United Kingdom:
HMRC Release the New PAYE Special Arrangement for Short-Term Business Visitors Liable to UK Tax

Overview

On 19 August 2015, HM Revenue & Customs (HMRC) released the final wording of the new Pay As You Earn (PAYE) special arrangement for short-term business visitors (STBVs) who are unable to claim exemption from UK tax under the provisions of a relevant Double Tax Treaty (DTT).

Key features of the new agreement

The key features of the new agreement are as follows:

- The new agreement is available for use for the 2015/16 tax year and all future UK tax years.
- It is intended to apply where the UK employer has a PAYE-reporting obligation, the STBV is performing substantive duties in the UK, and exemption under a DTT is not available.
- Once the PAYE Manual has been updated, the new agreement will be available for download at PAYE81950.
- The new agreement applies to STBVs who work in the UK for the benefit of a UK employer on no more than 30 days during a UK tax year.
- HMRC is clear that the 30-day limit will not be relaxed with the result that in the event an STBV has more than 30 UK workdays in a tax year, any PAYE due will need to be accounted for under regular PAYE or any EP Appendix 6 modified PAYE agreement that might be in place.
- Days on which the only duties performed in the UK are merely incidental to the main duties performed outside of the UK do not count toward the 30-day limit, but days on which an individual travels to and from the UK may need to be taken into account.
- The agreement applies for tax only and will not apply for the purposes of National Insurance Contributions (NICs).
- It cannot be used for UK nonresident directors of UK companies.
- A report covering all STBVs covered by the agreement will need to be submitted by 19 April after the end of the relevant tax year using an approved method of electronic communication.
- The amount of tax due for the year will need to be paid in full by 19 April after the end of the relevant tax year unless paid by an approved method of electronic communication in which case the tax due will need to be paid by 22 April after the end of the tax year.
- Late filing and late payment penalties will be imposed if the above deadlines are not met.
- There will be no need to gross up the tax due on cash payments unless the STBV is specifically entitled to net pay.
- However, the tax due on any benefits in kind will need to be grossed up unless the tax due is recovered from the STBV.
- Forms P11D will not be required.
• The STBVs covered by the new agreement will not usually be required to file annual UK tax returns.

Deloitte’s view

Despite its limitations, the new agreement is likely to be viewed as a welcome addition to the existing suite of PAYE agreements available in connection with internationally mobile employees. The agreement should help employers manage their PAYE obligations in relation to STBVs who work in the UK for the benefit of a UK employer for no more than 30 days per tax year but cannot claim exemption from UK tax under the provisions of a relevant DTT. The STBVs to whom the agreement is expected to apply will include:

• STBVs who are employed by the overseas branch of a UK company,
• STBVs who are resident in a country with which the UK does not have a comprehensive DTT, and
• STBVs who, while resident in a country with which the UK has a comprehensive DTT, do not meet the conditions to claim exemption from UK tax under the relevant DTT. This could, for example, include STBVs who cannot make use of the 60-day rule because, although they are present in the UK for fewer than 60 days in a single tax year, they are present for 60 days or more when linked periods are taken into account.

Next steps

Employers who wish to enter into a new special arrangement with HMRC can do so from today onwards. Such employers should take steps to identify which STBVs are expected to meet the requirements outlined above. A key consideration is whether the STBVs are expected to work in the UK for no more than 30 days during the tax year. Some STBVs will clearly fall within the 30-day limit but in other cases a careful assessment will need to be made of whether duties are incidental or substantive and, separately, how travel days should be assessed.

Where an employer enters into a new special arrangement for 2015/16 but has already included eligible STBVs in their regular PAYE scheme, the STBVs can be removed from the regular PAYE scheme and included in the new agreement instead.

Employers should bear in mind that HMRC has made clear that the new agreement cannot be used for STBVs who work in the UK for more than 30 days during the UK tax year. STBVs for whom a PAYE obligation exists and who work in the UK for more than 30 days during the UK tax year should be included on the UK employer's regular payroll or, if the requirements are met, any EP Appendix 6 modified PAYE agreement between the employer and HMRC. HMRC has made clear that the UK tax cannot be accounted for via a PAYE settlement agreement (PSA).

Deloitte’s view

Employers who enter into one of the new special arrangements with HMRC should be mindful of the tight deadlines for filing the end-of-year report and paying over the full amount of tax due on both cash and any relevant benefits. If these deadlines are missed, late filing and late payment penalties will be imposed and HMRC has reserved the right to terminate the
agreement should it wish to do so. With this in mind, Deloitte anticipates that employers will wish to keep contemporaneous records, including all relevant travel information, details of both UK and non-UK workdays so that earnings can be apportioned as appropriate, and whether the STBV is tax equalized or not. Employers may also wish to ensure that relevant compensation data is collated in real time or that processes are in place for it to be collated immediately after the tax year-end so that the amount of tax due can be calculated quickly and easily.

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