

JOINT EXPATRIATE FORUM ON TAX AND NICS: 31 May 2018

HMRC Business Centre, 1 Ruskin Square, Croydon, CR0 2WF

Chair: Steven Wood (HMRC)

Secretary: Alan Higham (HMRC)

MEETING NOTE

1. Introductions

1.1 The chair Steven Wood introduced himself, apologised on behalf of Bozena Hillyer who was unable to attend and talked through the housekeeping.

1.2 Introductions were given around the room.

2. Update to the Joint Forum on Expatriate Tax and National Insurance Contributions Terms of Reference and the key objectives of the forum

2.1 HMRC explained that the chair Bozena Hillyer has asked that the membership be reminded of the intended purpose/objective of this forum. The Secretary Alan Higham receives a large volume of requests and we don't consider all these to be appropriate to the forum.

2.2 All forum members should have received a revised copy of the Terms of Reference before the meeting from the secretary Alan Higham.

2.3 HMRC would like to remind the membership that the key objectives of the forum are:

- A. To discuss any proposed legislative changes which impact the inbound expatriate population. The forum is to be used to highlight any potential problems arising from any proposed changes and to enable all forum members to consult with technical colleagues to identify and propose any solutions. The introduction of the Statutory Residence Test and discussions surrounding Short Term Business Visitors are examples of how this has worked previously.
- B. To discuss any issues which arise in relation to any existing processes, for example in relation to the various arrangements HMRC have in place relating to the relaxation of PAYE for the inbound expatriate population. What HMRC does not want however, is the forum to be used as a means of checking if an individual is eligible to use one of these processes. Requests such as these should be made via HMRC's operational team by calling 03000 533148 or by writing to Charities Savings International 3, HMRC, BX9 1AJ.
- C. The forum is also there to discuss particular technical, compliance or operational issues with regards to the interpretation of the legislation or HMRC guidance which impacts across the inbound expatriate population.

2.4 HMRC will not cover individual customer issues. So if for example a forum member has a disagreement with HMRC on a specific case, say a S9A enquiry case, then they should follow the usual procedures. Initially this will be by trying to reach agreement with the caseworker.

2.5 The forum should also not be used as a conduit to accessing other parts of the department or for seeking advice on hypothetical issues. Forum members are reminded to

follow the normal procedures which may include HMRC's non-statutory clearance service which will be discussed in more detail shortly.

2.6 HMRC reiterated that they are not trying to discourage the members from contacting Alan Higham but are asking members to consider other avenues before submitting their questions.

2.7 HMRC would like to invite feedback from forum members with regards the frequency and type of future meetings. One option that has been suggested is the possibility of arranging face to face meetings every 6 months but having bi-monthly telephone conferences in the interim periods. Forum members should send their feedback and comments to Alan Higham before the end of July so that any changes can be discussed.

[POST MEETING NOTE: In regards to point B, to clarify, when customers and their agents call HMRC's operations team on 03000 533148 they will be presented with 5 options. If their question relates to Short Term Business Visitors and/or modified PAYE arrangements then customers and their agents should choose option 3 and follow the instructions/directions which will eventually lead them through to HMRC's technical support team.]

Questions

Q. Would it be possible to get a faster turnaround on the meeting notes being published?

A. HMRC agreed that the turnaround on the notes has not been as good as it should be. There is a process that must be followed to get the notes agreed and signed off. This can be delayed if there were numerous technical issues discussed at the meeting as the input and agreement of the technical specialists is also required.

Q. Would the forum still consider NIC queries in regards to outbounds?

A. The forum certainly wouldn't dismiss these queries. HMRC will find out the relevant area that deals with these issues.

Q. Would HMRC consider expanding the forum to include the outbound population? The members appreciate that another area deals with these customers but there is a large amount of crossover. Some taxpayers are both inbound and outbound customers.

A. HMRC do liaise with their outbound colleagues on a regular basis. Member's feedback will be provided to the chair Bozena.

3. Update on the forum Q&A log

3.1 HMRC apologise that the issuing of the Q&A log has slipped recently but it is to be brought back into use and updated on a regular basis.

3.2 It will be kept as a living document and contain a running record of advice rather than only being produced and released alongside each forum meeting.

3.3 The log will be updated each time a new question is received, which means that a question will still be entered onto the log even if a response has not been received.

3.4 Questions that are awaiting an answer will be updated to show who they have been referred to and when HMRC expect to receive an answer.

3.5 The secretary Alan Higham is currently working on a large issue which will contain all of the questions asked and answered since the last Q&A log was issued. Going forward, Alan will send out an email to the members when the log has been updated.

Questions

Q. Can the Q&A log be shared in a central facility?

A. This is certainly something HMRC will take forward. HMRC will need to consider if the tools/software are available to do this. For the time being Alan Higham will share all updates to the Q&A log with the members by email.

Q. The membership have a large amount of questions relating to the EU-Exit. Can a separate bank of EU-Exit questions be kept?

A. Absolutely, even though the EU-Exit team are unable to answer most queries at this time, it seems a very good idea to log all of the membership's questions and at least make the EU-Exit team aware that these will need answering in the future. Alan Higham will set up a separate Q&A log for this purpose.

Q. Can the Q&A log provide links to the appropriate guidance and/or EIM?

A. Yes, where appropriate guidance links can be inserted into the Q&A log.

4. HMRC's Non-statutory Clearance service

4.1 HMRC's Code of Practice 10 (COP10) which detailed how to get information and advice was withdrawn on 31 October 2011. Its replacement Clearances and Approvals 1 (CAP1) details how non-business customers or customers with a query about non-business activities should get advice on HMRC's interpretation of recent tax legislation.

4.2 The non-statutory clearance service is offered to all customers and their advisers.

4.3 Before using this service you must ensure that:

- A. You have fully considered the relevant guidance and/or contacted the relevant helpline.
- B. You have not been able to find the information you need.
- C. Remain uncertain about HMRC's interpretation of tax legislation.

4.4 HMRC will not provide advice under this service if:

- A. HMRC doesn't think there are genuine points of uncertainty.
- B. If you're asking HMRC to give tax planning advice.
- C. HMRC is checking the customer's tax position for the period in question, in which case you should contact the enquiry officer.
- D. Your application is about treatment of transactions which, in HMRC's view, are for the purposes of avoiding tax.

4.5 When you write to HMRC you should use the appropriate checklist to ensure that your application is complete. There are different checklists for different heads of duty and they can be found on gov.uk.

4.6 Applications should be sent to: HMRC non-statutory clearance team, 5th Floor Alexander House, 21 Victoria Avenue, Southend on Sea, Essex, SS99 1AA. They can also be emailed to: hmrc.southendteam@hmrc.qsi.gov.uk

4.7 HMRC will aim to provide a response within 28 days but may ask for more information before a response is provided.

Questions

Q. Previously there was a named contact in HMRC who dealt with clearance requests in respect of the treatment of US LLCs in the UK. There does not appear to be anyone in HMRC who deals with these now.

A. HMRC are unsure of the specific person who would deal with these requests but will try to find out.

5. Operational updates/messages

5.1 When responding to our Expat S9A enquiries, customers and agents are asked to write to HMRC's Bootle address rather than the WMBC Newcastle address. The correct address is: WMBC, HM Revenue and Customs, BX9 1LH. Failure to do this may lead to postal delays.

5.2 HMRC has been asked by colleagues in policy to pass on a message regarding changes to the issuing of National Insurance Numbers and Biometric Residence Permits.

5.3 HMRC, DWP and Home Office have aligned the process for some people applying for a biometric residence permit with their application for a National insurance number. From August, more people will be able to get their NI Number when they are given their Biometric residence permit from Home office, instead of having to apply to DWP. Some of these customers may not have a NIC liability if they work in the UK. Being given a NI number does not change that. Normal rules still apply. For secondees to the UK, remember that you must complete the appropriate boxes to identify them on your first RTI submission. More guidance can be found on gov.uk on the "new employee coming to work from abroad" page.

5.4 HMRC added that it may be a good idea to always have someone from the operations team attend the forum meetings, although members should bear in mind that the operations team are no longer part of the same work area since the move to WMBC.

Questions

Q. We presume that the above only applies to non-EU nationals?

A. Policy have confirmed that it does indeed only apply to non-EU nationals for now.

Q. Does post sent to the BX9 1LH postcode only go to HMRC Expat teams in Salford and Bootle?

A. HMRC to check.

[POST MEETING NOTE: The postcode BX9 1LH is unique to WMBC as a whole but post sent to this address does not solely relate to our Expat teams within WMBC but relates to all facets of WMBC. Other areas within HMRC use a variation of this postcode unique to their business area.]

Q. Whilst the membership agree that the Expat area of HMRC are more reasonable than other areas when it comes to S9A enquiries, they do believe that HMRC do not give sufficient time to reply to letters and resort to issuing information notices very quickly.

A. HMRC have recently had a big push on elapsed time targets and there has indeed been more of a focus on the use of information powers. HMRC acknowledge their own post

turnaround times. HMRC wouldn't call their use of information powers more aggressive but more effective. Caseworkers are encouraged to pick up the phone and speak to agents before issuing notices to attempt to solve any issues agents and their customers are having in responding. As long as times can be agreed and expectations set, there should be no surprises for the agent if a notice is issued, or if a caseworker is willing to offer an extension.

6. AOB

6.1 The members asked if it would be possible to set up a sub-group (much like the FTCR one) for termination payments, to discuss the new legislation. It was agreed by all parties that further discussion would be very helpful.

6.2 HMRC wanted to make the membership aware of the actions they will be taking in the next month regarding the Requirement to Correct (RTC) initiative. For customers who are not under enquiry they will be receiving a general "nudge" style information letter advising them about RTC.

6.3 For customers who are currently under enquiry, they will receive a more tailored letter advising them of their options and informing them of the information which HMRC considers to be relevant.

Questions

Q. Could HMRC clarify the section on the UAE treaty contained in the last meeting notes?

A. HMRC will look into this and provide further clarity.

Q. Can the membership be provided with the Class 2 NIC briefing as discussed at the last meeting?

A. Alan Higham will send the briefing to the members by email in the next week.

Q. Is HMRC planning another meeting of the Foreign Tax Credit sub-forum?

A. HMRC's Competent Authority Shaun Thomas has recently been off work after a knee operation. He has previously indicated that he would like to organise another meeting of the sub-forum and so HMRC will liaise with him now that he has returned to work.

Q. In regards to termination payments, if a customer has a split-year then they have a period of residence and do not get the relief. People don't seem to be understanding the new rules and they are very complex to advise customers on.

A. HMRC will go back to Laura Hines for a better explanation.

Q. Can HMRC share a template of the generic RTC letter which will be issued to customers who are not under enquiry?

A. Yes, once the letter is finalised it will be shared with the membership.

Q. Can the employers be warned about the RTC letters?

A. HMRC doesn't envisage any problems with this but will check. Alan Higham will feedback via email.

End of meeting.