

SENDING EMPLOYEES TO WORK IN THE UK

A guide for expat employees and the businesses at which they work.

It is often mistakenly believed that someone can work in the UK for 183 days without any tax implication. Just one day of work, excluding incidental duties relating to overseas employment, is sufficient for UK tax obligations to arise.

There are a number of issues which should be considered before you send an individual to work in the UK. Among the considerations are:

- Right to work
- Employer obligations
- UK taxation
- UK social security
- Creating a permanent establishment

Right to work

The rules regarding the right to work in the UK are becoming tighter. Whilst most British citizens and EEA nationals are able to work in the UK, employers are expected to ensure that appropriate documents are held in all cases. Any individual who is not a national of one of these countries is likely to need a visa to work. There are various visa categories from business visitor, providing limited scope of activity for a maximum of six months, to more formal applications. Fines for failing to follow the requirements of the UK Border Agency are significant.

Employer obligations

HMRC seek to collect any UK tax and social security that may be due under the PAYE system. This requires an employer to deduct income tax and social security contributions from the employee's earnings and pay it to HMRC on a monthly basis.

An overseas employer sending an employee to the UK will have obligations to operate a PAYE system if they have a presence in the UK. Presence for this purpose is a branch, office or even just a business address and will also be sufficient for employers' social security contributions to arise.

If the overseas employer does not have a presence but the employees are working at or under the control of another UK business that business may be regarded as a host employer. A host employer takes on the PAYE obligations including employer social security even if they do not pay the employee. Issues can arise in obtaining the necessary information.

If there is no obligation under the categories above, the individual will need to advise HMRC of their work in the UK and may be requested to operate a PAYE scheme themselves. This is a direct collection scheme. Unless the employer is within the EEA there is unlikely to be an employer social security charge. Where the employer is based within the EEA they may prefer to operate the PAYE scheme themselves to pay over the social security due.

If it is not possible for a PAYE scheme to be operated the individual employee will need to pay any income tax due via a UK tax return. They should also register with HMRC on arrival as the PAYE notification process will not have been completed.

UK taxation

All earnings for work in the UK will result in a tax liability unless the UK has an appropriate Double Tax Agreement (DTA) with the overseas country. Such a treaty will generally exempt

the individual from UK taxation where:

- They are in the UK for less than 183 days in a tax year or 12 month period (depending on the treaty wording) and;
- The employer is based in an overseas country, and;
- A UK business does not ultimately suffer the employment cost either directly or via recharges (subject to the 60 day rule).

If these conditions apply the requirement to deduct UK taxes can be relaxed if either:

- The employee applies for a No Tax (NT) code, or
- The employer seeks agreement with HMRC for the operation of a Short Term Business Visitor (STBV) scheme.

In return for relaxing the rules HMRC will require the employer to keep a track of visitors to the UK and make an annual return by 31 May following the end of the UK tax year.

UK social security

In the UK, social security is separate to taxation and has its own rules that need to be considered. Social security is generally based on an individual being present and undertaking gainful employment under a contract. EU social security regulations and a small number of social security treaties may exempt an individual from paying into the UK system, allowing them to continue paying into their home country system instead. Generally the employers contributions follow the employees, hence if the employee does not make contributions the employer will not either. It is therefore important to consider the employees liability carefully.

Creating a permanent establishment

If the activities in the UK are sufficient for a taxable presence to be established the business will have filing requirements with the UK authorities and have obligations under other taxes such as corporation tax and VAT. The nature of activities should be considered to determine if any additional tax issues will arise.

Other points to consider:

Costs

The cost of an overseas assignment can be considerable with tax and benefit costs needing to be considered for both the home and host country. A formal assignment policy can help manage cost and reduce disputes between employer and employee.

Post departure

The employer's obligation does not cease when the employee returns to the home country. Post departure bonuses and share based remuneration needs to be tracked so that any payments relating to the time in the UK are identified.

Tax reliefs

Depending on the nature of the assignment tax reliefs maybe available which would reduce the cost to the employer. A discussion prior to any assignment being agreed can identify the UK tax cost so that any decisions are made with full knowledge.

Pension contributions

Consideration needs to be given to the ongoing pension position of the employee. They maybe able to continue to pay into their home country scheme or may be looking to join a UK scheme in which case the transfer position at the end of the assignment should be considered.

Employee tax return

The employee maybe required to complete a tax return in the UK. In order to ensure that their tax affairs are kept in order professional advice should be taken and should include an initial review of their residence and domicile position as well as completion of the tax return.

Further information

For further information on any of the issues raised here, please email contact your Menzies relationship partner or email expat@menzies.co.uk.