Office of Tax Simplification: Review of hybrid and distance working

Employment Tax | International Tax

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The ATT, CIOT and LITRG have responded to the Office of Tax Simplification's call for evidence reviewing the trends and tax implications arising for hybrid and distance working.

The ATT, CIOT and LITRG have responded to the Office of Tax Simplification's (OTS) review looking for evidence of the emerging trends and tax implications of hybrid and distance working (tinyurl.com/2s6jshex). Our responses also consider whether current tax and social security rules are flexible enough to cope, as new ways of working become business as usual.

In its response (www.litrg.org.uk/ref2692), LITRG reported that they have received an increasing number of queries from members of the public in respect of a wide range of cross-border working arrangements. In their evidence to the OTS, LITRG commented that there is a high level of confusion and uncertainty among unrepresented taxpayers in understanding the tax and related consequences of cross-border working. In particular, unrepresented taxpayers can find it difficult to determine their own residence position and understand the 'source' of income in a cross-border working situation. Also, social security is often overlooked and can be incorrectly assumed to follow the tax position.

LITRG added that they expect the complexity and lack of guidance in this area leads to non-compliance, or otherwise to decisions taken by employers based on a misunderstanding of the risks involved. They hoped that the OTS's review will prompt HMRC to fill this general guidance gap so that, should current trends continue, cross-border working generates less of a compliance 'headache' for all concerned.

The CIOT response (www.tax.org.uk/ref1010) follows up on a meeting with the OTS in September. Bearing out LITRG's evidence, the CIOT noted that member feedback also indicates that it is becoming increasingly common for employees to want to work more flexibly and to choose where they work from, which is leading both the employer and the employee to face several tax compliance issues. The CIOT highlighted three key areas:

- for employees temporarily working in a country other than where they normally work, how tax and social security in that country comes into play;
- for a UK resident employee working from home or hybrid-working, what expenses and benefits-in-kind are taxable or tax exempt; and
- for an overseas business with a UK-based employee, in what circumstances could the employee's presence in the UK cause a UK permanent establishment (PE) to be established.

In reply to these points, the CIOT's response discusses the current trend towards a more flexibly based workforce, and then raises a number of practical issues that members have reported in relation to working across international borders, travel and other expenses for hybrid and home-based employees, and PEs. The CIOT also included recommendations to address these issues, such as improving guidance and using technology to speed up HMRC decision making. Our suggestions are aimed at making it easier for employers to account for the correct taxes from the outset and allow HMRC to focus their resources on higher-risk areas.

The ATT also met with the OTS to discuss their review (though they did not submit a written response). At this meeting, many of the issues highlighted above by the CIOT and LITRG were discussed. In particular, the ATT noted that there continues to be confusion over the taxation of employee benefits and expenses in the context of hybrid and distance working. The difference in tax treatment between employer provided benefits and reimbursed benefits was also flagged as an area of complexity. The government should look to provide more guidance for employers and employees. Consideration could also be given to legislative changes, such as putting the (now expired) temporary relaxation for employers reimbursing employees for home office equipment purchases on a more permanent footing.

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