an organisation including reducing its geographical footprint to operate from fewer locations. The future operating model is expected to be based on 12 regional centres. Further details to follow in due course on the specific locations.

5.12 HMRC will focus on re-enforcing strategic compliance through its strategy to;

- Promote compliance.
- Prevent error from entering the system.
- Respond to non-compliance by undertaking interventions.

Digital tax accounts

5.13 HMRC advised that digital tax accounts were currently in private beta testing mode. In the first instance it is anticipated that these will be available to those who have less complex tax affairs.

5.14 HMRC explained that although digital tax accounts are currently being tested, further consultation and engagement with stakeholders and ministers would be required.

5.15 Forum members asked whether this meant that expats would not need to complete a tax return in the future.

5.16 HMRC explained this is the ambition, however, it is a complex issue with a number of strategic considerations. There would always be a need for the department to be able to require some taxpayers to provide some information to a set timescale but the aim was to limit this to where it was strictly necessary and the expectation was that it would look very different from the current cycle of annual tax returns.

5.17 Forum members asked who was responsible for this area of work and how they could feed into this.

5.18 HMRC said that it would look to organise a session with HMRC's IT colleagues and forum members to demonstrate the work that had been undertaken so far.

5.19 Forum members commented that the theme seemed to be 'pay as you go' and asked if an individual had overpaid whether a repayment could be made as easily.

5.20 HMRC confirmed that this raised a number of issues but again, this is the ambition.

Charities, Savings and International

5.21 HMRC explained that previously Specialist Personal Tax contained a number of small teams which as an organisation is not sustainable particularly when reducing costs. As such Personal Tax International, Charities and Savings have merged to form Charities, Savings and International. This merger brought a number of smaller teams together and will offer greater flexibility in providing customer service and doing compliance work. The business unit is led by Dave Shaw.

6. Compliance and procedural matters

New Short Term Business Visitor Arrangement

6.1 At the February Forum, HMRC indicated that following a meeting with agent representatives, HMRC was exploring whether a new PAYE arrangement could be introduced. The target group was employers with very short term visitors for whom there is a

PAYE obligation. These are employees who work in their overseas branches and those short term business visitors (STBVs) are usually from group companies who work for them but cannot be included in a valid EP APP4 agreement.

6.2 HMRC worked with internal stakeholders and solicitors office to produce a scheme which was approved by the PAYE Management Board on 17 June 2015. HMRC shared this in draft with some agent representatives the following day. The feedback was very positive, however, some suggestions were made. HMRC are currently addressing these and hope to launch the arrangement in the next 2 to 3 weeks.

6.3 It is a PAYE scheme which will allow employers to operate PAYE annually at month 12 for STBV's with no more than 30 UK workdays. The 30 day count will not include days on which duties were incidental but the 30 day count will not be otherwise extended.

6.4 The arrangement is for people who have UK tax liabilities only, those with National Insurance Contributions cannot currently be included. HMRC asked forum members to provide specific details if this becomes a problem.

6.5 The employer will need to send a month 12 FPS by 5 April or 19 April with late reason code A and make payment by 22nd April electronically or 19 April by other means. Payments on account can be made beforehand but not the FPS unless it is the final FPS for the scheme.

6.6 A gross up of tax on PAYE income will be required only where the employee is covered by tax equalisation or other net pay entitlement arrangements.

6.7 Employers will be required to include benefits in kind – tax grossed up as necessary. Forms P11D and UK Tax Returns will not routinely be required.

6.8 The scheme will be available for the current 2015 to 2016 tax year. It will be made available via the PAYE Manual. All applications will be processed by Specialist Personal Tax in the same manner as EP APP6. The references will be within the EXP8000 range.

6.7 A decision has yet to be made on whether directors can be included.

6.8 Forum members asked when this would be available.

6.9 HMRC explained that further discussions would take place on this in the next week. Guidance would subsequently be drafted and published in the PAYE manual. Forum members will be informed when this is available.

6.10 With regard to the 30 days, forum members questioned how travel days would be treated.

6.11 HMRC explained that the Statutory Residence Test definition of a workday would not be used. Instead employers may use the 'rule of thumb' or apply the particular facts for travel days.

[POST MEETING NOTE: Further clarification on the treatment of travel days which include substantive work as well as travel is detailed in the new guidance in the PAYE manual.]

6.12 Forum members explained that there was some confusion regarding who was dealing with National Insurance Contributions questions.

6.13 HMRC confirmed that there had been some change in personnel and this would be followed up.

Action Point – HMRC to clarify who is responsible for National Insurance Contribution questions and if they can be contacted directly by forum members.

Statutory Residence Test
6.14 HMRC explained there is some evidence of what appears to be a general misunderstanding around split year treatment. Some agents and individuals have completed the SA109 on the basis that they were not resident and then ticked the box for split treatment to apply. HMRC have tried to address this by providing greater clarity in the SA109 notes for 2014-2015 and 2015-2016. In addition HMRC have trialled a support workshop for some of the smaller accountancy firms. This may be rolled out further later in the year.

6.15 There have also been examples of s154 Sch 45 FA2013 (Transitional Provisions) elections being made for multiple years unnecessarily, for example, because the years were already self-assessed as Not Resident. However, such elections have not been received in significant numbers. Elections that have been made and which impact on the SRT self-assessment year will be looked at closely.

6.16 So far there is insufficient evidence from our SA programme of interventions to gauge the impact of the introduction of the Statutory Residence Test or how well the rules have been applied or understood. There have been only a limited number of interventions opened to date and no specific trends have yet been highlighted.

Section 690 directions
6.17 Forum members raised concerns about HMRC delay in processing Section 690 directions.

6.18 HMRC is considering improvements to the guidance and implementing a standard approach for applications. Consideration is also being given as to whether applications can be made for more than 1 year. HMRC acknowledged there had been delays and apologised. Forum members were advised to contact HMRC where they have been waiting for 3 months or more. Please contact Pam Hughes in the first instance. This is a temporary measure till 31 October 2015.

6.19 Forum members explained there are problems for non-resident individuals who have left the UK, have no UK bank account and are awaiting large repayments. The repayments cannot be paid via cheque as the amounts are too large.

6.20 HMRC agreed to look into this.

Action Point – HMRC to review the repayment process for non-resident individuals with no UK bank account.

7. Forum Participation

7.1 Forum co-chairs led a discussion on the participation of the Forum with specific reference to the Big 4 sending two participants. It was noted that there was previously a system where the second participant would attend in an ‘observer’ capacity and would take notes at a ‘second table’.

7.2 Forum co-chairs invited members to contact them directly if they had views they wanted to share on this topic.

8. AOB

8.1 Forum members referred to HMRC delays in respect of NT tax code requests. Where the employer pays the UK tax under tax equalisation a National Insurance Contributions liability

arises. Where the NT code is subsequently received it is backdated to the date the overseas assignment commenced but the National Insurance Contributions paid on that tax are not refundable. Forum members raised concerns that HMRC delays are resulting in unnecessary liabilities.

8.2 Employers who choose to apply an NT tax code or S690 direction whilst awaiting responses to requests from HMRC do so at their own risk. Such employers would have no protection from PAYE recovery on income which is taxable and should have been subject to PAYE and may incur penalties if the applications were subsequently refused.

8.3 HMRC acknowledged the delays and confirmed that the question would be raised with the National Insurance specialists.

Action Point – HMRC to raise the question of National Insurance Contributions and NT tax codes with National Insurance specialists.

[POST MEETING NOTE: Provided a request for an NT code is made prior to or around the time of departure from the UK, HMRC will allow the employer to adjust the National Insurance position as well as the tax in accordance with the NT tax code, backdated to the day after the date of departure.]

8.4 Forum members referred to the Higgs v HMRC case and asked HMRC to provide clarity on the requirements of the Section 8 notice.

Action Point – HMRC to provide further clarity following the Higgs v HMRC case.

[POST MEETING NOTE: HMRC accepts the decision in the Higgs case and will accept, with effect from 11 March 2015 (the date of the decision in the Higgs case), Self Assessments from customers for years ending more than four years ago where a Section 8 notice has been issued, a determination has not been raised for the year of return and it is an original return not an amendment. As always we will expect customers to have the appropriate evidence to support their returns and the normal enquiry timelines will apply.

HMRC's Self Assessment IT infrastructure is constructed around our long held interpretation of S34 (1) which means that it is not possible to submit a Return electronically outside of a four year time frame. A customer who wishes to submit a Self Assessment in this instance will be required to do so in paper format.]

8. 5 HMRC proposed a short intermediate meeting in advance of the forum scheduled for 20 October 2015. This would be specifically to discuss issues arising from the Budget. HMRC invited forum members to feedback, via the secretary, if this would be useful.

8.6 Forum members noted the next meeting was scheduled for 20 October 2015 and asked HMRC to confirm the time of the next meeting.

Action Point – HMRC to confirm the time of the meeting scheduled on 20 October 2015.

[POST MEETING NOTE: The 20 October meeting is scheduled from 10:30 to 12:30.]

8.7 Forum members asked whether there was any further update on the restructuring of the personal allowance.

8.8 HMRC confirmed there were no further updates

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 July 2015

No	Question	Answer
1.	**NHS Surcharge** From 6 April some immigrants coming to the UK for more than six months who are not EU citizens will be liable to pay an annual NHS surcharge of £200 for themselves and for each family member while they are in the UK, so long as they remain subject to immigration control. This affects Tiers 1, 2 (other than inter-company transfers), 4 & 5. An affected immigrant from outside the EU who applies for a Visa for four years must pay £800 for himself and must pay it up-front with his Visa fee when he applies to come to the UK. Clients are querying whether:	The NHS surcharge is related to the individual's presence in the UK rather than their travel to get here. The information specifically states that it is not a VISA. As such, it is not a travel facility for the purposes of S281, S370, S371, s373 or S374 ITEPA. The payment should be reported as income for both tax and NICs. **Update with effect from November 2015** HMRC has recently been asked to reconsider its view on the treatment of NHS surcharges paid by employers on behalf of employees for tax and NICs purposes. Because the surcharge must be paid upfront and is part of the VISA process, HMRC has decided that the costs of the NHS surcharge may be attached to the VISA costs and be regarded as a travel facility in the same manner as the airfares,

No	Question	Answer
	1. If the employer pays the fee for the inbound foreign employee and his family this will be treated as a taxable benefit? 2. In this regard it is HMRC's practice to treat Visa fees as a deductible international travel expense under S373 ITEPA for non-domiciled employees and their families who meet the conditions imposed by S373 to S375. Will the same treatment be extended to the NHS surcharge for income tax (and for Class 1 NIC, where applicable)? 3. The charge could be treated as a qualifying relocation expense, say as a travel facility within S281 ITEPA.	train fares, etc. As such, where the costs can be attributed to a particular journey from overseas to the UK, a deduction will be appropriate for the employee under S370 or S373 ITEPA 2003 and for the accompanying or visiting spouse, civil partner and children under S371 or S374 ITEPA 2003. Similarly such costs are therefore disregarded for both Class 1 and Class 1A NICs. Where however there is no journey for example because the cost relates to an extension to allow the employee to stay in the UK, the costs met by the employer will be general earnings and liable to tax and NICs.
2.	**2014-15 SA109** We've been looking at the Self Assessment SA109 for 2014/15 and find it much better configured for the SRT than the 2013/14 version. However, there are a few points on which we'd appreciate HMRC's clarification Boxes 2 and 14 – the instructions to box 2 cross refer to box 14: 'If you put an 'X' in Box 2 [eligible for OWR for 2014/15] you need to put an entry in Box 14 [Number of overseas workdays in 2014/15].' The instructions to Box 14 state 'If you have put an 'X' in Box 2 enter the total number of overseas work days that relate to your claim to Overseas Workday Relief for the whole of 2014-15. If you have put an 'X' in Boxes 2 and 3 [split year treatment applies] you only need to enter the number of overseas work days in respect of your Overseas Workday Relief claim for the UK part of 2014-	HMRC believe our instructions are correct, however, it is up to the individual to self assess, and box 40 (previously box 39 for 2014-15) is always available for clarification or additional notes. It should be borne in mind that due to lead-in preparation timescales there is nothing that can be done to change the actual SA109 form for 2014-15. Any changes to the notes will be reflected in all versions of the 2015-16 notes as appropriate, but may only be reflected in the 2014-15 internet version of the notes. Box 2 - We agree and clarification will appear in the notes to explain regarding OWR and reference will be made in the RDR4 booklet.

No	Question	Answer
	15'. The instructions then refer the reader to RDR3 where the concept of 'work' is explained. A UK workday for the purposes of overseas workday's relief is not the same as a workday for the purposes of the SRT. We suggest that we report at Box 14 overseas workdays as defined for the purposes of overseas workday's relief, and not SRT workdays.	Box 14 – HMRC believes that this has now been answered by changing the notes regarding box 2.
	Box 13 (number of UK workdays) – the instructions state 'If you have ticked box 1 because you meet the automatic overseas test for 2014-15 …' Should this be restricted to the third automatic overseas test or do HMRC want the number of UK workdays for individuals regarded as automatically NR on the basis of days of presence? As HMRC appears not to want the number of UK workdays for individuals who are NR under the sufficient ties test (STT), we assume box 13 should be completed only where the individual is working full-time abroad. Can HMRC confirm this please?	Box 13 - There is a requirement to return all UK workdays as the earnings arising from these UK workdays are potentially chargeable to UK tax.
	Box 10 (the deeming rule). If you have not put an X in Box 8 (residence in any of the previous three years) the deeming rule will not apply. If you have put an X in Box 8 the deeming rule will apply but only if there are more than 30 days on which the individual was present but not at midnight. Please confirm that HMRC is expecting the entry in Box 10 to reflect the number of days of presence under the deeming rule but no other days of presence on which the individual was present but not at midnight including the first 30 days of presence in the case of someone who has at least 3 UK ties and who was resident in one or more of the previous three years.	
	Box 12 (UK ties). The notes say that ties are to be entered only for the overseas part of the year. No mention is made of	

No	Question	Answer
	having a family tie at any time in the year, which also counts as a tie for the split year test. Should this be included?	
	Box 3.1 (more than one case of split year treatment applies). This could result in unnecessary additional work. For instance, for UK employees going to work abroad full-time, if Case 1 clearly applies there is little point in examining the Case 3 position until or unless the Case 1 position comes into question. Completion of Box 3.1 ought not to be necessary in these circumstances. For employees returning to the UK, please confirm that we do not need to assess each of Cases 4, 5, 6, 7 and 8 and that we only need to assess the Cases that could in fact apply. For example, if Case 6 (cessation of full-time employment abroad) applies, the only other Case that could apply is Case 5. In such a case, the maximum number we would need to enter in Box 3.1 is '2'. However, if the initial facts clearly point towards Case 6 and cessation is before the employee's physical return to the UK to recommence full-time work in the UK it would again be helpful if we did not have to complete Box 3.1 The difficulties of assessing all potential cases are increased by the uncertainty over whether Case 5 applies if the employee returns to the UK towards the end of the tax year and it is not yet possible to assess a 365 day period for full-time working in the UK. In this case, we will use our best judgement to determine whether Case 5 is likely to be applicable and then, if Case 6 applies we will determine the split year date on the basis of the earlier date under Cases 5 and 6, and if Case 6 does not apply we will determine the split year date on the basis of the earliest date under Cases 4, 5 and 8.	Box 10 - You are correct subject to box 7 being checked. Box 12 - Applies to individuals who became UK resident part way through a tax year. It seeks to test ties in the overseas part of the year only. So for a UK resident claiming split-year this question is only relevant to the overseas part of year.

No	Question	Answer
	Box 9 (overseas home) – the instructions state that the box needs to be checked only if the individual had an overseas home but spent fewer than 30 days in that home during 2014/15. To complete this box we would have to determine what is a home and how many days of presence the assignee had in that home. The point of this is not clear unless the assignee has a home in the UK and the 2nd automatic UK test is being applied. Should it only be completed in those circumstances?	Box 3.1 - HMRC need to know what cases of split-year have been considered, we need to be satisfied that the correct priority rules have been applied and therefore the correct case applied.

No	Question	Answer
		Box 9 - This is for information gathering purposes, as HMRC have been advised anecdotally that individuals are not necessarily reading the accompanying notes, and this is relevant for split-year cases. It is intended that the notes be amended to include the following: "You need to consider each and every home you have overseas when considering this question." .

No	Question	Answer
3.	**Late Self Assessment Returns** The recent judicial decision of the Upper Tribunal (UT) on the application of Higgs v HMRC 2015 UKUT0092 concludes that HMRC's interpretation of S34(1) TMA on this point is wrong. It decided that HMRC should have processed a late-filed 2006/07 return, showing a significant overpayment, which was not submitted until November 2011. The UT also concludes that should it be wrong about S34 (1) HMRC has a discretion to process late returns. 1. Can HMRC confirm whether it accepts the decision? 2. If so how should such returns be submitted to HMRC?	1. HMRC accepts the decision in the Higgs case and will accept, with effect from 11 March 2015 (the date of the decision in the Higgs case), Self Assessments from customers for years ending more than four years ago where a S8 notice has been issued, a determination has not been raised for the year of return and it is an original return, not an amendment. As always HMRC will expect customers to have the appropriate evidence to support their returns and the normal enquiry timelines will apply. 2. HMRC's Self Assessment IT infrastructure is constructed around our long held interpretation of S34 (1) which means that it is not possible to submit a Return electronically outside of a four year time frame. A customer who wishes to submit a Self Assessment in this instance will be required to do so in paper format.
4.	**SRT – Split-Year** I have come across what appears to be a potential gap in the legislation when considering whether a number of the split year cases can apply for someone coming to the UK who qualifies as an "arriver" with respect to the tables at FA 2013 paras 17 to 20. As you know, one of the qualifying conditions for split year under cases 4, 5, and 8 is that in the "overseas" part of the tax year the taxpayer does not have sufficient UK ties. For these purposes the sufficient ties test is modified to time-apportion the tables at paras 18 and 19. The problem is that the "arriver" table (para 19) does not cover the position where an individual has no UK ties in the tax year. In such a case he or she could spend up to 182 days in the UK	Under the SRT an individual who has determined that they are resident in the UK is required by statute to consider whether they meet the conditions for split-year treatment. Split-year treatment is not available to an individual who has determined themselves to be non-resident in the UK. If the conditions of any of the Cases of split-year are met the tax year is split (s43 Sch45 FA13 refers) into an overseas part and a UK part. Where the conditions of more than one Case of split-year are met, the individual is required to apply the priority ordering rules detailed at s54 & s55 Sch45 FA 2013.

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<tr><th>No</th><th>Question</th><th>Answer</th></tr>
<tr><td></td><td>without being UK resident. This is clear and for the main test there is no problem with the way that the table in para 19 is set out.

The difficulty is where you have an individual who wants to claim split year under case 4, 5 and/or 8 is an “arriver” and has no UK ties in the “overseas period”. Common sense would say that 182 is apportioned because that is the day count which would apply for the entire year. However, as mentioned, 182 is not in the table in para 19 so the directions on apportioning the day count figures in the para 19 table that are provided in the sub-sections for cases 4, 5 and 8 would not seem to apply. I may have missed something but it does seem to me to be an issue with the legislation and it would be helpful to know what the HMRC view is.</td><td>Split-year Cases 4, 5 and 8 all require the individual to consider whether they had sufficient UK ties in the overseas part of the year. However, this is not a test of their residence status either for the year or for the overseas part of the year. Rather, it is simply a condition of those split-year Cases that the individual did not have sufficient ties in the overseas period. As stated above the individual will already have determined they are resident for the year. Otherwise, they would have no need to consider the split-year provisions at all.

As correctly stated, in order to determine whether they had sufficient ties in the overseas part of the year, the individual needs to consider the day count limits set out in column 1 of the Tables at s18 & s19 Sch45 FA13 which are proportionately reduced by the number of whole months remaining in the relevant tax year. Using Case 4 as an example, this would be the day from which the individual started to have his only home in the UK; or for Case 5, the day he started work in the UK and for Case 8 the day they started to have a home in the UK.

An arriver who had not been UK resident for any of the three previous tax years and starts to have a home in the UK only from 1 February in year X would reduce the day count limits in the Table at Para 19 by 2/12ths i.e.

<table>
<tr><th>Original</th><th>Adjusted to</th><th>Ties</th></tr>
<tr><td>More than 45 but no more than 90</td><td>More than 37 but no more than 75</td><td>Need at least 4</td></tr>
<tr><td>More than 90 but not more than 120</td><td>More than 75 but not more than 100</td><td>Need at least 3</td></tr>
<tr><td>More than 120</td><td>More than 100</td><td>Need at least 2</td></tr>
</table>
</td></tr>
</table>

No	Question	Answer
		The individual would therefore have had to have a minimum of two UK ties **and** spent more than 100 days in the UK in the overseas part of the tax year to have met the sufficient ties test for the purpose of Case 4. The consequence of meeting the sufficient ties test is that Case 4 would not apply and unless the individual met the conditions of another Case of split-year they would be regarded as resident for the whole of year X. In this example an individual who had less than two ties in the overseas part of the tax year could never meet the sufficient ties test, even if they have spent up to 182 days in the UK. An individual who has no ties to the UK in the overseas part of the year could never fail the sufficient ties test condition within split-year Cases 4, 5 and 8. They may of course fail to meet other of the Case conditions.
5.	**SRT** We recently attended a Seminar at HMRC Trinity Bridge House and we had a few follow up queries on sufficient ties in split year cases which we were advised to address through the expatriate forum. We understand from the comments at this seminar that when considering split year cases 4 & 5 the sufficient ties are not apportioned and are applied only to the overseas period. As such we wanted to confirm that our understanding for the individual ties below is correct: **SRT – Accommodation Tie** When considering split year sufficient ties, we understand that HMRC reference the 91 day UK accommodation tie over the overseas period and not throughout the year. E.g. if the overseas period ends in July	**Accommodation & Work Tie** Your understanding is correct with regard to the accommodation and work tie day limits when considering Case 4 & 5 split years. The same also applies to Split-year Case 8 S47 (6) Sch 45 FA 13 and s48 (5) Sch 45 FA 13 state that Paragraphs 17 to 20 (and Part 2 of this Schedule as far as it relates to those paragraphs) apply for the purposes of s47 (4) Sch 45 FA 13 (split-year Case 4) and s48 (3) (b) Sch 45 FA 13 (split-year Case 5) when determining if an individual does not have sufficient UK ties in the overseas part of the tax year. As stated above the same would be true for the purpose of s51(4) Sch 45 FA13

<table>
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<tr><td></td><td>2014 and there is UK available accommodation throughout the overseas period from the 6 April 2014 to July 2014, as long as there are 91 days on which the accommodation is available in this overseas period, it will be tie for UK tax purposes.

Alternatively if overseas period is less than 91 days, the UK available accommodation in the overseas part of the year not be considered a tie, as it is not possible for this to be available for the required 91 period given the length of the overseas period. Is this correct?

SRT – 40 UK days
As above, we understand that in split year cases, UK substantive work tie of 40 UK days must be wholly consumed by the overseas period, therefore if the UK workdays in the overseas period from 6 April 2014 are less than 40 days in total, this would not be a tie for the overseas part of the year. Please can you confirm whether this is also HMRC's understanding.

SRT – Sufficient ties
Paragraph 47(6b) & 48(5b) of Sch 45 of FA 2013 directs us to apportion the day figures in paragraph 18 and 19 tables in these split year contexts. In respect of paragraph 19 there is no reference to an individual with one tie, and therefore, we wanted to clarify whether a taxpayer with one tie using paragraph 19 will:

• always not have sufficient ties in the overseas period regardless of the days spent in the UK
• compare UK days compared to apportioned 182 days
• the two tie apportioned limits need to be applied.</td><td>So, if the overseas part is less than 91 days then the individual cannot have an accommodation tie in that period and if the individual has worked for more than 3 hours in the UK on less than 40 days in the overseas part then there will not be a work tie.

Sufficient Ties

In order to determine whether an arriver who had not been UK resident for any of the three previous tax years had sufficient ties in the overseas part of the year, the individual needs to consider the day count limits set out in column 1 of the Table at s19 Sch 45 FA13 which are proportionately reduced by the number of whole months remaining in the relevant tax year. Using Case 4 as an example, this would be the day from which the individual started to have his only home in the UK; or for Case 5, the day he started work in the UK and for Case 8 the day they started to have a home in the UK.

An arriver who had not been UK resident for any of the three previous tax years and starts to have a home in the UK only from, say, 1 February in year X would reduce the day count limits in the Table at s19 by 2/12ths i.e.

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An individual would therefore have had to have a minimum of two UK ties and spent more than 100 days in the UK in the overseas part of the tax year to have met the sufficient ties test for the purpose of Case 4. The consequence of meeting the sufficient ties test is that Case 4 would not apply and unless the individual met the conditions of another Case of split-year they would be regarded as resident for the whole of year X. In this example an individual who had less than two ties in the overseas part of the tax year could never meet the sufficient ties test, even if they have spent up to 182 days in the UK.

An individual who has 1 or no ties to the UK in the overseas part of the year could never fail the sufficient ties test condition within split-year Cases 4, 5 and 8. They may of course fail to meet other of the Case conditions.
</td></tr>
<tr><td>6.</td><td>Residence

The query refers to issues in respect of the current position regarding UK residence:

1. Our client left the United Kingdom on 11 February 2013. We are satisfied that at that time under the residence rules that they would be regarded as non-residence from the date they left the UK.</td><td>Point 1</td></tr>
</table>

No	Question	Answer
	The intention at the time was to live for the foreseeable future abroad although they continue to be a director of a UK company and have drawn dividends in the year 2013/14 from this close company. Due to unforeseen circumstances, they may now need to return to the UK to reside prior to being non-resident for five years. Are we correct in our understanding that having left the UK prior to 2013/14 they would not be subject to any UK liability from 2013/14 dividends on the return to the UK if it was within five years?	In the circumstances described in your scenario, provided the taxpayer met the conditions to be regarded as non-resident from the date of their departure in February 2013 they would not be subject to the Statutory Residence Test (SRT) temporary non-residence rules as they only apply from 6 April 2013. Should the taxpayer return to the UK within 5 years of their departure in February 2013 their liability in respect of income and gains arising whilst overseas will be considered under the former provisions which are more limited in scope.
	2. On a secondary matter, could you please confirm that any dividends paid out of post-departure trade profits would not be taxable regardless of the above and finally, could you confirm HMRC's interpretation of "post-departure trade profits" for clarity?	Point 2 Dividends paid in respect of post-departure trade profits - please refer to s134 (6) Sch45 FA13. Definition of post departure trade profits - please refer to s134 (7) Sch45 FA13. For completeness also refer to s134 (8) Sch45 FA13.

No	Question	Answer
7.	**Overseas Workday Relief (OWR)** The material contained at paragraph 18 of RDR4 concerns the transitional rules for OWR, in relation to any individual who (*under pre-SRT rules*) was resident but not ordinarily resident ("R/NOR") in the UK at 5 April 2013. Such an individual is not eligible for OWR under the new rules and instead the old rules as set out in HMRC6 still apply. It appears that the guidance in RDR4 must be intended to cover all the possible instances of the old R/NOR status and not just what was the standard rule in HMRC6. Can HMRC confirm that this is a correct assumption? For someone who had R/NOR status at 5 April 2013, OWR remains available in 2013/14 and any subsequent year where, applying the principles of pre-SRT law, R/NOR status would result. The normal rule per HMRC (para 7.7.4) is that "you will be ordinarily resident from the start of the tax year in which the third anniversary falls." So for someone who was R/NOR as at 5 April 2013, having first arrived during the 2012/13 tax year: · The third anniversary of that arrival falls in 2015/16. · That makes 2015/16 an ineligible year for transitional relief. · Transitional relief is only potentially available in 2013/14 & 2014/15	The transitional rules at paragraph 18 of RDR4 are intended to mirror the treatment HMRC would have given under HMRC6, if the facts of an individual's circumstances show that they were not ordinarily resident in the UK. For example:- Let's assume that P (the customer) arrived in the UK in Oct 2012 and remained in the UK after the third year anniversary of his arrival. He could be treated as follows: 12/13 Not Ordinarily Resident (NOR) therefore entitled to OWR 13/14 NOR - entitled to OWR 14/15 NOR - entitled to OWR 15/16 OR - no entitlement to OWR, this is because he remained in the UK after the third anniversary of his arrival and therefore in accordance with HMRC 6, paragraph 7.7.4 he is OR from the start of this tax year. However if P arrived in the UK in October 2012 and left the UK **before** the third anniversary of his arrival, say July 2015, he could be treated as being NOR up to his date of leaving the UK in 2015/16 and be entitled to OWR up to this date. Obviously if HMRC agree for whatever reason to allow NOR beyond the actual date of the 3rd anniversary then his entitlement to OWR would continue also.

No	Question	Answer
	The example in RDR4, para 18 (third bullet point) indicates that eligibility for transitional relief "may continue" under old rules for 2013/14, 2014/15 **and 2015/16.** (*emphasis added*) Am I correct in assuming that the use of "may continue" in RDR4 is to allow for those rare situations in the HMRC6 guidance where R/NOR status could extend to a period beyond the third anniversary of arrival in the UK? (i.e. marginal overstays in relation to original intent, or the very unusual circumstances where a stay in the UK in excess of three years could be demonstrated to be not 'ordinary' and to have no settled purpose).	
8.	**Pensions** 1. Are there any plans to amend the NIC Regulations, specifically SI 2001/1004 Schedule 3 Part VI, to bring the NIC disregards up to date for pension's flexi-access from April? This affects in particular EFRBS schemes, including non-UK schemes that provide benefits on the same basis as a registered pension scheme. There is currently no provision for an uncrystallised funds lump sum to be disregarded, and I think other changes are required. 2. Consideration could also be given to introducing a disregard for an otherwise qualifying in-service distributions where the member has reached the minimum pension age.	1. The disregard in Part VI of Schedule 3 of SI 2001/1004 relates to authorised payments, specifically lump sums permitted by the lump sum rule (as per section 164(1) (b) of Finance Act 2004). Authorised payments such as the uncrystallised funds pension lump sum will fall within this category and so are already covered by the disregard. 2. This seems unrelated to pension flexibility but if it would be an authorised payment if paid by a registered pension scheme then it is already covered. If it would not be authorised then it seems contrary to the reason for providing the disregards in this Part.

No	Question	Answer
9.	**Pensions** What is HMRC's position if, under pensions flexibility, an individual who is non-UK resident and treaty resident abroad takes a distribution from a relevant non-UK pension scheme which consists of funds which have received UK tax relief. The treaty reserves the sole taxing right to the residence country, but the payment is not an authorised member payment under UK law. For instance, a member may take a lump sum distribution which would be an uncrystallised funds pension lump sum for UK purposes but for the fact that the member is not yet 55. Assume the member has achieved minimum pension age under the foreign scheme. If the member had been UK resident in the previous five years, would HMRC tax the payment as an unauthorised payment, irrespective of the double tax treaty?	In the example provided, the payment would be an unauthorised payment but as to whether or not we would collect the unauthorised payment charges, this would depend on the terms of the relevant double taxation agreement.
10.	Pensions Concepts such as drawdown and "uncrystallised funds pension lump sum" are likely to be unfamiliar to overseas pensions law and hence will not be incorporated in the rules of overseas pension schemes. In so far as overseas scheme administrators are aware of them they will not have the discretion conferred statutorily on UK administrators to override existing scheme rules. This seems to narrow the potential	The concept of drawdown pension is not a new one having been in existence since April 2006 and relevant non-UK schemes (RNUKS) have been able to pay the equivalent of drawdown pensions since then.

No	Question	Answer
	application of the new rules to foreign schemes quite considerably. I would be interested in HMRC's comment.	When a scheme manager chooses for their scheme to become a QOPS or a QROPS they undertake to comply with certain requirements. In choosing to become one of these schemes HMRC expects overseas scheme managers to make themselves aware of their responsibilities, and continue to do so whilst they want their scheme to be a QOPS or a QROPS. HMRC publishes extensive guidance on the operation of the UK tax rules for pension schemes. For example, guidance on uncrystallised funds pension lump sums can be found in the Pensions Tax Manual (PTM) at PTM06330 (http://www.hmrc.gov.uk/manuals/ptmanual/ptm063300.htm). Regarding the operation of section 273B FA 2004 which provides scheme administrators of registered schemes with the discretion to override certain scheme rules, it would not be appropriate for UK tax legislation to impact the operation of non-UK schemes.
11.	Pensions FA 2004 S165(3A) has been repealed, so that the member no longer has to make a valid declaration to the scheme administrator. The legislation no longer posits that it is the member, as opposed to someone else, who designates the funds. This leaves us wondering what a foreign scheme administrator, unfamiliar with UK pensions practice, would need to do in order to establish to HMRC's satisfaction that funds have been validly designated. For instance, if a foreign trustee (not a scheme administrator) designates funds for drawdown, would that be accepted.	The equivalent of drawdown for overseas schemes has been catered for in legislation since April 2006 (before the introduction of section 165(3A) which dealt with flexible drawdown requirements). The latest legislative changes have not changed how designation works; it is still the member that takes action to instigate the process. To determine if a drawdown fund has been created HMRC would apply the same conditions as would apply to a registered scheme. This would involve some element of ring-fencing of funds for the particular purpose of allowing the member to access the funds. This designation is more than a schedule of proposed future payments.

No	Question	Answer
	Conversely, can the member inadvertently crystallise funds for drawdown without intending to? For instance, assume the administrator writes to a member on his reaching retirement age and explains that under the pension rules he can take his benefits in one of a number of ways, including (a) paying them out immediately as a combination of pension/ annuity and lump sum, (b) leaving them available to be taken as pension or annuity as short notice, or (c) leaving them invested for longer-term growth (requiring a deferral for a minimum number of years). Would, for instance, (b) be interpreted as the constructive designation of funds for drawdown, even though that was not the intention?	The relevant guidance on drawdown pension funds (created before 6 April 2015) and flexi-access drawdown funds (created from 6 April 2015) can be found in the Pensions Tax Manual: http://www.hmrc.gov.uk/manuals/ptmanual/ptm062730.htm http://www.hmrc.gov.uk/manuals/ptmanual/ptm062510.htm
12.	Pensions Assume an RNUK scheme member has two separate investments within his overseas scheme: one consisting of investments bought out of contributions paid while working and resident outside the UK and the other purchased out of UK tax-relieved contributions. Paragraph 4 of SI 2006/207 specifies that payments are deemed to be made first out of a notional UK tax-relieved fund. However, if the member designates the non-UK tax relieved fund for flexible access and takes benefits from that it is not clear how the deeming rule operates. Is he nonetheless deemed to take benefits from the UK tax-relieved fund? If so, are these subject to the drawdown rules or are they an UFPLS?	Deeming rules are not perfect but paragraph 4 of SI 2006/207 provides that payments made by the scheme are assumed to have been made out of the UK tax-relieved fund in priority. So in this example the payments taken first will be taken from the UK tax-relieved fund. Whether the payment is an UFPLS or a drawdown payment will depend on the facts (for example if the funds have been designated). But if a payment has been made from crystallised funds, which will include funds designated into drawdown, it cannot be an UFPLS.
13.	Pensions	

No	Question	Answer
	With the revised definition of uncrystallised funds it seems to us that the distinction between a UFPLS and a drawdown payment could become unclear in certain circumstances. Para 55 of Schedule 1 to TPA 2014 amends S166(2) to make clear that a person becomes entitled to a UFPLS immediately before it is paid. Para 57 amends Sch 29 to FA 2004 by inserting para 4A, which spells out the conditions that need to be met for a payment to be regarded as an UFPLS. Para 4A(f) states that 'immediately before the member becomes entitled to it, the sums or assets that are to be used to provide it (i) represent rights of the member under the scheme that are uncrystallised rights as defined by section 212(1) and (2) but (ii) do not to any extent represent rights attributable to a disqualifying pension credit …'. So a person becomes entitled to an UFPLS immediately before it is paid and the test for whether para 4A(f) is met needs to be assessed by reference to whether, immediately before entitlement arises, the rights are uncrystallised. Does HMRC agree that members of RNUKS who choose or are required to take a 100% lump sum from their pension scheme and have not made a drawdown designation in respect of the funds in question should be regarded as in receipt of an UFPLS on the basis that they became entitled to the lump sum immediately before it was	Whether or not pension funds are uncrystallised is a matter of fact. Where a member has designated funds into drawdown the legislation deems those funds to be crystallised If an individual has not made a drawdown designation then payments cannot be made from a drawdown fund (as it has not been created). Provided the requirements of paragraph 4A of Schedule 29 are met then the payment could be an UFPLS. Typical circumstances in which a member is treated as entitled to the present payment of benefits is, but not limited to, payment of a pension/annuity which continues to be paid. Whether a pre-arranged programme of payments out of a fund means that the payments are crystallised will depend on the facts. If funds have been designated into drawdown they will be crystallised. Whether or not a proposed schedule of future payments constitutes crystallisation will depend on the individual circumstances.

No	Question	Answer
	paid – in other words, immediately before payment their rights are uncrystallised? Some members may be allowed to take their pension benefits in a finite number of lump sums rather than as either a single lump sum or as periodic pension income. If the scale and frequency of the payments is determined in advance, would the member be treated as 'entitled to the present payment of benefits'? This would result in the funds being treated as crystallised (S212(1), FA 2004) and so any lump sum after the first lump sum would apparently not be an UFPLS, whether or not the member intended to designate funds for drawdown. We would appreciate HMRC's comment on this, including clarification of the typical circumstances in which a member would be treated as entitled to the present payment of benefits? For instance, would the preparation of a payment schedule be treated as a designation?	
14.	Pensions If a member requests a transfer of his RNUK scheme fund to another overseas scheme which is not a QROPS that would be treated as an unauthorised payment under previous legislation. Does that remain the case, or might such a transfer be treated as a UFPLS if the conditions for that are otherwise met (as, seemingly, they might be)? If a transfer is treated as an UFPLS that would appear to trigger the money purchase annual allowance. Do you agree?	A transfer from an RNUKS to a scheme that is not a QROPS (or registered pension scheme) remains an unauthorised payment. The nature of a payment depends on the facts. A payment can only be an UFPLS if it meets ALL the payment conditions for an UFPLS. Clearly a transfer payment cannot be an UFPLS because it doesn't meet the UFPLS payment conditions. For example, under section 166 Finance Act 2004 a lump sum must be paid **to** the member.

No	Question	Answer
		If a member receives an UFPLS it will trigger the money purchase annual allowance.
15.	Pensions It appears that while the UFPLS is added to paragraph 1 Schedule 34 FA 2004 as a member payment charge, both UFPLS payments and drawdown payments are subject to the temporary non-residence rules by S579CA and S576A ITEPA, respectively. Presumably, where an amount has been taxed as a UFPLS in a complete year of non-residence it will not be taxed again in the year of return under the temporary non-residence rules (S579CA)? From paragraph 82 of Schedule 1 TPA it appears, though, that an amount taxed as an UFPLS in a temporary non-residence year will count towards the £100,000 limit above which a temporary non-residence charge will apply.	Schedule 34 sets out the tax charges on RNUKS - this includes the tax charges on an UFPLS. The temporary non-residents rules for RNUKS are in section 576A – the income to be taxed under these rules does not include an UFPLS.
16.	Pensions 1. In a scenario where an OPS fund of £1 million consists of 25% UK tax relieved contributions, 25% investment growth on the UK tax relieved contributions, 25% funds contributed without UK tax relief and 25% investment growth on the non-UK relieved contributions, what UK tax charges apply to a lump distribution of the whole fund to a UK resident individual (assuming the unauthorised payment charge does not apply)? 2. In the same scenario, what UK tax charges apply if the OPS pays a lump sum equal to 25% of the whole fund?	1. There must be an authorised payment for the UP charges not to apply. Assuming that the payment meets the requirements to be an UFPLS then there will be UK tax charges applied to the £250,000 UK tax-relieved fund in the following way: • 25% of £250,000 tax-free • 75% of £250,000 taxable under section 579A of the Income Tax (Earnings and Pensions) Act 2003 2. Again assuming the payment meets the requirements to be an UFPLS then there will be UK tax charges applied to the £250,000 UK tax-relieved fund in the following way:

No	Question	Answer
		• 25% of £250,000 tax-free • 75% of £250,000 taxable under section 579A of the Income Tax (Earnings and Pensions) Act 2003 This is because the £250,000 is deemed to come from the UK tax-relieved fund in priority to other elements of the fund.
17.	Pensions In the absence of any specific action on the part of the pension provider, how would HMRC treat a payment to a UK resident from a relevant non-UK scheme that is not pension income and is not an unauthorised payment? Specifically, would the default position be that it is (a) a UPFLS so that 75% is taxable under s.579A ITEPA; or (b) an amount which, if the scheme were a registered pension scheme, would be income withdrawal so that 90% is taxable as foreign pension under s.573 ITEPA; or (c) a pension commencement lump-sum so not taxable (assuming it does not exceed 25% of the value of the fund)?	The type of payment depends on the facts and circumstances related to its payment. The tax treatment of a payment will depend on the type of payment. Any payment that is not an authorised payment will be an unauthorised payment so it would first need to be determined whether a payment could be classed as an authorised payment. If a payment meets all the conditions to be an UFPLS, it is an UFPLS, and will taxed as such. Equally, if a payment meets all the conditions to be a pension commencement lump sum (PCLS) it is a PCLS and will be taxed as such. Payments will not be able to meet both sets of conditions as paragraph 4A(1)(d) of Schedule 29 Finance Act 2004 (inserted by paragraph 57 of Schedule 1 to the Taxation of Pensions Act 2014) effectively states that a payment that is a PCLC cannot be an UFPLS.
18.	**Double Taxation Relief** Following the decision announced on 1 July 2015 by the Supreme Court of the United Kingdom in *Anson v Commissioners for Her*	HMRC is considering the wider implications of the judgment.

No	Question	Answer
	Majesty's Revenue and Customs [2015] UKSC 44, are HMRC prepared to comment if they will now agree that all United States LLCs are treated as transparent for UK tax purposes? This is an important question for Expats, because many come to the UK owning interests in domestic United States LLCs.	
19.	**Double Taxation Relief** Following the recent supreme court decision in *Anson v HMRC*, that US FTCs should be allowed by HMRC for taxes paid by corporates that are transparent for US tax purposes, how will this change HMRC's approach and the policy on repayments in this area. **<u>FTCs for transparent US entities</u>** We have set out questions again in the example below: **Scenario 1** A UK resident taxpayer (non-domiciled) holds an interest in a US corporation that is transparent for US tax purposes (either an LLC, S-Corp etc). The taxpayer per the articles of the corporation is entitled to his share of profits and the US authorities tax the underlying business income and expenses in the hands of the taxpayer. We would welcome HMRC's comments on whether:	HMRC is considering the wider implications of the judgement.

No	Question	Answer
	1. as a result of *Anson,* HMRC will not deny FTC for US taxes paid on a personal level on the business profits of the corporation if it is transparent for US purposes and corresponding evidence/disclosure that HMRC may require on enquiry to substantiate this 2. whether HMRC will seek to distinguish *Anson* to deny FTCs in other cases (i.e. on the basis that the taxpayer in that case was an active member of the LLC) and if so whether HMRC can confirm the factors that will be taken into consideration. Particularly we are interested in whether the actual profit allocation mechanism and the degree of the business carried out by the individual will impact whether Anson applies. 3. in circumstances where it is beneficial for the taxpayer to continue to treat the US corporation as opaque and report distributions as dividends without an FTC, are they entitled to do so **<u>Prior year claims</u>** It would also be helpful to understand whether HMRC will accept claims for this the treatment to apply for years prior to 2015/16. Please can HMRC confirm whether taxpayers within the time limits will be able to recover overpaid tax either through amending their prior year returns (if not time barred) or whether a claim would be available under Sch 1AB TMA 1970.	

No	Question	Answer
20.	**Employment related securities** With effect from 6 April 2015, the revised employment related securities rules contained within Schedule 9 of FA 2014 come into force. As part of this enactment, Chapter 5A of Part 2, ITEPA 2003 is replaced with the new Chapter 5B and as a result ITEPA section 41A is repealed. ITA 2007 section 809Z7(4A) currently refers to section 41A of ITEPA in defining the meaning of an individual's foreign specific employment income for a tax year. It would appear that Schedule 9 of FA 2014 makes no provision for a change to section 809Z7, so that section 809Z7(4A) will continue to refer to a now repealed section 41A, rather than its replacement. Please could we have HMRC's comments on the above? In addition, for the avoidance of doubt, could we seek confirmation that ITA 2007 section 809Z7(4), reproduced below, should be interpreted as: An individual's "foreign specific employment income" for a tax year ("the relevant tax year") consists of the income (if any) within **either** subsections (4A) **or** (4B) *[(4) An individual's "foreign specific employment income" for a tax year ("the relevant tax year") consists of the income (if any) within subsections (4A) and (4B).*	The continuing reference to section 41A of ITEPA in ITA 2007 section 809Z7(4A) is an oversight. In the circumstances the reference to foreign securities income for the purposes of section 41A should be read as a reference to chargeable foreign securities income for the purposes of section 41F where it relates to amounts that count as employment income under Chapters 2 to 5 of Part 7 for tax years from 2015/16 onwards. This error should be corrected in the next Finance Act. Section 809Z7(4) could be stated as 'an individual's "foreign specific employment income" for a tax year ("the relevant tax year") consists of the income (if any) within subsection (4A) and the income (if any) within subsection (4B).'

No	Question	Answer
21.	**Employment related securities** **Situation** Company awards restricted securities to employees, with the only restriction being a two year blocking period, in which the employees are unable to sell the shares, HMRC has previously agreed that the proportion of the value of the shares that is earnings at the date of award is (say) 80%. Employee X was not resident at the date of award, with no UK work days in that tax year, so the proportion of earnings taxable in the UK in the year of grant is 0%. Employee X moves to UK half way through the two year blocking period and is resident **Question** For Employee X, what is the Taxable Specific Income from the chargeable event at the end of the 2 year holding period, after applying the ITEPA Part 2 Chapter 5B rules? **Our Answer** 10% of the value of the securities at the end of the blocking period is TSI at that date. **Our Analysis** 80% of the award value was earnings at grant (even though not taxed in the UK), so 80% is a Deductible Amount under s428(7)(b). So IUP in s428(3) is (100-80) / 100 = 20%. The Chapter 2 taxable amount under s428(1) is therefore 20% of UMV at that date (assume PCP, OP, CE all equal zero). The relevant period is the 2 years from acquisition to the date of the chargeable event. Half of the duties in that period were duties abroad in a period of nonresidence, so half of the Chapter 2 amount is	HMRC agrees with the answer and analysis.

No	Question	Answer
	unchargeable foreign securities income (20% x half = 10%), leaving the remaining 10% as TSI. Does HMRC agree with our answer and analysis?	
22.	**PAYE and Real Time Information** What is the correct PAYE code to use when a UK outbound employee goes abroad on assignment and switches from a UK domestic payroll to an outsourced International Assignee payroll. The particular problem is that for in various unavoidable circumstances the UK domestic payroll may be notified late (in the following monthly pay period) that the employee has left the UK domestic payroll. Consequently it can't issue a P45 and provide leaver information in the month that the employee actually switches. This gives rise to various difficulties with PAYE coding described below. This is a real practical problem, which may, for instance, arise where individuals are present abroad but can't properly register for payroll withholding abroad where there are delays in obtaining a work visa. **Scenario:** • Notification of the start of an assignment received late by UK (Home) payroll ("Domestic Payroll"), flowing from uncertain timelines around securing work visa for Host state;	This is a fairly regular occurrence in the payroll world and so under RTI, HMRC introduced an FPS reporting "data item 154 - Late PAYE reporting reason" which allows the submitter to tell HMRC why the information that has been sent late did not meet the on or before obligation. There are several available categories to choose from under this data item but this particular scenario would be category H - "Correction to earlier submission". This would be appropriate in the scenario described by this customer **if** they reported the original payment date information again, showing the taxable pay and tax deducted in the pay period as zero and including the leaving date https://www.gov.uk/employee-leaving. If the software does not allow this, can the business make an additional submission for the month in question so that the P45 can be generated with a cumulative code and pay and tax?

No	Question	Answer
	• Notification is "Late" in the sense that Domestic Payroll cut-off date is missed; • Under RTI, Domestic Payroll only able to notify HMRC that someone is a leaver in a month in which we include them in an FPS; • Zurich have determined that such an individual can be included in the FPS in the following month with a nil payment (Workaround 1); • However, the consequence of nil payment AND use of the latest PAYE tax code, if cumulative, could potentially generate a refund of tax that isn't really due; • Decision made to use week 1/month 1 in this scenario without notification from HMRC (Workaround 2). • Question of what PAYE tax code should be used by the IA payroll in its first month as - due to the above phenomenon - a P45 wouldn't have been produced by the Domestic Payroll; • IA Payroll follows PAYE Regs (and related guidance) to determine relevant PAYE Code in non-P45 cases, to be displaced once P45 available (Workaround 3).	