

## **JOINT EXPATRIATE FORUM ON TAX AND NICS: 12 July 2017**

100 Parliament Street, Westminster, London, SW1A 2BQ

Chair: Mark Tunstall (HMRC)

Secretary: Alan Higham (HMRC)

### **MEETING NOTE**

#### **1. Introductions**

1.1 Introductions were given.

1.2 The new secretary Alan Higham was introduced by the chair Mark Tunstall who explained that he was standing in for Bozena Hillyer.

1.3 HMRC made apologies for the meeting room as the layout was different to previous meetings.

#### **2. Update on Deemed Domicile (HMRC)**

2.1 An introduction was given.

2.2 HMRC explained that the basic rule of Deemed Domicile is that long term non-doms will be deemed to be domiciled in the UK after 15 out of 20 years in the UK.

2.3 The new legislation was set to be introduced into the Finance Bill this year (2017) but the General Election stopped this and to date the bill has not yet been reintroduced to the house. The Government's intention is still to introduce it as early as possible.

2.4 HMRC explained that they are waiting on the ministers to make a decision on this and we will have to wait and see what happens. Every Thursday Parliament releases their schedule. HMRC advised that if Deemed Domicile is not included in tomorrow's schedule (13 July 2017) then it is likely it will not be before the House now until the autumn, likely September.

2.5 HMRC gave the following email address out to the forum members: [Aidan.close@hmrc.gsi.gov.uk](mailto:Aidan.close@hmrc.gsi.gov.uk) and invited members to contact them with any questions or comments. HMRC also agreed to send the members a copy of any proposed changes to the legislation once the Finance Bill is announced.

#### **Questions**

Q. Are there any updates or guidance for customers who have acted upon expectation and filed as domiciled? What date will customers be considered domiciled from?

A. There are a 3 possible scenarios and we do not know which one it will be as of yet. It could be that domicile changes are backdated to 6 April 2017 or it could start from 6 April 2018. It is also possible that it could start from the date the bill gets Royal assent.

Q. We have heard that it may be possible to allow customer to elect, is this correct?

A. Possibly, electing retrospectively might be the best option. There are a number of conclusions that could be reached. If and when we hear, comms will be sent out and I will include all of you in any updates.

Q. When are we likely to hear? Will it be straight away?

A. The election has changed all of the timetables. When we know for certain, updates will appear on the website and everyone should hear very quickly.

### **3. Presentation on employer issues and Scottish Rate of Income Tax (HMRC)**

3.1 HMRC explained that their compliance approach has changed significantly over the past few years and is set to change at an even greater pace with the introduction of Making Tax Digital.

3.2 In the past HMRC's compliance resource was focused on carrying out reviews and enquiries. HMRC are now taking a more holistic approach to compliance which includes initiatives to educate our customers and to prompt customers into considering their approach to compliance in certain risky areas.

3.3 HMRC's intention is to prompt our customers to review their systems and processes in order to determine if they are robust enough to deliver the right tax at the right time. HMRC then hopes that if errors are found then these are disclosed.

3.4 HMRC pointed out that for Expat Employment Duty disclosures, customers and their advisors should not be using the Digital Disclosure Facility and instead the preferred route would be to use the following email address: [eddisclosures.international@hmrc.gsi.gov.uk](mailto:eddisclosures.international@hmrc.gsi.gov.uk) Alternatively disclosures can be posted to the following address:

Wealthy Midsize Business Compliance

HM revenue and Customs

SO733

Newcastle

NE98 1ZZ

3.5 HMRC explained that they wanted to share with the forum members the areas where HMRC are finding that their customers are making frequent mistakes in the hope of avoiding such mistakes in the future.

3.6 HMRC also explained that Short term business visitors (STBVs) are individuals employed by an overseas entity of a group of companies. They normally work outside of the UK, but temporarily spend time working in the UK. Some examples of STBVs include:

- Short term assignees on international assignment to the UK for up to 6 months.
- Business travellers – employees travelling frequently to countries outside of their home country on a regular basis.
- Project workers- employees assigned to work on specific projects of variable lengths in countries outside of their home country.
- Multi state commuters – employees living in one country but working in a second country on a regular basis.

3.7 Although there has been wide publicity, HMRC are still finding that employers are failing to operate PAYE on STBVs where they are required to do so.

3.8 PAYE should be operated on STBVs from day one if any of the following conditions are met:

1. If the inbound foreign national is from a country which does not have a Double Taxation agreement with the UK.
2. Where the UK employer has met the costs of the STBV. If in doubt UK employers should speak to the overseas business.
3. If the STBV has come to the UK from an overseas branch of the UK company. In this case HMRC categorise a branch as simply an extension of the UK Company undertaking work in an overseas tax authority. It is not a separate legal entity (unlike a subsidiary) and it is not a resident of the overseas tax authority. HMRC would therefore view the UK Company as the ultimate employer and PAYE should be operated from day one.

3.9 Another common area that HMRC find errors is in respect of EP Appendix 4 Arrangements, particularly the practical operation.

3.10 The arrangement only applies where individuals are:

- Resident in a country with which the UK has a double Taxation Agreement under which the Dependent Personal Services/Income from employment article is likely to be competent.
- Coming to work in the UK for a UK company or the UK branch of an overseas company, or are
- Legally employed by a UK resident employer, but economically employed by a separate non-resident entity.
- Expected to stay in the UK for 183 days or less in any 12 month period.

3.11 HMRC has found the most common error is when individuals have been included even if the country in which they are resident has no DTA with the UK.

3.12 Recently a case has come to light where a customer came the UK from Hong Kong as a STBV. Whilst the UK and HK do have a DTA, there is a fourth condition within Article 14 Paragraph 2 which is not present in other DTAs. It states: d) the remuneration is taxable in the first-mentioned Party according to the laws in force in that Party. This means that for STBVs in the UK, the remuneration has to be taxable in Hong Kong for condition d) to be met and hence for double taxation relief to be claimed.

3.13 If an employee is employed by a Hong Kong company to work in Hong Kong then their full income is chargeable in Hong Kong even if part of the duties are carried on outside Hong Kong. However, they may claim exemption of income or relief from tax under certain circumstances on a year-by-year basis.

3.14 In the case in question an employee of a UK employer that was assigned to work in Hong Kong made visits to the UK as a STBV.

They were included in an appendix 4 arrangement but subsequently the employer realised that the UK duties would not be assessable in Hong Kong and as such condition d) of para 2 Article 14 is not satisfied and treaty relief is not available. The remuneration from their duties in the UK should therefore be taxed in the UK.

3.15 HMRC wanted to flag this up to employers as there may be similar problems with STBVs coming from Singapore as this DTA contains a similar clause to the Hong Kong DTA.

3.16 HMRC are finding that employers do not deduct National Insurance Contributions (NIC) because:

1. The employee is from a European Economic Area country, however to be exempt from deducting NIC an employer must have a certificate A1 in this case.
2. The inbound assignee is from a country with which the UK has a reciprocal arrangement. For the exemption to apply in this case the employee must have a certificate of continuing liability.
3. The inbound assignee is from a rest of the world country. In this case employers must deduct NIC after the first 52 weeks.

3.17 Employers should be reminded that when an inbound assignee comes to the UK, they must be aware of any long term incentive plans (including shares) which the employee participates in. Where the employee is present in the UK for any part of the period in which the bonus was earned then PAYE and possibly NIC should be deducted from that portion of the bonus.

3.18 In regards to share awards, most errors occur when the employee moves in and outside of the UK. Most Share awards are forward looking but are often conditional and are treated as being earned from the date of grant to the vesting date. Where the assignee is present in the UK for any of the period from grant to vest then PAYE should be due on the proportion of the award treated as earned during their time in the UK.

3.19 Problems can also occur when a share option was granted in the UK but the assignee left the UK before the vesting date.

3.20 In respect of salaries paid from overseas, HMRC states that UK employers must find out about all salary, bonuses and other case payments from an assignees overseas employer as there may be an obligation to deduct PAYE or NIC.

## **Questions**

Q. Does HMRC's new approach mean less enquiries?

A. In theory it could do, we are certainly finding an increase in disclosure. Using an educational approach is less resource intensive and in the last ten years, yes the number of enquiries has decreased.

Q. Which channels will be used to feedback?

A. HMRC will be undertaking outreach activities and things such as the employer bulletin will be used to reach our customers. We will also review the disclosures we receive annually in order to feedback common mistakes and address common themes.

Q. In my experience, employers get confused with PAYE and STBVs and it can be extremely difficult to find the answers or appropriate guidance.

A. In regards to STBVs, HMRC's customers are lobbying for a simpler system. We will take your feedback away regarding the guidance as an action point and see what can be done to make things simpler for our customers.

Q. How does the 60 day STBV rule link to what you have said today?

A. The 60 day rule still applies.

Q. Trying to find guidance relating to directors and partnerships is causing problems.

A. Our Expat area has just teamed up with the Large Partnership Unit and we will be working closely with them going forward.

Q. In regards to executive directors and senior managers and PAYE obligations, it is very difficult to understand and complex for employers to get their heads around.

A. HMRC will take this away as an action point and provide clarification to employers through the aforementioned channels whether or not PAYE will apply in these cases.

**Action point: HMRC to clarify whether or not PAYE will apply in regards to executive directors and senior managers.**

Q. It would also be helpful to have guidance on, as there is a lack of clarity, regarding when PAYE starts and on what level of income PAYE applies to. It would also be helpful to know how this interacts with a S690.

A. HMRC to provide clarity.

**Action point: HMRC to clarify when PAYE starts and on what level of income PAYE applies to. HMRC to also explain how this interacts with S690.**

Q. Do you accept that there can be no PAYE obligation even if the DTA doesn't apply?

A. It can happen yes.

Q. There is now a new DTA with the UAE (United Arab Emirates). In a case where a customer has spent under 60 days in the UK, how will this affect trailing payments if they relate to time before the DTA agreement, should they be included?

A. HMRC to find out the answer.

**Action point: HMRC to find out how the new DTA with the UAE will affect trailing payments relating to time before the introduction of the DTA.**

Q. How does the Scottish Rate of Income Tax work when a customer is on a modified payroll? We know that employers will receive a coding notice with the prefix S in cases where the SRIT should be operated but modified payrolls receive no coding notice.

A. Employers are to make their best estimates which can be corrected later by an SA return. If the employer thinks that SRIT applies then they should operate it.

#### **4. Update on Making Tax Digital (HMRC)**

4.1 An introduction was given and forum members told of an ongoing agent's trial which they can sign up to by contacting [mailbox.agents@hmrc.gsi.gov.uk](mailto:mailbox.agents@hmrc.gsi.gov.uk).

4.2 The Making Tax Digital Initiative (MTDI) is part of the MTD roadmap first published in 2015. The enablers which will make MTD possible are: The Personal Tax Account, a refresh of the PAYE system, the end of the tax return and data mastery, creating a single comprehensive customer record.

4.3 Over 1.7 million refunds were claimed via the Personal Tax Account in 2016, with one billion pounds paid straight into customer bank accounts. This saved HMRC nearly £4 million in administration costs as a direct refund costs around a penny versus 2 pounds for a cheque.

4.4 As previously mentioned, agents will be invited to take part in a proof of concept trial starting in July 2017. This will enable agents to access data for a chosen client in order to

test HMRC's new systems and provide feedback. The trial is set to run until September 2017.

4.5 Changes to PAYE went live on 2<sup>nd</sup> July 2017. HMRC will be making better use of the information we get from employers to ensure customer are coded more flexibly in the year to ensure the right amount of tax on their income as they earn it.

4.6 Dynamic coding will dramatically reduce the 8.5 million customers who currently receive P800 notifications at the years end. HMRC will be hosting interactive webinars throughout July and August which will cover the changes.

4.7 Simple Assessment is another new introduction which allows HMRC to make a calculation of Income Tax liability without the need for an individual to complete a self-assessment tax return.

4.8 The first group of customers moving into Simple Assessment will be pensioners whose only income source is a state pension in excess of their Personal Allowance (approx. 27,000 customers). Exit letters will be provided to those customers currently in self-assessment and warm up letters introducing Simple Assessment will follow. Finally a Simple Assessment bill will be issued. A gov.uk page and supporting guidance are being developed.

4.9 There will be a queries and appeals process but there will be no penalties or interest applied in the first year at least.

4.10 An important part of HMRC's digital strategy is to pre-populate customer records with data obtained from Third Party Suppliers. This is expected to lead to an increase in tax yield/reduction in tax gap and a reduction in customer burden. This will support the phasing out of the tax return for those customers for whom we have a full picture of their income.

4.11 HMRC already has data from banks and building societies and will begin to use this information to pre-populate data from September 2017 and banks stopped deducting tax from interest earned on savings from April 2016. The third party data is used to calculate the tax due, which is then coded out and the customer informed via the P2 process.

4.12 Joint bank account holders will be asked to use their Personal Tax Account to let HMRC know their personal share of any interest.

## **Questions**

Q. Will guidance be available online?

A. Yes, from the start upon delivery.

Q. Can you advise on the general timeframes? Is there a communication plan in place?

A. The plan is based on direct comms. Our intention is to first write to customers. The preferred approach will always be a direct one.

Q. In regards to you writing to customers about their liabilities (after moving them out of SA), it seems strange that you would write to someone in August and expect them to pay their liability by January. Have you spoken to services which offer help to older customers?

A. We have spoken to the various groups which represent our older customers more than any other group so far.

Q. If a customer already has a personal tax account already set up, will this change procedures for them?

A. Apart from being able to pay online, no, there will be no other changes to the process and we will still write to them first.

Q. If for example the information regarding bank accounts and interest etc. which is automatically given to HMRC is wrong, how do customers challenge this? Should they contact the bank directly?

A. That is the intention yes, that customers should contact their bank.

Q. Can customers go into their personal tax accounts and tell HMRC the information is wrong?

A. We will need to check and get back to you.

**Action point: HMRC to confirm whether or not customers can tell HMRC that their information is wrong through their personal tax account.**

Q. How will the banks match accounts to people? Will they use National Insurance numbers? Is there a possibility that they will be linked to the wrong person?

A. In regards to accounts being linked to the wrong person, there is no question that in the case of individuals, this may be an issue.

Q. How will this work with Expats as they often don't need a National Insurance number?

A. HMRC to take away as an action point and get back with the answer.

**Action point: HMRC to confirm how bank accounts will be matched to individuals who do not have/need a National Insurance Number.**

Q. Are all the banks on side? What if they don't pass all of the information on to HMRC?

A. Customers will be required to check the pre-populated information and are obliged to add any information that is missing.

Q. Will there still be a signed declaration?

A. HMRC to find out the answer and feedback.

**Action point: HMRC to find out if there will be a signed declaration.**

Q. Will expats who have already registered for a personal tax account have theirs updated/changed to reflect their status when the system goes live?

A. This is not an issue yet.

## **5. Operational updates and messages (HMRC)**

5.1 The following messages are from HMRC colleagues working on the operations team.

5.2 Please do not send EP Appendix 4 reports to us using more than one source. The preferred method is through our digital mail system, the postal address is:

HMRC Personal Tax International  
Operations S0733  
PO Box 203  
BOOTLE  
L69 9AP

We have received a number of emails stating that the agent or employer has also sent a hardcopy of the report. This is not required – as it just duplicates our work and as this time of year is extremely busy for us, it creates major delays in us dealing with more pressing issues.

5.3 we will no longer be acknowledging all EP 4 reports. If we need any further information we will write out and ask for it. This means that for reports only recording STBVs of less than 60 days no acknowledgement will be issued.

5.4 Not all Business areas within HMRC can accept and receive post via email. The reason being that not all emails are secure. Operations have been receiving an increasing amount of unsolicited emails from agents where correspondence really should be coming through DMS or through Shared Workspace.

5.5 HMRC can still receive post by fax. The fax number is 03000 533121.

5.6 Customer calls now go through to staff on another team. These customer operations staff have been trained to deal with general expat issues, however anything technical will still be dealt with by our expat operations team.

5.7 Finally when submitting information to HMRC regarding new starters, please:

- Supply the (correct) date of birth.
- Provide us with the correct PAYE ref for the employer
- Confirm when (if applicable) the first Full Payment Submission was made.

## **Questions**

Q. In regards to the EP App 4 STBV reports, HMRC previously preferred all reports to be sent together, rather than in segments even if it meant that they were late. Is this still the case?

A. As far as we know, this is still the case. Our operations team have not said anything different.

## **6. AOB (all participants)**

6.1 Before AOB was opened to the forum members there were a couple of issues HMRC wanted to raise.

6.2 HMRC explained that HMRC were coming across examples of earlier year updates (EYUs) being made on Appendix 6 schemes. Whilst these are not prohibited, HMRC does not consider them appropriate and the correct tax figures should be included in the self-assessment return rather than by an EYU.

6.3 HMRC are looking to amend the Appendix 6 agreement at point 12 under the heading - *Calculation of estimated PAYE on tax equalised earnings* on the EP6 as follows: -

*We agree that making an Earlier Year Update (EYU) is not appropriate for employees included in this arrangement. If a self-assessment tax return is submitted with an incorrect PAYE tax figure we undertake to ensure the return is amended, to reflect the correct figure, if*

*we are within the amendment time limit (12 months from the original return deadline). If we need to amend the PAYE tax figure after the amendment time limit we agree to: -*

- *Write to HMRC to make an overpayment relief claim, or*
- *Write to HMRC to make a disclosure of any further PAYE tax due.*

6.4 HMRC are also looking to make a similar change to the EP Appendix 7A agreement at point 21 to read as follows: -

- *We agree that making an Earlier Year Update (EYU) is not appropriate for employees included in this arrangement. If an underpayment is identified after the submission of the NSR we agree to write to HMRC to make a disclosure of any further NIC due.*

Point 24 will also be amended as follows: -

- *We agree that making an Earlier Year Update (EYU) is not appropriate for employees included in this arrangement. If an overpayment is identified after the submission of the NSR we agree to write to HMRC to make a NIC refund claim.*

6.5 AOB was opened up to the forum and HMRC invited discussion regarding the frequency of the Expatriate Forum meetings. HMRC have noted that they are getting less issues from forum members and less agenda items for meetings.

6.6 In addition to this, the more complex issues are being addressed via the Expat Forum sub groups.

6.7 HMRC proposes to move the main forum meeting to once every six months and invited comments from the forum members.

6.8 The general consensus from the forum members was that the meetings should be kept at the same frequency as they are now, although it was suggested that due to the many changes effecting the expat population going forwards, such as deemed domicile and Brexit, that the meetings should be more frequent if anything. Members also commented that it is proving difficult to obtain answers from HMRC to questions raised. If HMRC were to answer questions more promptly then less meetings may indeed be needed.

6.9 It has therefore been decided to keep quarterly meetings but keep the frequency under review going forward.

6.10 Members were told to continue to direct queries to HMRC via Alan Higham using the following email address: [alan.higham@hmrc.gsi.gov.uk](mailto:alan.higham@hmrc.gsi.gov.uk).

6.11 No other topics were raised and so members were thanked for their attendance and the meeting closed.

## **Questions**

Q. Should EYUs be avoided even in the case of say a missed share award?

A. Yes, this should also be declared via an amendment to the SA return, within the normal amendment window of course.