JOINT EXPATRIATE FORUM ON TAX AND NICS: 20 April 2016

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. Domicile

2.1 HMRC provided an update in respect of the non-domicile reforms advising that all measures will now be legislated in Finance Bill 2017.

2.2 HMRC confirmed that the recent Budget announced two further measures - the rebasing of capital gains to 2017 market values and the facility for all non-domiciled individuals to "cleanse" or reorganise mixed funds for a limited period only. HMRC advised that the detail of these measures was still being considered but draft legislation would be published as soon as possible so that stakeholders can consider how the protections will operate.
It was still the intention that for those who leave the UK before 6 April 2017, but would nevertheless be deemed domiciled under the 15/20 rule on 6 April 2017, the present rules will apply.

2.3 HMRC confirmed that they were currently waiting for agreement to publish the following consultation/response documents;

- A response document to the non-domicile consultation that closed in November 2015.
- A technical note on the protections for income and gains arising in overseas trusts created before individuals became deemed domiciled under the new 15/20 rule.
- A consultation document on Business Investment Relief.
- A consultation on inheritance tax on indirectly held UK residential property.

2.4 Forum members referred to the transitional arrangements that had previously been discussed and asked if these remained the same.

2.5 HMRC confirmed that there had been no change and it was intending to continue with those provisions.

3. National Insurance Contributions

3.1 HMRC provided an update on the action points arising from the NIC sub-group held on 10 December 2015.

3.2 Action Point 1 - HMRC to provide further clarification by way of a technical note and/or updated guidance on the practical operation of NIC following the new apportionment rules for Employment Related Securities (ERS).

3.3 HMRC confirmed that they were further considering the apportionment rules. Whilst recognising that there were wider considerations/implications beyond the United States

(US), HMRC confirmed that they had approached their US counterparts to determine their response to the UK's stance on apportionment following the introduction of the new rules in UK legislation. HMRC confirmed that they would update forum members on this point as soon as further information was available.

3.4 Action Point 2 - HMRC to provide further clarification by way of a technical note and/or updated guidance on the sourcing of non-equity one-off payments made to Internationally Mobile Employees, and equity awards made before 6 April 2015 pursuant to Restricted Stock Unit (RSU) entitlements. The effect of conditions attaching to entitlements would be considered.

3.5 HMRC noted that forum members had expressed concerns at the NIC sub-group with regard to inconsistencies in HMRC's approach. Those concerns were covered substantially in a letter sent to HMRC by a forum member which was subsequently circulated to the wider forum. HMRC advised that they would seek to address the points made and provide further guidance on this point in due course.

3.6 Forum members explained that previous guidance on this point, produced by way of a series of Tax Bulletins, had been helpful. Forum members expressed their concerns that the uncertainties now needed to be addressed by HMRC and said that it would be helpful if HMRC could share their interpretation of the legislation.

3.7 Forum members asked HMRC whether it would be useful for them to share examples of the responses that HMRC had previously provided on this point.

3.8 HMRC confirmed that this would be useful particularly for areas where forum members considered there to have been inconsistencies. HMRC reiterated that it may take some time to provide further guidance as they were conscious that they wanted to cover all points to avoid any further confusion or uncertainty going forward.

3.9 Action Point 3 - HMRC confirmed (at the meeting on 10 December 2015) that they would discuss the EU policy with the issue of S1 forms with the appropriate operational teams as well as the Department of Health and that the outcome would be communicated back to the Forum.

3.10 HMRC confirmed that they are responsible for issuing S1 certificates under Article 24 (987/2009), which only applies to a person that is resident in a Member State other than the competent Member State. HMRC is of the view that Article 25, applicable to a person staying in a Member State other than the competent Member State, would be the relevant Article in the case of a temporarily posted worker and in this circumstance a European Health Insurance Card (EHIC) is the appropriate medical form.

3.11 In the event that a person is going to be in another Member State for more than 2 years (Article 16 of 883/2004), it is HMRC's long standing policy that we will generally accept that they are temporarily resident in the other Member State for the purposes of issuing a S1 certificate - otherwise, if they are not resident in the other Member State the legislation only allows for the issue of an EHIC.

3.12 HMRC advised that they do have an exception to the rule and would issue an S1 in the following circumstances:

- When another Member State insists that an S1 is required and will not accept the EHIC.
- In the case of pregnancy.

3.13 HMRC noted that difficulties can be caused, particularly regarding the speed with which an S1 can be issued, in cases where an EHIC is not accepted. HMRC advised that discussions are ongoing with the Department of Health to highlight the concerns raised by forum members and a further update will be provided on conclusion of these discussions.

3.14 Action Point 4 - HMRC to consider the respective meanings of “ordinarily resident” and “ordinarily employed” as used in Regulation 145(2) and in particular whether the usage of “ordinarily employed” aligns with its meaning for employment law purposes (the base test).

3.15 HMRC advised that Regulation 145(2) of the Social (Security) Contributions Regulations 2001 provides exemption from the payment of primary and secondary Class 1 NICs for posted workers arriving in GB for a continuous period of 52 contribution weeks provided the worker is

- not ordinarily resident in GB; and
- not ordinarily employed in GB; and
- in pursuance of an employment that is mainly outside the UK;
- by an employer with a place of business outside the UK; and
- is employed for a time in GB as an employed earner.

3.16 HMRC confirmed that the exemption lasts until the employee has been resident in GB for a continuous period of 52 weeks starting from the beginning of the contribution week following the week in which the worker arrives in GB to take up employment.

3.17 HMRC explained that the determining factor for the “not ordinarily employed in the UK” element of Regulation 145(2) is based on the individual facts of each case. This involves assessing both the historical and future circumstance of the employment.

3.18 With regards to “not ordinarily resident in the UK” HMRC explained that ordinary residence is not defined in Social Security legislation so whether a person is “ordinarily resident” is a question of fact and will depend on the particular facts of each individual case.

3.19 HMRC consider both the time spent in the UK and other social factors when considering whether a person is “ordinarily resident”. An explanation of the factors considered is included within the National Insurance Manual at NIM33560. Although this page refers specifically to persons going abroad from the UK, the basic factors considered are the same. This will include factors such as whether the individual will be returning to their home country and why, whether family will be going with them abroad, whether they retain a home in their own country that will be available on return etc.

3.20 HMRC advised that there are no legislative provisions for a minimum period of time between visits to the UK for a new exemption under Regulations 145(2) to apply. Each consideration is based on the facts of the individual case and based on a number of factors including those outlined above.

3.21 HMRC noted that forum members have referred to previous ‘rulings’ on a minimum period between visits of 3 months but can confirm that no such stringent period is applied when considering the provisions of Regulation 145(2). At the point of any given visit the specific facts of each individual case will therefore need to be considered before a decision can be made and this should not include any reliance on a minimum period such as 3 months. Any further cases where such a ‘ruling’ is applied should be referred to HMRC.

3.22 Forum members expressed their concerns and stated that as we are moving to an increasingly digital age there was a requirement for something more practical in legislation.

Forum members said that greater clarity was needed in HMRC's guidance and furthermore that it would be helpful if there was consistency between the tax and NIC rules.

3.23 Action Point 5 - HMRC to further consider forum member's representations regarding the NIC position with respect to UK outbound employees that remain liable to pay UK NICs and the position where one-off or equity payments are made following the expiry of a 52 week period where there is continuing liability under Regulation 146.

3.24 HMRC advised that Regulation 146 of the Social (Security) Contributions Regulations 2001 refers to a situation where an individual employee, who is ordinarily resident in the UK, is sent to work abroad by his employer, who has a place of business in the UK. In such circumstances, where the employer is remaining ordinarily resident in the UK, the regulation recognises the continued link to the UK as the individual's centre of interest and provides for an ongoing UK NICs liability for the first 52 weeks of employment abroad.

3.25 A counterpoint to this is provided by Regulation 145. This recognises situations where individuals who are working in the UK are not ordinarily resident in the UK and are working for an employer with a place of business outside the UK. In such circumstances the regulation effectively recognises the continued link to the country from which the employee has been sent and allows that no UK NICs will be payable until they have been resident in the UK for a continuous period of 52 weeks.

3.26 HMRC advised that the term "ordinarily resident" is not defined in the legislation, but NIM33560 of the National Insurance Manual sets out some factors which HMRC will consider in determining whether a person should be considered ordinarily resident in the UK so that a continuing UK NICs liability will arise under Regulation 146. The final decision made will depend upon the circumstances of each individual case, but as noted in the previous action point, consideration will be given to factors such as whether the individual will be returning to the UK and why, whether family will be going with them abroad, whether they retain a home in the UK that will be available on return etc.

3.27 HMRC explained that they were essentially seeking to establish whether the individual remains UK based with a UK centre of interest notwithstanding that their employer is sending them to work abroad for a period. If this is not the case, and the individual is effectively breaking their link to the UK and ceasing to be ordinarily resident at the point of moving abroad then there will be no continuing UK liability. However, if the terms of Regulation 146 continue to apply there will be a continuing 52 weeks of liability.

3.28 HMRC advised that in the absence of any reciprocal social security agreement with the country in which the individual is employed, the UK cannot have any control over the social security charging mechanisms of that country and is therefore unable to prevent a possible situation where that country may also seek to make a social security charge.

3.29 Action Point 6 - HMRC was invited to reconsider its policy and practice for non-resident employers with no UK presence where the host employer rules do not operate.

3.30 HMRC were unable to cover this action point at the meeting on 20 April 2016 due to time constraints but are now able to provide the following view.

3.31 POST MEETING NOTE: Where both employer and employee NICs are involved, as will be the case with EU Article 21, HMRC's basic PAYE tools will cope with NIC only schemes. HMRC does not think it is appropriate to create another type of settlement arrangement at this time, when there is already the existing PAYE system to deal with this type of case. With regard to the coding out of benefits this is automatic based on the submission of a P11D.

3.32 Action Point 7- HMRC was invited to reconsider its approach in CA44 to non-resident directors of UK companies, which forum members considered is of little use in its current form because of the attendant restrictions.

3.33 HMRC thanked forum members for their suggestions and advised that they were further considering this point with the appropriate policy and operational teams. HMRC said that they hoped to be able to issue a response shortly.

3.34 At the meeting on the 10 December 2015 one of the forum members presented a paper on the NIC consequences of foreign tax reimbursement (tax equalisation) as commonly practiced by employers. The paper argues that the lack of any corrective mechanism to align the NIC due with the true figure of earnings (taking account of tax reimbursement and foreign tax credits) leads to excessive NIC liabilities and needs to be addressed. HMRC and forum members agreed to consider the matter further in advance of the next forum.

3.35 HMRC confirmed that they were further considering this point. A full response will be delivered to forum members in due course.

Proposed abolition of Class 2 NIC

3.36 HMRC advised that the abolition will now be from April 2018 as announced in the Budget on the 16 March 2016. This reflects concerns raised during the consultation. The full response to the consultation will be published in due course.

3.37 Forum members had previously raised some issues on this point. HMRC advised that their and the Department for Work and Pensions (DWP) views on the key issues raised were as follows;

1) The complicated conditions in SI 2001/1004 Regulations 145-147 which determine whether Class 3 voluntary NIC can be paid;

The concern is noted. The abolition of Class 2 NIC will simplify the position set out in Regulations 145-147.

2) The higher annual cost of Class 3 NIC compared to Class 2 NIC (which in some cases will be borne by the employer);

Whilst we acknowledge that Class 3 NIC have a higher annual cost than Class 2 NIC, the new State Pension a self-employed person (with a full contribution record) will receive, if they reach State Pension age after 6 April 2016, will increase from £115 per week to £155 per week.

3) The increase from 6 April 2016 regarding the minimum number of contributions years that are required for any entitlement to a UK state pension;

This is a feature of the new State Pension. A Minimum Qualifying Period of ten years reinstates the principle of targeting the State Pension to those who have made a significant social or economic contribution to the UK. The Minimum Qualifying Period can also be met by taking into account contributions made in other EEA countries, those with reciprocal arrangements and Switzerland. People can also meet the Minimum Qualifying Period through the payment of voluntary Class 3 NICs.

4) The payment process for voluntary Class 3 NIC for 2018 to 2019 onwards. Forum members raised concerns that if this is the same as the new payment process for Class 2

NIC the voluntary NICs will be credited long after the end of the contribution year. This is a concern for expatriate employees returning to the UK around state retirement age.

The detail for processing voluntary Class 3 payments, post abolition of Class 2 contributions, has not been finalised however, forum member's concerns have been noted.

5) There is also the issue that currently a reduced range of state benefits is provided by payment of Class 3 voluntary NIC compared to Class 2 NIC. Will the benefits entitlement change on the abolition of Class 2 NIC?

A review is underway as to whether Class 3 NIC may be expanded to give Materntity Allowance and Employment and Support Allowance entitlement following the abolition of Class 2 NIC.

NIC on termination payments in excess of £30,000

3.38 HMRC explained that currently termination payments that are derived from the employment (usually contractual or paid through custom and practice) are earnings and liable for Class 1 NICs. Those termination payments that are not derived from the employment are not earnings as they don't meet the statutory definition of earnings within section 3 of the SSCBA i.e. there has been no profit or remuneration from the employment as a "genuine" redundancy payment is compensatory for the employee losing their employment.

3.39 At Budget 2016 the Chancellor announced that an employer NICs liability would be placed on the excess of termination payments over £30,000 - this mirrors the existing tax treatment - even where the payment is not derived from the employment. There will be no change to the employee NICs liability for termination payments not derived from the employment. In addition, there will also be some clarification of the existing rules such that all Payments in Lieu of Notice will be earnings for NICs and employment income for tax and therefore liable for Class 1 NICs/charged to tax on the full amount.

3.40 We are therefore clarifying that all payments in lieu of notice (regardless of whether they are contractual or not) will be subject to income tax and NICs in the same way as other payments of earnings; putting beyond doubt that if the payment was an existing entitlement it will be subject to tax and NICs in the normal way.

3.41 HMRC confirmed that there will be a technical consultation over the summer and the treatment will come into effect from the start of the 2018 to 2019 tax year.

3.42 Forum members said that the sense of timing by HMRC regarding this measure was important. Forum members commented that it would helpful to have guidance on this point sooner rather than later.

3.43 HMRC noted forum members concerns and advised that they would feed this back.

4. Personal Savings Allowance and Dividend Allowance

Personal savings allowance

4.1 HMRC advised that, subject to Royal Assent, the personal savings allowance became effective on 6 April 2016 with basic rate customers able to earn up to £1,000 in savings income tax free and those who pay higher rate able to earn up to £500.

4.2 HMRC confirmed that the allowance is not available to customers who pay additional rates of tax. It is strictly for individuals and is therefore not available to non-individuals such as trusts and estates.

4.3 HMRC advised that income from ISAs does not count towards the personal savings allowance and that it is in addition to the 0% starting rate for savings. Income within an individual's personal savings allowance and/or dividend allowance will count towards the basic or higher rate limits and may affect the level of personal savings allowance entitlement and the rate of tax due on any excess.

4.4 HMRC explained that in view of the number of savers who will no longer have any tax to pay on their savings income, it did not seem sensible to continue to require banks and building societies to pay the income net of tax. HMRC have therefore removed the duty to deduct tax from these accounts and their equivalents including National Savings and Investments (NS&I). However, other withholding obligations do still remain.

4.5 HMRC confirmed that the personal savings allowance applies to a wider range of savings income than pure savings accounts, and these other forms of savings income will continue to be paid as they are currently.

4.6 HMRC explained the application of the personal savings allowance; interest is taxed when it arises, effectively when it is paid or made available for example, by crediting it to an account. If this happens after 5th April 2016 it is taxable in 2016 to 2017 and the personal savings allowance is available. If this happened before 6 April 2016 it is taxable in 2015 to 2016 with no personal savings allowance available.

4.7 HMRC advised that they expected the vast majority of savers will not need to do anything as their savings income will fall within the personal savings allowance. For the remainder, many will already be completing Self Assessment Tax Returns and should continue to pay tax on their savings income in this way. In other cases HMRC will, where possible, collect the tax due over the course of the tax year by changing the individual's tax code. HMRC advised that if any person believes that changes made to their tax code will mean they will pay too much or too little tax, they can get their code changed by following the guidance in their PAYE coding notice.

4.8 There are a small number of customers where HMRC cannot use PAYE recoding to collect the tax due. HMRC plans to write to affected customers later this year to tell them how they can pay the tax. HMRC does not anticipate requiring these customers to complete a Self-Assessment Tax Return if they do not already do so.

4.9 Forum members asked whether those individuals claiming the remittance basis were eligible for personal savings allowance and dividend allowance.

4.10 HMRC confirmed that they would clarify this.

Action Point – HMRC to confirm whether individuals claiming the remittance basis of taxation qualify for personal savings allowance and dividend allowance.

4.11 Forum members asked what the policy was for personal savings/dividend allowance and the introduction of personal tax accounts.

4.12 HMRC confirmed that the introduction of personal tax accounts was not intended to change the policy for personal savings allowance or dividend allowance.

4.13 Forum members expressed their concerns with regards to the implications of personal tax accounts for those individuals with complex tax affairs and suggested that consideration should be given to retaining the current Self Assessment Tax Return system for those individuals that would fall within the ‘complex’ group.

Dividend allowance

4.14 Until 6 April 2016, dividends were paid with a notional tax credit. So, if a person received dividend income of £90, they received a notional tax credit of £10 giving them dividend income of £100. The tax credit would then be set against their tax liability, sometimes reducing it to nil.

4.15 For dividends paid on or after 6 April 2016 (again, subject to Royal Assent) the tax credit has been repealed, so where a company pays a dividend of £90 that will be what the shareholder receives. Shareholders therefore do not need to make any claims to receive the income without the tax credit. The tax credit has been replaced by a dividend allowance, meaning that the first £5,000 of a person's dividend income will be tax free. Dividends received above £5,000 will be taxed at 7.5%, 32.5% or 38.1% depending on a person's other income.

4.16 The new allowance applies to dividends from UK and non-UK resident companies. UK resident and non-UK resident individuals qualify for the new allowance (but only individuals qualify, i.e. not companies or trusts etc). Credit for foreign tax would not be allowed against foreign interest and dividends that fall within the respective allowances, but individuals who have a mixture of UK and foreign income taxed on the arising basis were free to allocate the allowance against UK source income.

4.17 The dividend allowance is on top of a person's personal allowance.

4.18 Non-resident individuals currently do not have to pay tax on dividend income because they are treated as having paid tax at the dividend ordinary rate, and their liability is capped at this amount. This is because the income is treated as "disregarded income". This treatment will continue from 6 April 2016, meaning that the vast majority of non-UK resident individuals will continue to not have to pay tax on dividends from UK companies. For the very few who do pay tax (these will be people who paid tax on dividends already), they will now receive the dividend allowance.

4.19 Most people with dividend income on which they must pay tax are already in Self-Assessment or pay tax on dividends via adjustments to their tax code. We expect that there are fewer than 8,500 people who will pay tax on dividends for the first time and who are not in Self-Assessment, and we expect to collect the majority of this tax through adjustments to their tax code.

5. Personal Tax Accounts

5.1 HMRC provided an overview of making tax digital and personal tax accounts. HMRC explained that they anticipated the future model would be more effective and efficient for HMRC’s customers.

5.2 HMRC advised that a public consultation would be taking place and that this will be an opportunity for stakeholders to share their views.

5.3 HMRC advised that the consultation timetable would be announced in due course and would be published on gov.uk.

5.4 Forum members asked what the reference for pulling together the information would be for example, an individual's National Insurance number.

5.5 HMRC advised that this would form part of the consultation.

5.6 Forum members expressed their concerns that for a large number of globally mobile individuals HMRC would not have the information required to facilitate personal tax accounts.

5.7 Forum members said that it would be useful to have a road map for globally mobile individuals particularly as advisers were being asked a number of questions by their clients.

5.8 HMRC noted forum members concerns and explained that making tax digital was a 5 year plan for the Department and was a complex area. HMRC advised that it would be useful during the consultation stage for forum members to share their feedback and any specific concerns.

5.9 HMRC explained that more work would be undertaken on personal tax accounts in the course of the 2016 to 2017 tax year and that they were currently exploring authorised agent access and how they would govern those relationships within the personal tax account. HMRC advised that this was a key part of the design strategy and they hoped to be able to share a road map on this point in due course.

5.10 Forum members raised concerns regarding the security of personal tax accounts.

5.11 HMRC assured forum members that there was a host of security methods in place and that this was a priority for the Department.

5.12 Forum members reiterated their concerns in respect of personal tax accounts for those individuals with complex tax affairs and advised that the role of agents for these individuals should not be underestimated. Forum members stated that stakeholders needed to be consulted at the right time and for this particular group of customers as soon as possible.

5.13 HMRC noted forum members concerns and advised that they would look to hold a consultation with stakeholders at the earliest opportunity.

6. Forum Meetings

6.1 HMRC advised that they were considering the format of the forum going forward and how they could achieve the best representation.

6.2 HMRC invited forum member's comments/feedback on this point and said that it would be helpful if they could share these via the secretary.

6.3 Brian Redford expressed his thanks for the co-chair leadership and counsel of Philip Paur ahead of his stepping down and wished him a long and healthy retirement.

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 April 2016

No	Question	Answer
1	**SRT and the temporary non-residence rules** The scenario is that an individual is establishing residence in Switzerland now. He has bought a property in the last few weeks and is in the process of registering as Swiss resident. He will spend less than 90 days in the UK during 2014/15, but will be UK resident and is unlikely to be treaty non-resident. Next year he will likely avoid the automatic residence test and keep below the maximum days in the ties test. Our analysis is below, with all references to paragraphs in Sch 45 FA 2013: 1. The definition of "sole UK residence" in s112 (1) is that in this situation he will be treated as having sole UK residence for 2014/15. This is because he is UK resident in 2014/15 and is at no time in that year treaty non-resident (s112 (1)). He would not benefit from the split year rules. 2. Period A does not therefore end until 5 April 2015.	We confirm that your understanding of the legislation at S112 Sch45 FA 13 is correct and that in the circumstances of the scenario you have given and accepting the facts at face value the outcome would be as you suggest, i.e. the individuals absence from the UK would be regarded as a period of Temporary Non-Residence notwithstanding that they had been non-resident in the UK for 5 complete tax years. We can confirm that it is the policy intention that in order not to be regarded as temporarily non-resident an individual must not have sole UK residence for a minimum period of 5 years and 1 day. The relevant legislation is S110 (1) (d) Sch45 FA13. There are of course other legislative conditions that must also be met. Consideration was given to having legislation that provided for a period of non-sole UK residence of a shorter period. However, having considered that option, regard was given to the potential for individuals to manipulate the split year rules, so as to shorten the period for which they need not have sole UK residence to as little as 3 years. As the purpose of this legislation is to prevent avoidance such an option was felt to be unacceptable. It is accepted that a consequence of the current legislation is that some individuals will, in very

No	Question	Answer
	3. Let us assume he manages his time in the UK through all years, but in say January 2021 he starts spending much more time in the UK and goes over the maximum days in the ties test. He would be UK resident for 2020/21. Again, if he does not benefit from being treaty non-resident in 2020/21 or qualify for split year, s112 (1) would treat him as having sole UK residence for 2020/21. 4. The period of non-UK residence would end at the start of 2020/21. 5. If the period of non-residence runs from the beginning of 6 April 2015 through to the beginning on 6 April 2020, the period is exactly 5 years and is therefore a period of temporary non-residence even though the individual has been non-UK resident for 5 complete tax years. Although we appreciate that the way in which the rules work sometimes operates so as to treat periods of actual residence in the UK as temporary non-resident for these purposes and that any legislation with a cut-off point may lead to apparent inconsistencies, we wanted to check this scenario since it is a clear change from the way in which s10A previously operated where an individual was not subject to charge if they had 5 complete tax years of non-UK residence. Under this revision they could need 6 complete tax years of non-UK residence unless they were able to benefit from split year treatment or treaty non-residence. This may come as a surprise to those who have taken the tone of various HMRC commentaries as meaning that the new rules are more flexible than the old, for example the comment from RDR3 (para 6.2) that "... for the special rules to not apply, your period of temporary non-residence has to be more than 5 years, it does not have to be for 5 complete tax years".	specific circumstances, have to have a longer period of non-sole UK residence than others in order not to be regarded as temporarily non-resident.

No	Question	Answer
	It also seems surprising that there is a scenario where the individual would avoid the charge in the 6th year if they were to sell their overseas home (suggesting a more permanent return to the UK), but may suffer the charge if they retained this (suggesting a less committed return).	
2	**National Insurance refund claims for internationally mobile employees** When we identify clients with internationally mobile employees for whom NIC has been paid in error, we often assist the clients to reclaim the NIC. Historically this has involved liaison with the NIC refunds group and submission of reclaim forms, summarising the NIC overpaid, and outlining the reasons why the NIC was not in fact due. We have spoken with the NIC refunds group about specific refunds several times on recent occasions to try to understand how we should do this following the advent of RTI and the ability for a company to make an Earlier Year Update (EYU). We have been given a number of different views on what we/our clients should do to obtain their refunds going forward: • Continue to work under the existing process - namely payroll adjustment for current year NIC and written NIC refund claim for prior years; • Payroll adjustment for current year NIC, EYU for immediately preceding year's NIC and written NIC refund claim for prior years. • EYU for all years since the introduction of RTI. Would it be possible for HMRC to confirm what the correct approach is to NIC refunds?	Full Payment Submissions (FPS's) or Earlier Year Updates (EYU's) should be submitted for all RTI filing customers. Once RTI reaches the 6 year limit this will be the maximum number of years that an employer can submit EYU's. Please see the following link for further information https://www.gov.uk/payroll-errors

No	Question	Answer
3	**Social Security - Cancelling periods of invalidity** Please confirm HMRC's practice and expectation of employers in relation to cancelling periods of invalidity on A1 certificates or certificates of coverage. Specifically, we would like your confirmation whether an employer is required to cancel a certificate in the following scenarios: • the assignee repatriates to the UK earlier than expected. • the assignee finishes their assignment earlier than expected and is sent directly on another assignment and is issued with a new certificate to cover the new assignment. • the assignee finishes their assignment earlier than expected and is sent directly on another assignment and is not issued with a new certificate. • the assignee finishes their assignment earlier than expected and localises in their host country. • the assignee finishes their assignment earlier than expected and leaves their employment of invalidity under which HMRC would not require the employer to notify them.	Please see our responses to your questions. • the assignee repatriates to the UK earlier than expected - Yes, ICW need to be notified to enable us to update our records (you may also need to notify Overseas Healthcare Team/Foreign Authority if the customer has an S1 PD). • the assignee finishes their assignment earlier than expected and is sent directly on another assignment and is issued with a new certificate to cover the new assignment - A new application for the new assignment could be submitted to enable us to consider issuing a further A1 Portable Document regardless of whether the UK employer had changed. • the assignee finishes their assignment earlier than expected and is sent directly on another assignment and is not issued with a new certificate. If the circumstances are - Employee was assigned by the same UK employer to another site in the same EEA country for the same undertaking there is normally no need for a new A1Portable Document however if the Foreign Authority require sight of an A1 showing the new address an application can be submitted. • the assignee finishes their assignment earlier than expected and localises in their host country - Yes ICW needs to be notified of this end date to enable us to update our records and notify the Foreign Authority/Overseas Healthcare Team to cancel an S1 PD (if applicable). • the assignee finishes their assignment earlier than expected and leaves their employment of invalidity under which HMRC would not require the employer to notify them - If this relates to an employee ceasing to work for a UK employer and an A1 (and possibly an S1 PD) has been issued in respect of that employee we would need to be notified of any changes to their employment status.
4	**Alignment of pension input periods in 2015/16 - impact on relevant non-UK schemes** I have a query on what effect, if any, the alignment of pension input periods with the tax year legislated in F(No.2)A 2015 and	As there are two tax years within 2015-16 for annual allowance purposes - the pre- alignment tax year and the post-alignment tax year- every scheme will

No	Question	Answer
	now expressed in S228C FA 2004 has on relevant non-UK pension schemes (RNUKS). For relevant non-UK pension schemes the pension input period always has been the tax year itself. I would therefore have expected the PIP alignment legislation to apply only to registered pension schemes and specifically to exempt RNUKS from S228C. However, it is by no means clear that the legislation achieves this. It seems to me that the critical question is how you interpret paragraph 9 of Schedule 34. This provides that "the annual allowance provisions apply by virtue of paragraph 8…..as if references to the pension input period of an arrangement under the pension scheme that ends in a tax year were to the tax year." Is this subject to the transitional arrangements for 2015/16 in S228C, such that the pre-and post-alignment periods are separately "tax years" or does it override S228C and leave the PIP arrangements for RNUK schemes as they were? It is important to know because if the 2015/16 alignment legislation applies individuals whose input period is the tax year itself may have scope to make additional contributions in the remainder of 2015/16 (in the post-alignment period). If the 2015/16 transitional provisions do apply to RNUKS we need to be clear about how the carry-forward provisions operate. As a result of S228C modifying S228A it appears that in relation to the post-alignment period carry-forward is possible from the pre-alignment period and the two pension input periods before that. Therefore, the three carry forward years for the 2015/16 post-alignment year would be: • The 2015/16 pre-alignment year, • 2014/15, • 2013/14. Similarly, for 2016/17, the three carry forward years would be:	have at least two Pension Input Periods during 2015-16, one ending on 8 July 2015 and another running from 9 July 2015 to 5 April 2016. The SA helpsheet for 2015/16 which is due to be published shortly, will provide information on how the apportionment for UK service should be undertaken. This explains (with examples) that the (TE + TSI)/EI fraction is to be worked out by reference to 2015/16 as a whole and then applied to pension input amounts for the respective pre-alignment and post-alignment tax years. As to your query on carry forward, the carry forward years for the post-alignment tax year would be - the pre-alignment tax year (up to £40k max), - 2014/15, - 2013/14, <u>and</u> - 2012/13 and the carry forward years for 2016/17 would be - the post-alignment tax year, - the pre-alignment tax year (up to £40k max less any used in the post-alignment tax year), - 2014/15, <u>and</u> - 2013/14.

No	Question	Answer
	• The 2015/16 post-alignment year, • The 2015/16 pre-alignment year, • 2014/15. Finally, if we need to apply the transitional provisions of S228C to RNUKS, the question arises as to how to apply the fraction in paras 10(2) and 11(2) to apportion for days worked inside and outside the UK. Broadly, EI is employment income for 'the tax year'. So is 'the tax year' the normal tax year (6 April 2015 to 5 April 2016) or is it the pre-alignment year and post-alignment year. Put another way, is the fraction TE+TSI/EI: 1. Calculated separately for the pre- and post-alignment years and applied as relevant, or is the fraction:- 2. Calculated for the year as a whole and then applied in the same way to the pension input for each of the pre- and post-alignment years.	