Short-term business visitors - further HMRC updates

Changes to the PAYE arrangements for short-term business visitors to the UK, known as Appendix 4 agreements, came into effect for 2013/14. HMRC is now expected to issue a revised Appendix 4 agreement.

The reporting changes implemented for 2013/14 focused on the presence of short-term business visitors in the UK with changes to the various day limits and required reporting. The latest changes are expected to impact the ‘60 day rule’, introduce the possibility of alignment with the OECD model treaty with regard to the interpretation of ‘economic employment’, and clarify how branch employees are dealt with.

Background

Where employees based and employed outside the UK spend time working here, a PAYE liability may be triggered for the associated UK business, even though the employee’s visit to the UK is short. To reduce PAYE administration, HMRC allows employers to enter into Appendix 4 agreements, which means employers can refrain from applying PAYE provided that certain conditions are met, and specific reporting and tracking processes are followed. HMRC is now taking a much stricter approach to the operation of PAYE where an Appendix 4 agreement is not held.

The changes in more detail

The most recent changes and the terms of the revised Appendix 4 agreement will apply automatically for 2014/15 and it will not be necessary for employers to enter into a new agreement to apply the new terms.

We expect the key changes in the updated Appendix 4 agreement to be as follows:

► The agreement currently provides that where an employee was present in the UK for 60 days or less, there was no need to consider whether or not any remuneration costs were charged back to the UK for the agreement to apply. It was only necessary to show that the employees were paid via a non-resident employer’s payroll. The limit will now be reduced to 59 days and considerable emphasis will be placed on this period of presence in the UK of 59 days or less, not forming part of a more substantial period.

► The new agreement will also confirm that where employee remuneration is ultimately borne by the UK company, Appendix 4 treatment would not normally apply. However, employers will be able to request agreement from HMRC, on a case by case basis, to apply Appendix 4, rather than PAYE, in circumstances where the employee is present in the UK for 60 days or more and where costs are borne in the
UK but not in such a way as to make the employee economically employed in the UK. This may, for example, apply to allow Appendix 4 to operate where costs are recharged to the UK in respect of employees who work for a multinational group, in a global role, with costs recharged across the group. Previously, such a cost recharge for these employees would have meant their exclusion from Appendix 4 agreements, and required a separate treaty claim in the employee's UK tax return.

► The revised agreement makes it clear that it cannot be applied where individuals are employed by an overseas branch of a UK resident employer, except where the individuals are sent abroad to work for a separate non-resident entity and return to perform duties in the UK solely for that non-resident employer. However, such individuals are not covered by the 60 day rule.

► Finally, in addition to the Appendix 4 reporting information requested for up to 90 days, there will be a need for US citizens and Green Card holders to provide evidence of continuing residence in the US. Employers are pointed to the requirements of HMRC Manual DT19861A for further information regarding the data that needs to be provided.

**EY perspective**

Appendix 4 agreements are a valuable easement to the strict PAYE rules for host employers, particularly for international groups with a very mobile workforce. Real Time Information increases the PAYE burden for international groups and the continued use of these agreements is attractive where possible.

The proposed changes offer further clarification with regard to HMRC’s interpretation of the relief available under the Income from Employment Article of Double Taxation Agreements. There is also some welcome relaxation around the circumstances, albeit limited, where a recharge of costs to the UK may not constitute UK economic employment. However, the views expressed by HMRC on employment by UK branches would now appear to formalise previous HMRC practice.
TRAC and Tracer - A way to manage the risk

EY's TRAC (Travel Risk And Compliance) and Tracer technology provides support for business traveller tracking, data analysis and compliance.

TRAC is a web-based tool which acts as a single repository for an organisation's travel data, using the records of corporate travel providers, employees' electronic diaries and office visitors' logs to assess individuals' work locations. We have also developed Tracer, a smartphone application which enables business travellers and international assignees to easily and effectively track and record their movements in an online travel diary for tax and immigration reporting purposes. TRAC and Tracer complement one another, working together to present an innovative solution to a complex issue faced by many multinational employers.

For those UK employers covered by an Appendix 4 agreement, the reports generated by TRAC can form the basis for completing their annual return to HMRC. For further details please speak to your usual EY contact, or alternatively any of the individuals shown above.

How EY can help

We can assist with Appendix 4 applications, policy design and setting up procedures to monitor short-term business visitors. We can also assist with our TRAC/Tracer methodology, as referred to above, to deal with these difficult issues.

Our Total Reward Team advises on PAYE, national insurance contributions (NIC) and international social security issues to facilitate compliance with relevant legislation and the design of policies which deliver benefits for the employee and manage the cost to the employer.

Using our cross discipline expertise, we can, for example:

► Assist with UK PAYE employer compliance reviews undertaken by HMRC
► Advise on the tax, NIC and policy issues of employees leaving their employment
► Assist in managing NIC costs and avoiding PAYE pitfalls in relation to stock options
► Design and help implement new flexible schemes around company car issues
► Recommend policies on travel and subsistence
► Undertake cross-border reviews to assess employment tax risks for global organisations