Tax and administrative treatment of short term business visitors from overseas branches

Employment Tax

01 September 2018

HMRC published a consultation, looking at simplifying the tax and administrative treatment of short term business visitors (STBV) from foreign permanent establishments (‘overseas branches’) of UK companies. The CIOT has responded to HMRC and recommended that government both introduce a new tax exemption for STBVs from overseas branches and extend the PAYE special arrangement UK workday rule for STBVs from non-treaty countries.

The CIOT has responded to HMRC’s consultation on simplifying the tax and administrative treatment of short term business visitors (STBV) from foreign permanent establishments (‘overseas branches’) of UK companies. The consultation proposed introducing a new tax exemption for STBVs from overseas branches or extending the PAYE special arrangement UK workday rule for STBVs. The CIOT has recommended that the government do both!

A new tax exemption for STBVS from overseas branches

The consultation proposed a new and specific tax exemption for STBVs from overseas branches. The intention is to align the effective tax treatment of STBVs from overseas branches to those eligible for STBV arrangements.

Under a STBV arrangement, also known as ‘EP appendix 4’, the requirement on a UK company to operate PAYE on a STBVs earnings is relaxed. This eases the administrative costs and burdens associated with operating PAYE. These arrangements also relieve the individual of the need to pay UK tax on their earnings

or file a self-assessment tax return.

The administrative easements provided in STBV arrangements are not available to all UK companies with STBVs. For example, STBVs resident in countries with which the UK does not have a double tax agreement are ineligible, as are STBVs from overseas branches.

The proposed new exemption would effectively extend STBV arrangements to STBVs from overseas branches. The new exemption would be restricted in a similar way to STBV arrangements and proposed conditions for the new tax exemption are that the individual is:

1. resident for tax purposes in a country with which the UK has a Double Taxation Agreement under which the Income from Employment Article is likely to be competent;
2. working in a foreign permanent establishment of a UK company and coming to work in the UK for the UK company for a short term or temporary basis; and
3. expected to stay in the UK for 183 days or less in any 12-month period.

The CIOT agrees with HMRC that a new tax exemption will help align the effective tax treatments of STBVs from overseas branches to those eligible for STBV arrangements and we have recommended that the government proceed with introducing the new exemption as soon as possible.

We think that the conditions proposed by HMRC, as outlined above, are sufficient to ensure that the new exemption operates as intended (assuming the new exemption will treat employees working in the overseas branch as if they were employees of an overseas subsidiary and then apply the relevant Income from Employment Article in the normal way). Also, we do not think HMRC's proposal for 'a reasonable rate of tax' to be paid by the STBV in his/her country of residence to be included as an additional condition in the new exemption to be helpful. We think that so long as the employee is taxable on the income in their home country that should suffice.

Extending the PAYE special arrangement UK workday rule

The consultation proposes extending the UK workday rule from 30 to 60 UK workdays, so that more STBVs will qualify for the PAYE special arrangement and a greater number of UK companies and individuals can benefit from the arrangement's administrative easements.

The PAYE special arrangement was introduced in 2015 to simplify PAYE procedures for UK companies with STBVs ineligible for STBV arrangements. These arrangements are detailed in the HMRC's PAYE Manual at PAYE 81950. Under this arrangement, the UK company can operate an annual PAYE scheme for qualifying STBVs and does not have to report to HMRC in real time. At present, these arrangements can only be used for STBVs with 30 or less UK workdays in the tax year.

The CIOT has recommended that the proposal to extend the UK workday rule should be taken forward too in relation to STBVs from non-treaty countries. We think the existing 30 workdays limit is unduly short and that there would be a significant increase in those benefitting from the PAYE special arrangement, at no cost to the Exchequer, if it was extended to 60, 90 or 120 workdays.

We also think that the PAYE special arrangement could be further improved by (i) extending the date by which employers have to account for the tax due from 19 April to 31 May (after the end of the tax year), and (ii) permitting non-UK resident directors to be included within the terms of the special arrangement.