

# GMS Flash Alert



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## United Kingdom - Double Taxation Convention with Brazil Signed, Not Yet in Force

The U.K. and Brazil signed a double taxation convention on 29 November 2022.<sup>1</sup> This follows an earlier announcement that negotiations would be taking place during September 2022.<sup>2</sup>

The treaty is not yet in force; this will only occur once both countries have completed the procedures required by their domestic law to bring the convention into force, which could be a matter of months (or even years).

The U.K. has an extensive network of double taxation treaties, however, Brazil represented one of the major jurisdictions where there was a gap in that network. Businesses and professional bodies have previously stated to HMRC's Tax Treaty Team that agreeing a double taxation treaty with Brazil should be one of their main priorities.<sup>3</sup> As such, the announcement that a treaty has been agreed, thereby helping to prevent the double taxation of employment income *inter alia*, could be very welcome for both employers and employees.

This *GMS Flash Alert* considers the impact that the new double taxation treaty will have on globally-mobile employees and their employers.

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### WHY THIS MATTERS

As double taxation treaties are one of the main mechanisms for eliminating double taxation, it is of huge interest to businesses when a new double taxation treaty is agreed between jurisdictions as this can have a significant impact on the cost of cross-border working, both from a direct taxation perspective, and also the associated administrative obligations.

The provisions on the avoidance of double taxation should help foster cross-border commerce and protect cross-border workers against the risk of double taxation. The provisions on the exchange of information provide an additional impetus for the U.K.-Brazil cross-border workers to be compliant with their tax and reporting obligations.

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### Consideration of Key Articles for Globally-Mobile Employees

We highlight below the articles that could be of key interest to globally-mobile individuals and their employers.

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## Article 4 – Resident

This Article includes provisions to determine an individual's residency status when he or she is resident in both countries under his or her respective domestic tax law and follows the standard OECD model treaty article wording.<sup>4</sup>

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## KPMG LLP (U.K.) NOTE

This will be welcome for individuals who are domestically resident in both countries, considerably simplifying their tax affairs and minimising double taxation. For example, a Brazilian employee may be sent to the U.K. on a 9-month assignment and remain domestically resident in Brazil, but also be considered resident in the U.K. under U.K. domestic legislation for the whole of the U.K. tax year.

As there has been no competent double taxation treaty in place, relief for double taxation is currently only available under domestic tax legislation. From a U.K. perspective, the individual is likely to be taxable in the U.K. on his employment income for the whole of the U.K. tax year in the first instance. Although it may ultimately be possible to claim 'overseas workday relief' on the individual's non-U.K. work-days providing certain conditions are met, this can be administratively burdensome.

After the treaty comes into force, the individual may be considered to be treaty nonresident in the U.K. for the whole of the relevant tax year, restricting the U.K. taxation on the individual's employment income to the earnings relating to his U.K. work-days, for which relief should be available in Brazil under the terms of the treaty.

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## Article 16 – Income from Employment

Hitherto, in the absence of a double taxation treaty between the U.K. and Brazil, if an individual is taxable in both countries under their respective domestic tax law, the only way of relieving double taxation has been under the domestic tax provisions of both countries. This is often much less beneficial than being able to claim relief under a double taxation treaty.

For example, under U.K. domestic provisions, all short-term business visitors to the U.K. from Brazil are liable to U.K. income tax from the first day they work in the U.K., and their employer may also have a U.K. payroll reporting and tax withholding obligation. This can be burdensome, and the individual would need to claim relief for double taxation in Brazil, under Brazilian domestic legislation.

In contrast, once the treaty is in force, short-term business visitors coming to the U.K. from Brazil may be able to claim an exemption from U.K. tax on their U.K. work-days under Article 16 of the treaty, providing that all the conditions of this article are met (the U.K.-Brazil double taxation treaty includes the standard OECD model treaty 'Employment Income Article' wording). Similarly, the U.K. host employer will be able to take advantage of the relaxed payroll reporting requirements for treaty-exempt short-term business visitors.<sup>5</sup>

## Other Articles of Interest

We have briefly summarised some of the other articles of the treaty below. Once in force, the full terms of the treaty should be consulted before claiming relief.

- Where dividends arising in a contracting state are paid to a resident of the other contracting state, Article 10 of the treaty restricts the tax rate to 15 percent (in most cases).
- Similarly, where interest arising in a contracting state is paid to a resident of the other contracting state, Article 11 of the treaty restricts the tax rate to 15 percent (in most cases).
- Article 19 states that pension distributions should only be taxed in the state of residence of the individual. The treaty does not include an article in respect of pension contributions.

- Paragraph 5 of Article 25 states that where an individual is only subject to tax in one state by reference to the amount remitted or received in that state rather than the full amount, relief is restricted in the other country to the amount taxed in the first state. This may be the case where a non-U.K.-domiciled individual claims the remittance basis in the U.K., limiting her U.K. tax liability to U.K.-sourced income and gains, and non-U.K. income and gains remitted to the United Kingdom.

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## KPMG LLP (U.K.) NOTE

This is a welcome announcement, and the terms of the double taxation treaty will significantly simplify the tax and associated administrative requirements relating to cross-border employment between the U.K. and Brazil. It is hoped that the parliamentary proceedings in both countries will progress swiftly, and that the treaty comes into force as soon as possible.

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## FOOTNOTES:

1 For the text of the double taxation treaty, see: "Brazil: Tax treaties" at: <https://www.gov.uk/government/publications/brazil-tax-treaties> .

2 For the 2022 Brazil-U.K. joint declaration that negotiations are taking place, see "2022 Brazil-UK joint declaration» (updated 29 November 2022) at: <https://www.gov.uk/government/publications/brazil-tax-treaties/2022-brazil-uk-joint-declaration> .

3 For the Chartered Institute of Taxation's response to the HMRC Tax Treaty Team stakeholder consultation on Review of Double Taxation Treaties 2023/24, see "Review of Double Taxation Treaties 2023/24" (22 Nov 2022) at: <https://www.tax.org.uk/ref1045> . *Please note you are leaving the KPMG website for an external site (non-KPMG, non-governmental), that KPMG is not affiliated nor does KPMG endorse its content. The use of the external site and its content may be subject to the terms of use and/or privacy policies of its owner or operator.*

4 For the OECD Model Tax Convention on Income and on Capital 2017, see "Model Tax Convention on Income and on Capital 2017 (Full Version)" at: <https://www.oecd.org/ctp/model-tax-convention-on-income-and-on-capital-full-version-9a5b369e-en.htm> .

5 For the Appendix 4 Short-Term Business Visitors agreement, see "HMRC internal manual: PAYE Manual" (updated 4 November 2022) on "PAYE82000 - PAYE operation: international employments: EP appendix 4: criteria for short term business visitors" at: <https://www.gov.uk/hmrc-internal-manuals/payee-manual/payee82000> .

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