JOINT EXPATRIATE FORUM ON TAX AND NICS: 20 October 2015

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

MEETING NOTE

1. Introductions

1.1 Introductions were given.

2. Note of July meeting and Q&A log

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

2.2 Updates on the action points.

Repayment process for non-UK resident individuals with no UK bank account.

2.3 HMRC confirmed that they have internal procedures in place to deal with repayments in this scenario.

2.4 HMRC advised that if a repayment has not been claimed on a Self Assessment Tax Return, an R38 form would need to be completed and sent to HMRC.

2.5 It was agreed that if forum members have specific instances where non-UK resident individuals, with no UK bank account, are experiencing problems with their repayments, details could be sent, via the secretary, for HMRC to review.

2.6 The Q&A log was reviewed.

3. Employment Related Securities – Taxing Restricted Stock Units (RSUs)

3.1 HMRC referred to the guidance at ERSM20192. HMRC explained that the taxation of RSUs was a difficult area and there had been longstanding problems with their tax treatment that is, whether they are chargeable via Section 62 ITEPA 2003 or under Chapter 5, Part 7 ITEPA 2003.

3.2 A policy change was made with effect from 6 April 2015 in an attempt to deal with these difficulties; the essence of this was to more closely align the rules relating to earnings charges with those in the share schemes legislation in Part 7 of ITEPA 2003.

3.3 HMRC advised that it has since become clear that this has only been partially successful. HMRC explained that possible options for addressing the difficulties were currently under consideration. Further details will be provided in due course.

3.4 Forum members referred to the National Insurance Contributions (NIC) implications and said that consistent NIC treatment was needed.

3.5 HMRC confirmed that as part of any changes both NIC and Capital Gains Tax (CGT) aspects would be addressed.

4. Expenses and Benefits Changes

4.1 HMRC advised that the Office of Tax Simplification (OTS) had undertaken a wholesale review of benefits and expenses. Following this the Government announced a package of four measures to simplify the tax treatment of certain benefits and expenses. These were:

1. An exemption for paid and reimbursed expenses;
2. Abolition of the £8,500 threshold;
3. Introducing a framework allowing voluntary payrolling of Benefits in Kind (BiKs); and
4. A new exemption for trivial BiKs.

4.2 The intention is that this package will simplify the administration of benefits and expenses for employers, employees and HMRC.

4.3 The first three measures have already been legislated in Finance Act 15 (no. 1). The trivial BiKs measure fell out of the Finance Bill 15 but will be legislated in Finance Bill 16. All the changes will come into effect from April 2016.

The exemption for paid and reimbursed expenses

4.4 HMRC explained that this will remove the need for employers to either apply to HMRC for a dispensation or for them to report expenses payments to HMRC and for their employees to reclaim the tax.

4.5 If the employer is reimbursing an allowable expense then they will be able to reimburse the actual cost of expenses or pay a set amount - a benchmark scale rate, as set out in regulations, without reference to HMRC.

4.6 HMRC explained that if employers want to pay a bespoke scale rate then they will need to apply to HMRC for clearance. HMRC advised that the bespoke rate process is currently being worked on and it is anticipated that this will be finalised within the next few weeks.

4.7 Forum members asked whether the bespoke rate application process will be set out in legislation.

4.8 HMRC said no.

4.9 Forum members asked what the expected turnaround time would be for applications.

4.10 HMRC advised that where an employer already had a rate in place, they would expect the application process to be significantly faster than for employers applying for a bespoke rate for the first time. Guidance and further information about the process – for new and extensions to existing scale rates - will be available later in the year.

4.11 A question was raised as to how many bespoke arrangements were already in place.

4.12 HMRC said that the numbers were relatively low.

4.13 Forum members asked how the changes would affect the overseas rates.

4.14 HMRC confirmed that a review was currently underway on this point. In the interim there is no change to the current position.

4.15 Forum members asked whether the UK rates were also being considered.

4.16 HMRC confirmed that these were also under review.

4.17 Forum members asked whether the legislation would apply equally to inbound assignees.

4.18 HMRC said that it thought so but agreed to clarify this point.

Action Point – HMRC to clarify how the changes will affect inbound assignees.

[POST MEETING NOTE: In general, the expenses exemption will not affect inbound assignees any differently. There may however, be circumstances where special arrangements are needed, for example, if assignee's bring their family and the benefit needs to be apportioned as deductible/non-deductible.]

Abolition of the £8,500 threshold

4.19 HMRC advised that this will mean employers will no longer have to check whether their employees earn at a rate of less than £8,500 per annum and will remove the requirement for employers to complete and file form P9D.

4.20 There is a specific exemption for ministers of religion so they will continue to be taxed on their BiKs in the same way they are now. There is also a new exemption from tax and NICs for board and/or lodging provided to carers in the home of the person that they caring for.

Introducing a framework allowing voluntary payrolling of BiKs

4.21 HMRC advised that this will allow employers to account for the BiKs they provide to their employees through their payroll rather than through a form P11D at the end of the year. To do this employers deduct the tax for BiKs and report and pay this to HMRC each payday.

4.22 HMRC explained that this new system will be more responsive to change and means that there will be fewer under and overpayments of tax.

4.23 To be eligible to payroll, employers will need to register with HMRC's online registration tool, using their PAYE number. HMRC explained that if employers did not register then they will need to complete and file a P11D.

4.24 HMRC advised that there have been some changes to the regulations following the consultation. The major changes are:

- Employers will be able to continue payrolling, even where their employees income has dropped (for example they are receiving statutory maternity pay.) In these cases employers will deduct up to the 50% overriding limit and will roll forward any underpayment of tax until the next month. At the end of the year any underpayment of tax will be collected either by an adjustment to the employee's tax code or directly from the employee. Alternatively, in these circumstances employers will still have the option of stopping payrolling mid-year and recording the BiKs on form P11D in the usual way.

- The time to make good on fuel has also been extended until 1 June following the end of the tax year to allow time for the cost of fuel for private mileage to filter through the payroll.

4.25 The detail of how to payroll is set out in regulations which will be legislated by the end of October/early November. Guidance will also be made available shortly thereafter.

4.26 Forum members asked whether modified PAYE arrangements would carry on as before.

4.27 HMRC agreed to check this.

Action Point – HMRC to confirm whether modified PAYE arrangements will remain unchanged.

[POST MEETING NOTE: Employers usually estimate the benefits in kind to be included in the PAYE computations for modified payrolls. As such, the amount payrolled will not be the actual benefit in kind received and forms P11D will be required. Employers who payroll actual, rather than estimated benefits in kind (excluding living accommodation, vouchers and credit cards, interest free and low interest (beneficial) loans) may register for the online Payrolling Benefits in Kind (PBIK) service. Where the PBIK service is used, forms P11D will not be required. More information is available on the website at:

https://www.gov.uk/guidance/paying-your-employees-expenses-and-benefits-through-your-payroll

HMRC will arrange to update the wording of the EP Appendix 6 to reflect this.]

4.28 HMRC advised that there are 3 benefits not supported by the payrolling regulations;

1. Living accommodation
2. Beneficial loans
3. Credit vouchers and tokens

4.29 These benefits will still need to be reported on a form P11D as they are now.

4.30 HMRC advised that in the longer term consideration would be given to bringing these benefits into payrolling.

4.31 HMRC confirmed that a P11D(b) would continue to be required for NICs. HMRC confirmed that in the longer term they would also be considering whether it would be possible to allow Class 1A NICs to be payrolled.

5. Domicile – next steps

5.1 HMRC referred to the forum meeting held on 25 August 2015 and explained that 3 particular issues had arisen;

1. The treatment of split years.
2. Returning UK doms - individuals that were born in the UK and have a domicile of origin in the UK but subsequently leave the country. Under the

proposals these individuals will be treated as UK domiciled for tax purposes as soon as they return to the UK.

3. IHT for returning UK doms.

Split year treatment

5.2 HMRC advised that there were 3 options, the first being the days are not counted at all, the second that all of the days are counted and the third a proportionate running count.

5.3 HMRC explained that they were of the view that all of the days should be counted.

Returning UK doms

5.4 HMRC advised that this point was outlined in the consultation paper and if forum members had particularly strong views on this, HMRC would recommend outlining these as part of the consultation process.

IHT for returning UK doms

5.5 The consultation document also announced changes to the tax treatment of individuals who were born in the UK with a UK domicile of origin but who have acquired a domicile of choice elsewhere. These individuals will be treated as having a UK domicile for tax purposes whilst they are UK resident. The excluded property trust rules for IHT will be changed so that they do not apply in these circumstances.

5.6 An updated clause is expected to be published after Autumn Statement and it will contain some protection for individuals returning to the UK for a short time.

5.7 HMRC advised that the consultation opened on 30 September 2015 and closes on 11 November 2015.

5.8 HMRC will endeavor to publish the consultation responses by early December or shortly thereafter.

[POST MEETING NOTE: HMRC now expects the consultation response and draft legislation, covering Income Tax and CGT, to be published in January 2016.]

5.9 Forum members asked for clarification in the following scenario.

Assume that a non-domiciled individual became UK resident on 6 April 1997 and ceased UK residence on 5 April 2013. They were UK resident for 16 years continuously but have now emigrated permanently. On leaving the UK on 5 April 2013 they were advised that if they remained non-resident they would not be treated as UK domiciled for inheritance tax purposes, because they had not been resident in 17 of the previous 20 years. They no longer retain a UK tax adviser or have any UK ties.

Under the 15 out of 20 years test they will be deemed domiciled in 2017/18 if the new test is applied to them from 6 April 2017. This is because they have been UK resident in 16 of the previous 20 years.

If there is no grandfathering it isn't clear how an individual in this position is expected to realise that they are deemed domiciled in 2017/18. They will be ignorant of their UK tax position, with no reason to assume it has changed since previous advice. It may be that if they remain non-resident and are deemed domiciled for only a year nothing much would turn on it. But if they die while deemed domiciled the consequences could be considerable.

The suggestion is that nobody who is continuously non-resident from 6 April 2013 until 5 April 2017 should be deemed domiciled from 6 April 2017 until or unless they have been resident in the UK for at least one tax year, as well as meeting the 15/20 test.

5.10 HMRC advised that they would clarify this with the relevant specialist.

[POST MEETING NOTE: HMRC want people in this position (people who leave the UK before the announcement) to be protected from the effect of these reforms. Provision will be made in the legislation so that someone in the situation in the example given, will continue to be treated under existing rules.]

5.11 A question was raised regarding the representations received to date.

5.12 HMRC advised that the consultation was being led by HM Treasury. HMRC's understanding was that consultation responses had been received however, there had been limited numbers.

5.13 HMRC encouraged forum members to share their views and advised that it would be helpful for any particular points of concern to be raised as early as possible.

6. Compliance and procedural matters

New Short Term Business Visitor Arrangement

6.1 HMRC advised that the guidance had now been published and could be found in the PAYE Manual at PAYE81950. HMRC explained that the new arrangement had been widely welcomed and the first few applications had recently been received.

6.2 HMRC's agreement letter will include advice on how to report the STBV Income and any tax due at month 12. The report for each STBV will be as a Full Payment Submission (FPS).

6.3 To ensure HMRC systems can process the information correctly standard data field entries should be made for 3 of the data fields;

1. New employees section - Start date
   Enter the first day of duties in the UK in the year

2. Expatriate starter information - Employee present circumstances **Answer yes to - Intends to live in the UK for less than 183 days**

3. When an employee leaves section - Date of leaving
   Enter 5 April of relevant tax year

6.4 By completing the data fields in this way this will ensure that there is an annual start and leaving date irrespective of whether the STBV comes to the UK in one tax year, or year on year. The tax code applicable is full personal allowances where the employee is entitled to them or code 0T on a cumulative basis.

6.5 Where trailing payments such as bonuses or other incentive awards are made in a later year for which there are no UK workdays for the STBV, the taxable income apportioned for UK workdays can be included within the STBV arrangement for that later year provided that the employee has not been included on another UK payroll, for example, due to a UK assignment or localisation. In these circumstances it is suggested that a start and leaving date of 5 April is used, personal allowances can be applied where appropriate.

6.6 HMRC advised that it is important to note only a month 12 FPS should be submitted. If an employer sends submissions for other months, the annual month 12 payment frequency signal will be automatically removed from the record.

6.7 Earlier Year Updates (EYUs) can be submitted to incorrect month 12 data. However, HMRC expects the employer to have systems in place to comply with the arrangement and send accurate data within the normal time limit – 5 April or 19 April – late reason code A.

6.8 HMRC has been asked whether employers can take advantage of the arrangement where eligible STBVs have already been included in a regular payroll. HMRC has no objection to employers correcting the main scheme RTI data to remove the STBVs, so that they can be included in the new scheme. It is important however to confirm separately that this has been done. This will enable HMRC to review and close any open Self Assessment records for those STBVs.

Section 690 directions

6.9 HMRC advised that the new guidance for Section 690 directions is not finalised as yet.

6.10 Going forward employers will be able to make applications for a maximum of 3 years. HMRC said that they hoped to be able to provide further details in the next few weeks.

6.11 HMRC explained that some concerns were raised at the last meeting about delays in processing Section 690 directions. It was agreed that, as a temporary measure, where forum members had been waiting for 3 months or more, they could contact Pam Hughes in the first instance, until 31 October 2015.

6.12 HMRC confirmed that they would extend the timescale on this. HMRC advised that going forward, where forum members had been waiting for 3 months or more, to let the secretary have the details. This will be reviewed again before the next meeting.

6.13 A question was raised about the specific turnaround time for Section 690 directions.

6.14 HMRC said that they did not have specific details but in general, things had improved. HMRC agreed to provide an update on this in advance of the next meeting.

Action Point – HMRC to provide the turnaround time for Section 690 directions prior to the next meeting.

P85s

6.15 HMRC advised that the current turnaround time is 19 days however, this may be longer where there is a specialist technical element to the work.

6.16 HMRC explained that some questions had been raised as to whether it was possible to have specific contact points as an escalation route where there had been a delay. HMRC advised that they were currently undertaking a review, which included this area of work, and as such, providing specific contact points would not be possible.

6.17 HMRC recommended that in the first instance, if forum members were experiencing problems, they contact the agent's helpline on 0300 200 3311.

Standard letter to inbound assignees

6.18 HMRC advised that the new starter letter would be used with effect from 1 November 2015. The letter incorporates the requests that were previously made by forum members.

6.19 HMRC said that the deselection letter remained unchanged and advised that it was important to let HMRC know when assignees have left the UK.

Procedural matters

6.20 HMRC advised that they were moving toward one of their busiest times of year, the Self Assessment filing peak. In order to provide a better service, HMRC asked forum members to provide their client's date of birth on 64-8 forms, where they do not know the UTR.

6.21 HMRC asked that 64-8 forms, for inbound assignees, were sent to the following address;

HMRC Charities, Savings & International
Operations SO733
PO Box 203
BOOTLE
L69 9AP

6.22 HMRC asked forum members to remind assignees not to tick the 'employer PAYE scheme box' at the bottom of the 64-8 form. HMRC explained that whenever this box is ticked the agent will be noted as acting on the employers behalf.

6.23 HMRC explained that as a general reminder, where a Self Assessment tax return is submitted under a different agent's ID/code than what has been put on the 64-8 form, an R38 form will need to be completed if a repayment is requested.

6.24 HMRC said that it would be helpful if forum members could provide SA1's and 64-8 forms as soon as possible in the run up to the Self Assessment filing peak. HMRC confirmed that to enable them to provide the UTR number by 31 January 2016, all 2014-15 cases will take priority.

6.25 HMRC explained that a digital scanning system will be adopted from November 2015 for operational post.

6.26 Forum members expressed concerns about HMRC's postal system and delays. Forum members explained, with specific reference to HMRC's Self Assessment mailbox, that once a piece of post had been sent, agents and/or individuals were unable to trace the post.

6.27 HMRC advised that they were moving toward a digital interface and they hoped that issues such as this would improve with increasing digitalisation. HMRC said that if forum members would find it helpful, they would organise for one of their digital colleagues to attend the next meeting to provide an update on this point.

6.28 It was agreed that going forward compliance and procedural matters would no longer be a standing item on the agenda. Instead, updates on compliance and procedural matters will be provided to forum members, via email, in advance of the meetings.

6.29 Forum members raised concerns about HMRC delays in issuing A1 certificates.

6.30 HMRC agreed to look into this.

Action Point – HMRC to review the turnaround time for issuing A1 certificates.

7. AOB

7.1 Forum members raised concerns about HMRC's approach to disclosures under the UK/Swiss Agreement.

7.2 Forum members explained that the volume of questions being asked by HMRC was often disproportionate, particularly in cases where the overall tax liability was low. Forum members expressed concerns that in some instances, the adviser's fees in having to deal with HMRC's questions outweighed the final tax liability.

7.3 HMRC noted forum members concerns. HMRC explained that notwithstanding this, checks did need to be undertaken and each case would be risk assessed. HMRC recognised that there were proportionality considerations to take into account and advised forum members to share particular cases with HMRC, via the secretary, where they had specific concerns.

7.4 Philip Paur provided an update to the forum on current topical issues.

7.5 Philip Paur explained that at a recent ERS Forum, issues were raised with regards to outstanding ERS Returns and a number of wrongly registered ERS schemes. It was confirmed that an inadvertent ERS registration could not simply be cancelled. A nil return would need to be submitted, in the first instance, before the scheme could be closed.

7.6 Philip Paur referred forum members to the on-going travel and subsistence review and the Revenue and Customs Brief 15 (2015), in respect of the remittance basis treatment of foreign income and gains used for loan collateral.

7.7 HMRC invited forum members to let the secretary know, in advance of the next meeting, if there were particular topics that they wanted to cover.

7.8 It was agreed that the meeting scheduled for 2 March 2016 would be rearranged for April 2016 following the Budget.

7.9 Forum members referred to the deemed domicile provisions, currently under consultation, and explained that practical difficulties would arise as a result of the measures proposed.

7.10 Forum members explained that a number of individuals who would be caught by the changes would be taxable on the arising basis as opposed to the remittance basis. Forum members expressed concern that HMRC may be faced with a large volume of returns from individuals who had no previous experience of filing returns on the arising basis.

7.11 Forum members asked whether it would be helpful for them to share their ideas with HMRC as to the practical implications so that HMRC could plan for this.

7.12 HMRC advised that following their compliance work in this area, they already had some experience of the conversion from the remittance basis to the arising basis but, notwithstanding this, it would be helpful for forum members to share their ideas on this point.

7.13 HMRC said that if it would be helpful, HMRC would bring an example to the next meeting, to show how the reconciliation between the remittance basis and arising basis is undertaken.

Action Point – HMRC to provide an example at the next meeting, to outline how the conversion from the remittance basis to the arising basis works in practice.

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 – 20 October 2015

No	Question	Answer
1.	**STBV Special Arrangement** When will the new arrangement start?	The new scheme is available for 2015 to 2016. If an employer reaches agreement with HMRC to operate the scheme, HMRC has no objection to employers correcting main scheme RTI data to remove STBVs, so they can be included in the new scheme. This is of course subject to the STBVs total UK workdays being no more than 30 for the tax year.
2.	**STBV Scheme and Branch Exemption** We have a query in respect of whether branch exemption (for foreign branches of UK companies) changes the availability of tax relief (for employees who visit the UK on a short term basis) under the applicable Double Taxation Agreement (DTA) the UK has concluded with the country in which the foreign branch is located (and where the employee is resident in). Our understanding is that where an employee (employed by a foreign branch of a UK company) comes to work in the UK (for the UK parent) for a short period of time, then UK tax relief is not typically available	The application of branch exemption does not change the availability of tax relief for employees who visit the UK on a short term basis. UK foreign branches cannot be the legal employer of an individual. If an election is made this does not change the fact that the UK resident company is still the legal employer of that individual and therefore no relief is applicable under the DTA.

No	Question	Answer
	under the DTA concluded between the UK and the country in which the employee comes from (and where the foreign branch is located). As a result, the employee cannot be included on an Appendix 4 agreement and PAYE must be operated. Our question is would this position change if the UK company made an (irrevocable) election whereby the profits and losses from the foreign branch is disregarded for UK corporation tax purposes? In these circumstances will HMRC allow relief (under the applicable DTA) and therefore allow these employees to be included on an Appendix 4 agreement? If relief is available, please could you also confirm the position (i.e. in respect of the availability of relief under the DTA) where the election has been made but the branch exemption is not effective due to the transitional loss rules.	
3.	**Pensions: loss of fixed protection** We have a query on pensions fixed protection and benefit accrual. You will appreciate that the accidental loss of loss of fixed protection in cases where there has been marginal and unintentional benefit accrual in circumstances of which they were probably unaware is extremely unwelcome for clients. It appears to us that individuals who have taken Fixed Protection 12 or 14 and consequently opted out of active participation in an occupational pension scheme may be treated as continuing to accrue benefit if they are enrolled in a “death in service only” insurance arrangement after fixed protection comes into effect and the arrangement is part of a registered pension scheme. This may happen when they change jobs. At first sight, if the arrangement is a plain vanilla salary-related lump sum there ought not to be a problem. HMRC guidance at PTM 93500 et seq is helpful in this regard: If the death benefit promised is a	Both Fixed Protection and Fixed Protection 2014 can be lost in a number of ways and these are explained in the Pensions Tax Manual at PTM093400. As set out in the guidance, two of the ways in which the protections can be lost by an individual are if, on or after the day from which the protection has effect, they: (1) have benefit accrual under a registered pension scheme; or, (2) have a new arrangement made for them other than in permitted circumstances. PTM093400 then goes on to explain the circumstances in which making a new arrangement will lead to the loss of fixed protection. The Pensions Tax Manual contains extensive guidance on when benefit accrual occurs at PTM093510 and PTM093520. When looking at making a new arrangement, PTM093400 says "*If the member joins a new arrangement on or after:*

No	Question	Answer
	defined benefit (and this is often the case in occupational pension schemes) continuing to provide death cover should not cause loss of FP or FP 2014. This is because a death-in-service benefit is not considered to be part of a member's pension rights. So if a member continues to be provided with death-in-service benefits this is not benefit accrual and does not cause loss of FP or FP 2014. The problem is with para 1 Sch 22 FA2013 relating to FP14, but FP12 is identical: **(3)** But this paragraph ceases to apply if on or after 6 April 2014- a) there is benefit accrual in relation to the individual under an arrangement under a registered pension scheme, b) there is an impermissible transfer into any arrangement under a registered pension scheme relating to the individual, c) a transfer of sums or assets held for the purposes of, or representing accrued rights under, any such arrangement is made that is not a permitted transfer, or d) an arrangement relating to the individual is made under a registered pension scheme otherwise than in permitted circumstances. If you had a new joiner after 5 April 2014 who was put into a death in service arrangement that was provided via a registered pension scheme, this would apparently breach FP because it is an "arrangement" under a registered scheme otherwise than in permitted circumstances. It is not necessary for there to be actual pension inputs in order to trigger a breach in the rules. 'Permitted circumstances' are taken from the enhanced protection rules, which say: **(2A)** An arrangement is made in permitted circumstances if it is made- a) for the purposes of a permitted transfer, b) as part of a retirement-benefit activities compliance exercise, or c) as part of an age-equality compliance exercise.	*6 April 2012 for FP, or* *6 April 2014 for FP 2014* *for any other reason, FP or FP 2014 will be lost at the point the new arrangement is made. This will be the case even though there may be no "benefit accrual" for FP or FP 2014 purposes under the new arrangement (for example, where the arrangement provides defined benefit death benefits only).* *A new arrangement is an arrangement that is new to the individual, in other words they were not previously a member of the arrangement. So the arrangement can be one that has previously been in existence for other members and can be either in the same pension scheme or in a different pension scheme."* As the guidance sets out, if an individual makes a new arrangement (other than in the permitted circumstances) this will result in them losing their protection. The circumstance in which Fixed Protection or Fixed Protection 2014 can be lost are set out in legislation. We have a dedicated pension's helpline who will be able to assist with general queries of this nature. The contact details for the helpline can be found on the internet at this address: https://www.gov.uk/government/organisations/hm-revenue-customs/contact/pension-scheme-enquiries

No	Question	Answer
	If you are just looking at someone who has changed job and is enrolled in a pension-related death in service arrangement, this wouldn't be a "permitted circumstance" in the terms above. It is implied in the Pensions Tax Manual at PTM93520 that a new arrangement would normally breach the rules, where it says that HMRC will disregard situations where people opted out of death-in-service mistakenly thinking it was a problem for FP: **People whose life cover ceased because they believed the continuing payment of premiums on or after 6 April 2012 for Fixed Protection or 6 April 2014 for Fixed Protection 2014 would lead to benefit accrual.** In such cases, re-instatement of the life cover is not regarded as involving a new arrangement for the member so long as: • the cover was re-instated as soon as possible whether with the same or a new insurer, and • the basis of the cover provided has not been increased in comparison to the cover previously provided. This would not normally be a problem for existing insured members as of 5 April 2014, as the benefit accrued over an input period is nil if the terms of the scheme are not varied. But it could be for new members or for existing members where the benefit entitlement is varied, e.g. the salary-related multiple is increased after FP has supposedly taken effect. This could easily affect people changing jobs around the time FP takes effect, or afterwards. We would appreciate HMRC's agreement, or otherwise, with the analysis.	
4.	**Scottish Rate of Income Tax** Here are some questions in no particular order: • Will there be the concept of split year treatment in Scotland? • If an employer does not correctly identify an employee as a Scottish resident what penalty/ies, if any, would be imposed?	A direct communication to Scottish taxpayers is planned later in this tax year, however unfortunately, we cannot confirm the exact date that this will happen. We will publicise this as soon as it is confirmed.

No	Question	Answer
	• Will there be a period of grace / leniency in terms of any penalties as employers get used to the new regime? • Will there be any additional support for employers (e.g. dedicated helpline)? • Will this also be extended to a separate NIC rate for Scottish taxpayers in due course as well? • Will there be dedicated HMRC offices dealing with Scottish taxpayers and therefore records may move each year where a taxpayer does, then doesn't, qualify as a Scottish taxpayer? • If they can claim OWR via UK tax law does this mean Scottish source employment income will be the income relating to days worked in the UK? • In the very unlikely event there is an even spread of time and connections during a year (say a leap year where someone lives in the rest of the UK for 183 days and Scotland for 183 days in the tax year) which rules will prevail? • On the basis you either are or are not a Scottish taxpayer for the entire year, how is payroll meant to operate Scottish rates of withholding where an employee only triggers Scottish residence at some point during the tax year? • Conversely, where payroll does operate Scottish rates of tax from April but the individual then breaks ties with Scotland and is not considered a Scottish taxpayer for the year, does this withholding need to be refunded/converted to rest of the UK withholding? • Will there be a different tax return for Scottish tax payers? • How will the SA system cope whereby someone moves in and out of being a Scottish tax payer year on year? • If someone is only in the UK for part of the year and is split year, and resides in Scotland, will they only be taxable as a Scottish taxpayer on their UK source income (i.e. the income relating to the resident part of the year)? • Assume Scotland will recognise relief under DTAs, so if not taxable in the UK then you cannot be taxable in Scotland. Also if non UK tax resident under a DTA can you still be considered Scottish resident?	Supporting guidance and information on gov.uk will be available from October 2015. We are currently planning a publicity campaign using press, social media and intermediaries to help raise awareness and get key messages out at the time when the letters are issued. For the latest information and developments we have created a Scottish rate news page https://www.gov.uk/government/news/the-scottish-rate-of-income-tax.

No	Question	Answer
5.	**Scale rate expenses payments: employees travelling outside the UK** Please let me have a view in respect of the question below. There is an update from 27 October 2015 on the GOV.UK site entitled *Scale rate expenses payments: employee travelling outside the UK*. My understanding is that, under the present regime, HMRC accepts that payments made in accordance with the rates set out, do not give raise to a tax liability and do not need to be subject to a dispensation in order not to be reported on P11Ds (paragraph EIM05250). The announcement says that the rates will apply for the year commencing October 2015. When the P11D dispensation regime is abolished from 6 April 2016, will employers have to seek HMRC's approval under new s289B ITEPA 2003, in order to be authorised not to report scale rate payments made in accordance with the above rates, as these are not covered by regulations referred to in new s289A(6)(a) ITEPA 2003 (the draft regulations were published in the consultation *Draft legislation: review of employee benefits and expenses*)? If there are no regulations, it does seem that HMRC's approval will be required.	HMRC's published worldwide subsistence rates will remain available to employers after the introduction of the expenses exemption, on the same basis as currently applies, although this may change as HMT's review of travel and subsistence progresses. Payments to employees in respect of overseas travel can continue to be made up to the level of the published rates without deduction of tax or NIC, and the current record keeping requirements will continue to apply. Should an employer wish to pay higher scale rates than those published, they will have the option to charge the excess to tax and NIC as earnings, or to agree a bespoke rate with HMRC under the terms of section 289B of the expenses exemption. Employers also retain the option of paying on an 'actuals' basis subject to the usual checking requirements.
6.	**Statutory Residence Test – Sufficient Ties** If an individual (resident in one or more of the previous three tax years) meets none of the automatic UK or overseas tests and has 2 UK ties, we understand that they can remain in the UK for up to 90 days before they would be considered UK resident by reference to FA2013, Sch 45, para 18. If a married couple (both non-UK resident in the previous year as they had two UK ties and spent less than 91 days in the UK) were to separate during the tax year, with one spouse spending more time in the UK and becoming UK resident under the automatic residence test,	HMRC can confirm that your interpretation of the legislation is correct. In the scenario given the remaining spouse would have a Family Tie for the relevant year giving them 3 UK ties in total. As a result, they would be regarded as UK resident for the relevant year if their visits to the UK in that year exceeded 45 days.

No	Question	Answer
	would the spouse remaining outside of the UK now have three ties to the UK in that tax year, with one being a family tie? We understand that under para 32, an individual has a family tie in the tax year if in that year a relevant relationship exists at any time between that individual and another person. Does this mean that if for example, a couple are non-resident at the end of a UK tax year, separate on 7 April of the following tax year with one spouse returning to the UK for 184 days (and as a result becoming UK resident), that the remaining spouse will then only be permitted to spend up to 45 days in the UK before becoming UK resident, by virtue of the fact they will now have three UK ties as they had been married for one day in the tax year? This could be problematic if, for example, the couple had no contact after the couple had separated.	