

Insights following the HMRC expat and NIC forum - 5 July 2022

Summary

The UK tax authorities (HMRC) hold a quarterly forum with employers and professional advisors to discuss ongoing issues impacting inbound expats to the UK. At the meeting on 5 July 2022, a wide range of issues were discussed and the purpose of the note is to provide a quick overview of each of the key updates. HMRC will publish full minutes in due course [online here](#).

Key topics

General HMRC update

HMRC are working on improving turnaround times, including exploring automation of standard processes. [HMRC's dashboard](#) provides the latest update on current service levels across more common claims. For expats, HMRC indicated the current average turnaround times:

UTR applications- 29 day turnaround time

s690 applications- 4 months

P85- 28 days

Repayment claims - currently looking at claims from 5th May

Exceptional circumstances

HMRC intends to appeal the verdict of a recent First Tier Tribunal (FTT) tax case (A Taxpayer v HMRC 2022) which looked in detail at the nature of the test for determining exceptional circumstances under the UK statutory's residence test, i.e. the test of when circumstances can be regarded as exceptional such that a particular day or days spent in the UK should not count towards the cumulative total of days of presence in the UK. As such HMRC's current [guidance on exceptional circumstances](#) still represents its position on this matter.

The tribunal noted that the test is heavily dependent on the facts and circumstances of each case, and the test for exceptional remains tightly drawn, but in the case in question the tribunal decided to allow a wider set of circumstances to be exceptional than HMRC's preferred position.

Vialto Partners recommend looking at the FTT decision and commentary when reviewing a case for exceptional circumstances given the nuance in interpreting and applying the law in complex personal circumstances.

Social security updates

1. **New social security agreement with EFTA (Iceland, Liechtenstein, Norway)** is being negotiated. It is expected that the provisions will be no less generous than the Protocol:- more details to follow once agreed.

2. **Starting credits for NIC** - This is a niche legacy point.

Under UK domestic law, between 6 April 1975 and 5 April 2010 there were “starting credits” in NIC at ages 16, 17 and 18, which meant that even if a young person was not working and paying NIC, the person received an automatic NIC credit for the three tax years in which he or she turned 16, 17 and 18 respectively. Typically this NIC credit covered and benefited young people still in full time education between ages 16 and 18.

However, the domestic legislation on NIC contributions did not require that the individual had to be in the UK during this period under age 18 in order to receive the NIC credit, so for individuals who subsequently moved to the UK as adults and first acquired National Insurance numbers as adults before 6 April 2010, the Department for Work and Pensions (DWP) retrospectively awarded credits for those years, in accordance with domestic UK law. There did not appear to have been any check by the DWP at the time that the newly arrived individual did not already have a contributions record or credits in another country’s social security system for the years in question.

HMRC are responding to various complaints as the position on these “starting credits” is causing confusion with overseas authorities (Italy was referenced) in respect of social security/pension coordination.

3. **France Article 16 update** - now resolved with French authorities. [To recap](#), CLEISS, which is the French agency that looks after various aspects of French social security contributions, had received instructions from the French Ministry not to agree to any A1 forms requested under Article 16 of 883/2004 beyond 30 June 2021. Any individuals waiting for responses to A1 applications should now get responses, any that received rejection are encouraged to re-apply. CLEISS may ask for proof of UK immigration status in some cases where that is relevant.

4. **Specialised committee on Social Security Coordination** - HMRC confirmed there is a specialised committee on social security coordination. The two parties are the UK and the EU Commission and the committee’s remit is to discuss the administration of the social security agreements between the UK and the EU following the Brexit withdrawal. The most recent meeting was on 30th June 2022. The agenda and minutes of that meeting (the minutes are not yet published but will follow) are posted [online here](#).

5. **Kantar review** - Kantar did a review of social security processes at HMRC. The report will be published in due course but HMRC are continuing to review the A1 process, using digital tools. In particular, HMRC have now extended the attachment facility to all five of the various forms used for applying online for a certificate of coverage. Previously only two of these forms had this facility, so allowing attachments to be added in respect of the other three forms should speed up the processing of applications.

6. **UK/Swiss social security agreement** - both jurisdictions have agreed to recognise certificate of coverages issued under the old agreement until they expire.

7. **Late applications** - no update in respect of HMRC's approach to late applications under the protocol.

8. **Teleworkers and remote workers - Certificates of Coverage (CoCs)** - HMRC are looking at the position, particularly the EU easement for teleworkers, and will provide further guidance in due course.

9. **CoC and S1 lead times** - This is being reviewed as part of the Kantar review. HMRC indicated the current aim was to respond within 7 days for digital applications and within 40 days for applications made using paper forms.

Double taxation issues

HMRC reiterated that if there are any disputes in respect of the interpretation of double taxation agreements, these should be taken to mutual agreement procedure (MAP) to resolve. HMRC's view is that if any individual is resident in the UK, is treaty resident in the UK and is working in the UK, then the UK has the primary taxing rights on the individual's income. If a different position has been taken by an overseas jurisdiction (and HMRC has received feedback on Switzerland, India and China) in the Covid-19 pandemic or otherwise, this should be resolved via MAP. HMRC are expecting an increase in MAP claims as a result, and are ready to engage with overseas authorities accordingly.

Vialto Partners view- the need to resort to MAP is potentially problematic as typically this process takes a long time to resolve and the taxpayer may have to deal with claims for tax in both jurisdictions on the income time in the interim. It is to be hoped that, as many of the recent claims will have been triggered by issues arising from Covid-19, and will therefore be relatively unprecedented, some level of pragmatism will be adopted to resolve them quickly.

Definition of a lump sum from an overseas pension

HMRC is preparing updated guidance on what it considers constitutes a lump sum from an overseas pension, and will publish this shortly for comment.

Ongoing other matters

Unfortunately, there is still no update in respect of three key long standing questions. HMRC apologised again, and said that an update is promised very soon but unfortunately it would not put a timeline on it. The outstanding issues are broadly:

1) HMRC's view on interpreting ***the expression "derived by a resident of a Contracting state in respect of an employment"*** in double taxation agreements. When considering what this phrase meant, would HMRC look at the residence position of the employee (i) at the point of payment, or (ii) over the earnings period, or (iii) some other approach?

2) The ***NIC position*** on section 62 payments such as a ***cash bonus where the recipient had not been within UK NIC for the entire period*** covered by the bonus: Does HMRC look at the NIC position:

- (i) at the point of payment (i.e. all subject to UK NIC if the individual is within UK NIC at that time, or entirely excluded from UK NIC if the individual is outside UK NIC at the time), or
- (ii) over the earnings period and apportioned to UK NIC based on the period the person was subject to UK NIC during the earnings period, or
- (iii) case by case approach, considering UK domestic legislation, international agreements and HMRC practices

3) **Mixed funds/remittances and split payrolls**:- Several queries have been raised as a result of enquiries in respect of HMRC's position in applying the mixed fund and special mixed fund legislation in practice.

Vialto Partners view:- These are long standing queries that have now been unresolved over several years and impact a large number of employers and their expat employees. We recommend continuing to review technical UK payroll and tax return positions annually in light of current guidance and potential changes. HMRC has been informed several times of the impact of new guidance on employers and employees. In particular, HMRC issued the following statement on 11 June 2020 in respect of point 2 (the NIC position on cash bonuses) *“if an employer has been applying the all or nothing approach in a reasonable manner then HMRC would likely not look to take action in relation to prior periods. The caveat here is that each case is to be looked at on its own facts until such a time as HMRC clarify the wider position in published guidance.”*

Tax residency indicator tool - HMRC has [launched a new tool](#) to help customers determine their tax residence status.

Residency and the remittance basis charge letters - In June 2022 HMRC began sending letters to agents and taxpayers where the taxpayer had been tax resident in 7 out of the preceding 9 years, or 12 out of the preceding 14 years, to prompt the taxpayer and agent to review the remittance basis charge (RBC) and also to advise how to amend tax returns within 60 days if appropriate. Feedback was given in the forum to suggest HMRC were sending letters to individuals who are not yet caught by the RBC (e.g. non-resident in the year of arrival). HMRC will review and give feedback.

Contact us

Vialto Partners provides comprehensive tax solutions, immigration services, compensation & rewards and dynamic work strategy & services to clients. For a deeper discussion on the above, please do reach out to your usual Vialto Partners contact or alternatively: -

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