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United Kingdom – Short-Term Business Visitor Agreement to Be Updated

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Based on recent discussions between professional bodies and HM Revenue and Customs (HMRC), it is understood that there are plans for an updated Appendix 4 (short-term business visitor) agreement to be published in the U.K. at the end of August 2014. The update will help clarify the position for employees who spend up to 60 days in the U.K., but where costs are recharged to the U.K. entity so that treaty relief would not normally apply.

We have reported widely on the arrangements that employers can enter into with HMRC in the U.K. in respect of employees who spend short periods working in the United Kingdom.¹ The arrangements are known as short-term business visitor or Appendix 4 agreements. They reduce the burdens of payroll withholding and reporting in respect of short-term business travellers to the U.K. who benefit from relief under double taxation treaties.

Why This Matters

When considering whether an individual can claim relief under a double taxation treaty, HMRC looks at who the economic employer of that individual is rather than his legal employer. This can restrict the circumstances in which treaty relief is available, even where the individual meets the day count conditions in the treaty. This leads to uncertainty as to whether the treaty applies and whether individuals fall under the agreement with HMRC.

The changes mean it is now clear that where an individual is legally employed outside the U.K. and spends less than 60 days in the U.K., treaty relief will always apply. This should bring welcome clarity for employers operating these schemes.

Changes in Detail

The “60-day” Rule

Additional wording will be included in a new agreement whereby employees working in the U.K. for less than 60 days can be covered under the agreement, providing it can be shown that they were paid via a nonresident employer's payroll. It should be noted that the changes, however, do not apply where an individual is employed by a U.K. entity or overseas branch of a U.K. entity, unless the individual is seconded to work for a separate nonresident entity and is in the U.K. performing duties for that nonresident entity.

It is important to note that the 60 days cannot form part of a greater period spent in the U.K. (for example, an individual who spends 59 days in the U.K. at the end of the 2013/14 tax year but also spends 59 days in the U.K. at the start of 2014/15 has spent more than

60 days in the U.K.). In other words, the test is not a “per tax year” test. A day is considered to be a U.K. day if any part of the day is spent in the country unless the individual is solely transiting through on the way from one location to another destination. If an individual falls within these conditions, at the end of the year, HMRC will require confirmation that there is no U.K. contract of employment and that the 59 days do not form part of a more substantial period of time in the United Kingdom.

OECD Commentary on Double Taxation Treaties

The OECD model tax convention includes commentary on each article of the treaty. The commentary for article 15 of the model convention (the article which provides relief for employment income) outlines situations where, if applied in the U.K., the U.K. would not be regarded as an individual's economic employer and treaty relief would, therefore, be available.

There are situations outlined in the OECD commentary where treaty relief is still applicable even when there are recharges to a U.K. entity. These situations are not covered by the short-term business visitors agreement and a claim for treaty relief would generally need to be made on a U.K. tax return after U.K. withholding had been operated. The changes to the short-term business visitor agreement will invite employers to seek HMRC's agreement in respect of specific circumstances or groups of employees where the agreement could be extended to cover them. This will be for a trial period and is subject to withdrawal.

Employers with existing agreements will not need to sign new agreements. Any new agreements will contain the new wording once it has been published.

KPMG Note

The inclusion of these added clauses in the short-term business visitors agreement is a welcome move and reflects the discussions that have been taking place within the HMRC Expat Forum for some time. Employers now have far more clarity around who can and cannot be included in an agreement and the ability to seek specific clearance from HMRC is also appreciated.

Should you require guidance on seeking approval from HMRC for specific groups of employees where it is felt that the OECD guidelines will apply, please contact a qualified tax professional.

Footnote:

1 See, e.g., [Flash International Executive Alert 2013-069](#), 30 April 2013.

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The information contained in this newsletter was submitted by the KPMG International member firm in the United Kingdom. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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