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A Look Into Business Travelers – Canada, the UK, and the US

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Part Two: Business Travelers into the United Kingdom

While managing the risks and compliance needs related to your company’s business traveler population is quite important, there is more to consider when creating the business traveler processes and policies for your company.

One of the primary reasons for having a business traveler policy is to address the individual income tax reporting requirements in the locations being visited by your business travelers. Last month we explored some of the requirements relating to [business travelers into Canada](#). We will continue our discussion this month, by looking into some of the specifics related to business travelers into the UK, including withholding considerations, the “60 Day Rule,” and employer reporting requirements.

UK withholding – Pay As You Earn

Under UK tax law, an employer has an obligation to withhold funds, known as Pay as You Earn (PAYE), for all employees, including international employees visiting the UK. This is the case unless an exemption based on treaty relief is available and has been applied for under the Short Term Business Visitors (STBV) arrangements (often known as Appendix 4 Agreements). If no agreement is in place, then full withholding must be applied.

This would mean any individuals travelling to the UK to work for any length of time, would be subject to these rules and the UK entity would be liable to penalties if either full withholding was not applied or an application for STBV reporting was not in place.

The rules surrounding STBV reporting state that PAYE can be disregarded, if the individual is:

- a resident in a country with which the UK has a Double Taxation Agreement under which the Dependent Personal Services / Income from Employment Article (Article 15 or the equivalent) is likely to be competent;
- coming to work in the UK for a UK company or the UK branch of an international company;
- expected to stay in the UK for 183 days or less in any twelve month period; and
- the UK company does not bear the costs for the employee, and that no costs are recharged to the UK.

Where the above conditions apply, the company may not operate PAYE for the individuals concerned. However, the company must first apply for Her Majesty's Revenue & Customs' (HMRC) permission for this to occur and then report certain details (varying due to length of time in the UK) regarding each person who is affected. Tracking the number of days employees are present in the UK is important to make sure the employer is compliant in days reporting.

The 60 Day Rule

Where a STBV is present in the UK for less than 60 days and that period does not form part of a more substantial period or presence, PAYE can be avoided even if the remuneration costs are borne by a UK branch or permanent establishment of the overseas employer. However, as noted, a STBV agreement must be in place. If a business visitor spends 60 days or more in the UK and the costs are charged to, or paid by, the UK entity, there will be an automatic obligation to withhold PAYE for that individual and they must be included on UK payroll (either local, shadow, or modified) to ensure that full compliance is met. These individuals do not qualify as STBV.

To consider whether the 60 day period has been exceeded, the following factors may be relevant:

- Is there an expectation that the employee will return to the UK when they depart initially?
- How long is the gap between visits in comparison to the length of those visits?
- How frequently does the employee return to the UK?
- How integral to the business are the duties that are performed?

Additionally, if the Home country entity is an international branch of a UK company, HMRC will not treat this branch of the UK entity as a separate legal entity under STBV arrangements. This means that an employee of an international branch of a UK entity will be considered a UK employee under the relevant tax treaty. In these cases, the standard PAYE exemptions will not be applicable and visiting employees will need to be included on UK payroll for all days spent working in the UK, regardless of whether there is a recharge of costs or not. While some discussion exists on whether a de minimis number of days would be considered by HMRC as incidental, no confirmation on this is forthcoming, and again an advance agreement with HMRC would be required.

The current position is that STBV arrangements do not apply to business travelers to the UK from overseas branches as the UK entity is then deemed to be the ultimate employer (and treaty exemption does not then apply). Consequently, as mentioned, PAYE tax withholding is due irrespective of the number of days spent in the UK. However, there is a new scheme to assist companies with the withholding complexities for this scenario.

To assist with the administration of the tax payments in that situation, HMRC has introduced a Special Annual PAYE scheme for any business travelers from an international branch that spend less than 30 days in the UK. These individuals continue not to qualify for the STBV exemption, but the tax withholding in respect of their workdays can be paid at the end of year (by April 19) and it is not necessary to file on a monthly basis. If a business visitor from an international branch spends more than 30 days in the UK, then withholding would apply on a monthly basis under the standard rules.

Effective April 6, 2020, the limit of 30 days will extend to 60 days and the deadline for making the annual payment of tax will be extended from April 19 to May 31 following the April 5 UK tax year end.

Where the Special Annual PAYE arrangements apply, there is no need to also file a tax return for the relevant individuals.

This arrangement does not apply to non-resident UK directors, where any day in the UK is taxable.

Employer reporting requirements

The deadline for filing these employer reports is May 31 each year. In recent years, HMRC has tightened their rules with regards to STBV reporting. All companies with employees inbound to the UK should consider making the application to HMRC to allow the company to report STBV. Companies will not be allowed to make any retroactive applications should they find that they have individuals travelling to the UK in prior years. If this is the case, they will then have to file a claim under the relevant treaty to HMRC on an individual employee basis. In a situation where there is no treaty, or the treaty cannot apply, there will be a failure to withhold PAYE issue for the UK Company and penalties and interest will apply.

While the UK has reduced the need to operate payroll for all business travelers and removed the burden of individual tax compliance for employees, it is important to obtain business traveler data, set up a tracking process, and ultimately review your UK arrangements. Make sure you have applied for an Appendix 4 STBV arrangement and that the UK company submits this report by May 31 each year.

Due to the nature of the rules and requirements related to business traveler populations, a review of your [business traveler activity](#) and risk assessment is recommended. For assistance with this review or for further details on the requirements, please contact me at dlivitt@gtm.com or at +1.646.915.3301. Additionally, you can visit our [Mobility Tax Services](#) page to see what assistance we can provide.

Stay tuned for Part Three in our business traveler series where we will highlight requirements for business travelers into the US.

The information provided in this article is for general guidance only and should not be utilized in lieu of obtaining professional tax and/or legal advice.

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