



# Consultation response by KPMG LLP

**Tax and administrative  
treatment of short term  
business visitors from  
overseas branches**



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# 1 Introduction and executive summary

- 1.1 We welcome HM Revenue and Custom's (HMRC) [consultation](#) on the tax and administrative treatment of short term business visitors (STBVs) to the UK from overseas branches of UK companies.
- 1.2 This document sets out our responses to the specific Consultation questions.
- 1.3 We would be happy to meet to talk these through in more detail. If you would find this helpful, please contact either [Colin Ben-Nathan](#) or [Matthew Fox](#).

## Our experience in this area

- 1.4 We act for many employers that have STBVs to the UK from their overseas branches and numbers of these employers use the Special PAYE Arrangement referred to in the consultation. That said, other employers do not have overseas branches but nevertheless use the scheme for their STBVs from countries where there is no competent treaty.
- 1.5 The current process of managing, tracking and processing the payroll for these individuals can be administratively burdensome and give rise to costs that would not be incurred were those STBVs employed by an overseas subsidiary. There will be individual cases where the administrative burden exceeds the tax due. In addition to the tax burden and professional fees, some of our larger clients will have thousands of business visitors to track and therefore deploy internal teams to manage this.
- 1.6 Whilst the Special PAYE Arrangement was a welcome easement some organisations opted not to use it. One of our large Financial Services clients decided not to implement the Special PAYE Arrangement as it was too impractical, for the following reasons:
  - Difficulty claiming a foreign tax credit in the overseas location, without a certificate or other documentation from HMRC stating the UK taxable income and UK taxes paid
  - Communication with assignees who may have less than 30 UK workdays in one year, and more than 30 UK workdays in the next year. This causes confusion as some years they need to file a UK tax return, but not in others. It is important to our clients that they are able to provide clear and consistent messaging to their employees.Other clients have not signed up because of the tight deadline (see question 6).

## Our views

- 1.7 We welcome the Government's proposals to reduce these administrative burdens and maintain the UK as an attractive base for international business.



- 1.8 In our view, the proposed exemption would undoubtedly be very helpful in relation to employers with overseas branches and their employees. This is because it should significantly reduce the administrative requirements in respect of STBV from branches. At the same time we recognise that this approach would need to be balanced against the increased cost to the Exchequer as a matter of public policy.
- 1.9 We note that one of HMRC's objectives is to reduce the administrative costs and burdens to the employer. We agree this is very important and, indeed, the primary challenge facing employers who operate the PAYE Special Arrangement is the 19 April deadline and in order to meet this deadline, they need to collect all the travel data, overseas payroll data, prepare calculations and process the payroll in a very short period. In practice, many employers process a best estimate and then subsequently process an Earlier Year Update (EYU) once they have the full data. Therefore, a relaxation of the reporting requirements and deadline for the annual PAYE Special Arrangement would be particularly useful, i.e. alongside extending the arrangement from 30 days to 60 days.
- 1.10 In summary, we consider that both proposals would be welcomed by businesses and fulfil the government's objectives. However, we would also recommend a relaxation of the reporting requirements for the PAYE Special Arrangement, as our clients struggle to gather all the necessary payroll and travel data in order to process the payroll by the 19 April deadline. In addition, we would recommend that a formal certificate of UK taxes paid is provided to assist with foreign tax credit claims in the overseas location. We would also recommend that the PAYE Special Arrangement is broadened to allow for directors to be included.
- 1.11 There is one further point that comes to mind in relation to business visitors to the UK. And this is the very narrow definition that HMRC applies to 'incidental duties' in EIM 40203 and 40204. Under ITEPA 2003, s27, an individual who is non-resident in the UK is only liable to tax for general earnings in respect of duties performed in the UK. However, s39 regards duties performed in the UK that are 'merely incidental' to the performance of duties outside the UK as able to be treated as performed outside the UK. In practice, due to modern technology and the guidance referred to, many employers will not consider this 'exemption' as it requires a significant amount of analysis and risk and yet if HMRC were to take a contract view a large proportion of business travellers to the UK that are included in the Special PAYE Arrangement will only have one trip to the UK for a few days, resulting in a very small tax charge. If a statutory de minimis, say, 5, 7 or 10 days were introduced to s39 where the UK would treat such amounts as incidental without the need for further review, this would be really helpful as it would significantly reduce the compliance burden and related administrative costs.
- 1.12 Lastly, whilst the proposals are welcome, we would also encourage HMRC to work with the OECD to create a consistent approach at a global level on this issue.

## 2 Our response to the consultation questions

### 2.1 Question 1

**How many of your staff/your clients' staff visited the UK from overseas branches in the 2016-17 tax year? For each visitor:**

- What was the length of the visit?
- Which country did the individual visit from?

#### Our comments

2.1.1 We are not in a position to provide the full information requested. However, in terms of our clients with overseas branches, branch structures are particularly prevalent amongst UK headquartered banks and insurance companies. They are also used by non-UK headquartered financial services organisations for their operations in the EU. For example a US headquartered bank may operate in the EU using a UK subsidiary and an EU branch network.

### 2.2 Question 2

**Do you agree that the PAYE Special Arrangement is an effective simplification of PAYE procedures for STBVs? Please explain why you think this is the case.**

#### Our comments

- 2.2.1 We agree that this is an effective simplification, albeit 30 workdays is an unduly short restriction, and we would therefore welcome an extension to this limit. However, please refer to our answer to question 6 regarding difficulties experienced by employers who operate this arrangement. Please also refer to our commentary on 'merely incidental' duties in 1.12.
- 2.2.2 The PAYE Special Arrangement is most effective in cases where it is anticipated that the individual will definitely spend less than 30 days in the UK during the tax year, and their UK taxable earnings are under the personal allowance and therefore no UK tax is ultimately due. It is most beneficial when a company only has one overseas branch, and the employees have simple compensation arrangements, such as a salary that can be simply apportioned over the tax year.
- 2.2.3 The PAYE Special Arrangement is less effective in cases where it is not initially clear whether an individual will spend less than 30 days in the UK during the tax year or where they have complicated compensation structures, such as deferred compensation that needs to be sourced over a number of years – this is particularly common with employers in the financial services. Pensions saving can also be an issue. Additionally, if a company has more than one overseas branch, this increases the administration as the information needs to be requested from several different sources, and therefore there is still a significant time/money cost related to these business travellers.

## 2.3 Question 3

**Did you/your client apply for, or operate, a PAYE Special Arrangement in the 2016-17 tax year? If so:**

- **How many STBVs benefitted from the arrangement?**
- **How many STBVs had to be excluded from the arrangement?**
- **What was the reason for exclusion?**

### Our comments

- 2.3.1 In our experience the main reasons why STBVs are excluded from the arrangement are:
- i. Individuals who spent more than 30 days in the UK during the tax year. This also includes individuals where it was not clear at the start of the year whether they were likely to spend more or less than 30 days in the UK during the tax year, and so the employer chose to err on the side of caution and report their earnings through the payroll.
  - ii. Non-resident directors.

## 2.4 Question 4

**Do you think an extension of the 30 UK workday rule will make a worthwhile difference to you or your clients?**

### Our comments

- 2.4.1 Yes, this would definitely be worthwhile – please refer to our answer to question 2.
- 2.4.2 Business travellers often have a sporadic travel pattern, and as such it can difficult to predict whether they were likely to spend more or less than 30 days in the UK during the tax year. In the cases where an individual unexpectedly spent more than 30 days in the UK during the tax year, the company needed to process EYUs for the earlier months, which is administratively burdensome. An extension to 60 days would therefore be welcomed as it would reduce the number of cases where the company needs to process EYUs for their payroll.
- 2.4.3 Similarly, an individual may spend less than 30 days working in the UK one year, spend more than 30 days working in the UK in the next year (and therefore are excluded from the arrangement and need to file a UK tax return), and then spend less than 30 days working in the UK in the following tax year. Therefore, extending the deadline should ensure that more individuals are treated consistently on a year-by-year basis.

## 2.5 Question 5

**How many STBVs could have benefitted from the PAYE Special Arrangement in 2016-17 if the 30 UK workday rule had been:**

- a) 60 days or less?
- b) 90 days or less?
- c) 120 days or less?

### Our comments

2.5.1 We are not in a position to comment on exactly how many STBVs could have benefitted under each option, but it is unlikely to be a significant percentage.

2.5.2 The extension to 120 days would be the most beneficial, as this would cover the greatest number of STBVs, but at no additional tax cost to the Exchequer.

## 2.6 Question 6

**Do you experience any problems when applying for or operating PAYE Special Arrangements?**

### Our comments

2.6.1 Please refer to our responses to the above questions. In addition, our clients have experienced the following problems when operating the PAYE Special Arrangement.

2.6.2 The main problem is the short payroll deadline and having to account for the tax by 19 April (just two weeks after the end of the tax year). This is not long enough for our clients to identify all affected individuals, collect all the compensation and workday information needed, perform the calculations and process the payroll.

Typically, the process an employer will follow is:

- Gather and review travel information to identify those that visited the UK during the tax year.
- Review the STBVs to the UK during the tax year to determine which were from subsidiaries (and can therefore be included on the Appendix 4 agreement) and which were from branches (and therefore should be included on the PAYE Special Arrangement payroll). The STBVs may be supported by an HR specialist in the global mobility team. They may not fully understand why some STBVs are taxable in the UK and why some are not.
- Collect and validate the full travel data and UK workdays for each individual. In cases where an individual receives deferred compensation or stock options, this may involve gathering workday details for several years to ensure the

compensation is sourced correctly. Pension saving also needs to be considered and this can be particularly problematic;

- Request and collect the compensation data for each individual from overseas, including both cash compensation data and benefit-in-kind data. Depending on the employer, this may involve liaising with several different overseas payroll teams. Overseas benefit data can be particularly difficult to gather, particularly when the calculation of the UK taxable benefit does not match the overseas calculation (for example, with company cars);
  - Calculate the UK taxable earnings for each individual included on the PAYE Special Arrangement. This can be very time-consuming as the calculations for each individual need to be performed separately, and the items of compensation may have different sourcing periods.
  - Process and report the UK taxable earnings and pay any tax due to HMRC.
- 2.6.3 The current time frame for annual reporting for our clients is very tight and not in line with other end-of-year deadlines. This can lead to errors that need correcting afterwards, especially as the full data will not be available until after the end of the tax year. In practice, some employers process a 'best estimate' by 19 April, and then process an adjustment once they have the complete data needed to calculate the individual's UK taxable earnings correctly and ensure they are fully tax compliant. We would suggest changing this to either 31 May so as to tie in with Appendix 4 reporting, or 6 July in line with Form P11D reporting.
- 2.6.4 As no formal documentation is provided by HMRC stating the UK taxable pay and UK taxes paid, some individuals have been unable to claim a foreign tax credit in their home country. This has been a particular problem in Italy. Therefore, it would be helpful if HMRC could provide a formal certificate of UK tax paid which would be acceptable to overseas authorities where the employee is seeking tax relief in his/her home country.
- 2.6.5 Directors are currently specifically excluded from the PAYE Special Arrangement. However it is burdensome for the employer to operate payroll reporting and tax withholding on a strict RTI basis for non-resident directors who may only spend a couple of days working in the UK each year, and the directors would need to file a UK tax return. As such, we would recommend broadening the PAYE Special Arrangement to allow for directors to be included, and remove the requirement for a director to file a UK tax return where this is their only UK-sourced income.
- 2.6.6 Additionally, clarification would be helpful as regards whether PAYE paid/borne by the UK head office on cash payments does/does not require a gross-up. The PAYE Special Arrangement talks about whether the employee is/is not tax equalised but the language is somewhat opaque ("if the employee is covered by employer tax equalisation arrangements the tax must be grossed up within the calculation").
- 2.6.7 Clients find the application process straightforward, but have noted that some schemes have been automatically closed down by HMRC when they have not been used.

## 2.7 Question 7

**What changes, if any, would you make to improve PAYE Special Arrangements for you or your clients?**

### Our comments

- 2.7.1 As noted in our answer to question 6 above, an extension to the payroll reporting deadline would be very much welcomed as this would significantly ease the administrative burden for the employer.
- 2.7.2 We would also welcome extending the UK workday rule, but would extend this to 120 days, rather than to 60. This would remove more individuals from filing tax returns, thus reducing HMRC's administrative burden.
- 2.7.3 Additionally, we would recommend broadening the scope of the PAYE Special Arrangement, so that directors can be included under this arrangement
- 2.7.4 HMRC should be able to provide a certificate of tax paid where requested.

## 2.8 Question 8

**Do you agree that a new tax exemption will help align the effective tax treatments of STBVs from overseas branches to those eligible for STBVAs?**

### Our comments

- 2.8.1 Yes, we agree that this would align the treatment. One of the difficulties experienced by our clients is being able to easily distinguish between (i) taxable STBVs from branches and (ii) non-taxable STBVs covered by the easement given in Appendix 4. This is because business visitors are often managed by HR specialists who may not fully understand the distinction between branches and subsidiaries and why this impacts the tax treatment of the visitors.

## 2.9 Question 9

**Do you think a new tax exemption will help reduce the administrative burdens on UK companies with STBVs from overseas branches?**

### Our comments

- 2.9.1 Yes, this would definitely ease the administrative burden significantly, as the company would no longer need to collect, analyse and report the payroll data for each affected individual. As mentioned in our response to question 6, this is the part of the annual payroll process that the employers find most administratively burdensome.



- 2.9.2 Most of the visitors to the UK from branches are EEA nationals and are entitled to a personal allowance and the resulting tax liability is nil or very minimal. Gathering information for such visitors is burdensome for the amount of tax involved. In one typical client example no UK tax arose for about 70% of travellers due to availability of the personal allowance
- 2.9.3 Some of our clients currently have both overseas branches and overseas subsidiaries, and therefore additional work is required to determine which business travellers can be included on the Appendix 4 agreement, and which should be included on the Special PAYE Arrangement and to ensure that the relevant individual is aware and understand the distinction. A new tax exemption covering branch employees would therefore ease this.
- 2.9.4 Additionally, one of the problems our clients face is claiming a Foreign Tax Credit in the home location, both providing evidence of the UK taxes paid to the overseas authorities, and the timing and cash flow issues as it may be some time before the refund is issued in the overseas location. The proposed extension would improve this, as it would remove the need for an FTC claim to be made.

## 2.10 Question 10

**Do you have any objections to the introduction of a new tax exemption for STBVs from overseas branches of UK companies?**

### Our comments

- 2.10.1 We have no objections. On the contrary we would welcome the proposed exemption.

## 2.11 Question 11

**Are there any other conditions that would be needed to ensure a new tax exemption is targeted and effective?**

### Our comments

- 2.11.1 We cannot think of any in so far as presumably the legislation will treat the employees working/based at the overseas branch as if they were employees of an overseas subsidiary and we would then proceed to consider whether or not the Employment Article in the relevant treaty applies.
- 2.11.2 That said, it may be necessary to elaborate on what is meant by an employee “working/based at an overseas branch”.
- 2.11.3 Further guidance regarding the ‘economic employer’ approach reflecting more current working practices/patterns would also be welcomed, to provide further clarity in this area.

## 2.12 Question 12

**Are there any circumstances that should be excluded from a new tax exemption?**

### Our comments

- 2.12.1 If we treat employees at an overseas branch as if they are based at an overseas subsidiary and then apply the relevant Employment Article treaty article we cannot see the need for further conditions.

## 2.13 Question 13

**Are there any circumstances in which the outlined conditions could be abused or misused?**

### Our comments

- 2.13.1 We cannot immediately see any though if felt appropriate then a condition could be added to require that the employee was taxable on the amount being exempted from UK tax in their home country. For example, if the individual is resident in a country that has a beneficial tax treatment for expats, such as Belgium, Hong Kong or Singapore. However, due to the specific wording of these treaties it may be the case that visitors in such circumstances would have no competent treaty under which they can claim exemption from UK tax in any event.

## 2.14 Question 14

**Should a new tax exemption require that a reasonable rate of tax is paid by the STBV in their country of residence?**

### Our comments

- 2.14.1 See our response to Q13, though we think referring to “reasonable rate” would not be helpful and whether employees are taxable in their home country should suffice.
- 2.14.2 This is on the basis that it is up to the employee’s home country to decide their domestic level of taxation and this should not be held against the employee/their UK HQ. Differences in tax treatment of compensation items, such as deductibility of travel costs, could distort the rate comparison.
- 2.14.3 Such a condition would also add additional work and increase the administrative burden for employers, as they would need to gather data to determine the individual’s tax rate in their home country, and then compare this against the ‘reasonable’ rate as prescribed by HMRC.

## 2.15 Question 15

**Overall, which of the two options listed at 4.5 would deliver the government objectives most effectively? Please elaborate.**

### **Our comments**

- 2.15.1 The proposed exemption would be the most effective at fulfilling the government's objectives of increasing the attractiveness of the UK and reducing administrative costs and burdens for the employer. That said, we recognise that this would need to be balanced against the increased cost to the Exchequer as a matter of public policy.
- 2.15.2 In particular, the exemption would reduce the administrative burden for the employer significantly, as the employer would no longer need to collate full travel and payroll data and prepare payroll calculations in a very short timescale.
- 2.15.3 That said, extending the PAYE Special Arrangement from 30 days to 60 days would also be helpful, particularly if accompanied by a relaxation of the 19 April reporting deadline.
- 2.15.4 However, we see the options as complementary in so far as the proposed exemption would only cover visitors from overseas branches. In particular, the proposed modifications to the PAYE Special Arrangement (and our additional suggestions as included above) would also be greatly welcomed by employers who have STBVs from non-treaty countries.

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