

Tax Insights

Internationally mobile employees

Are you a UK subsidiary of an overseas organisation or a UK company that has expanded internationally? Do you have employees from overseas group companies performing duties for your UK company?

UK organisations where employees from overseas group companies come to the UK to work for a short time need to ensure that they're complying with all of the necessary filing requirements and paying tax appropriately. Organisations can either operate PAYE for these employees or agree a Short-Term Business Visitors agreement (STBV) with HMRC. But when can a STBV be used and what obligations does it entail?

Where an employee from an overseas group company comes to work in the UK temporarily for the benefit of a UK company, the UK company will typically have an obligation to operate PAYE on the employee's earnings as the 'host employer'.

Short-Term Business Visitor Agreements

Where certain conditions are met, a UK employer can apply to HMRC not to operate PAYE on the earnings of short-term business visitors. This is referred to by HMRC as a 'Short-Term Business Visitors agreement' (STBV). In entering into the agreement, the employer agrees to certain recording and reporting obligations.

When can you use a STBV?

An STBV can only be obtained for employees who are:

- Resident in a country with which the UK has a double tax agreement that covers employment income
- Coming to work in the UK for a UK company or a UK branch of an overseas company
- Expected to stay in the UK for 183 days or less in any 12-month period, and where
- The UK company or branch will not ultimately bear the cost of their remuneration.

Historically, HMRC did not insist on an STBV where the conditions were met and the business visitors were in the UK for less than 60 days. However, since the introduction of the Real Time Information (RTI) initiative, it has hardened its stance - in the absence of an agreed STBV, HMRC now requires PAYE to be operated.

What are the recording and reporting requirements?

An employer that has an STBV is expected to have a reporting system to track the number of days spent by a business visitor working for it in the UK.

Employees are expected to periodically report days spent in the UK on business to a central administrative point. The level of detail that the UK employer needs to provide to HMRC depends upon the number of days that the individual spends in the UK in the tax year as follows:

Visitors to the UK covered by the 60 day rule for 1 - 30 days

No requirements for either employer or employee to fulfil other than where the period is part of a longer period of 60 days or more.

Visitors to the UK covered by the 60 day rule for 31 - 59 days

For an employee who spends no more than 59 days in the UK during the tax year, PAYE can be disregarded provided it is confirmed that:

- there is no formal contract of employment with the UK employer
- the 59 days do not form part of a more substantial period

All visitors to the UK not covered by the 60 day rule for 1 - 90 days/other visitors to the UK for 60 - 90 days

For an employee who spends no more than 90 days in the UK despite tax year, PAYE can be disregarded provided that the employer supplies the information below by 31 May following the end of the tax year:

- Full name of employee
- Last known UK and overseas addresses of employee
- Nature of duties undertaken
- Start date
- End date
- Name of country that a tax return covering worldwide income is submitted

In addition, the employer must confirm that the UK company does not:

- Ultimately bear the cost of the employee's remuneration
- Function as the employee's employer during the UK assignment

Visitors to the UK for 91 to 150 days

For an employee in the UK for a period of 91 days but not exceeding 150 days in the tax year, PAYE can be disregarded provided that:

- All of the information requested for visitors up to 90 days is provided, and
- In the case of employees who are not US citizens nor Green Card holders, the employee provides a statement from the overseas tax authority confirming residence in the other country for tax purposes throughout the period in the UK. This statement should be passed to the HMRC Office by 31 May following the end of the relevant overseas tax year. This arrangement is only provisional until the relevant statement from the overseas tax authority is received

In the case of US citizens and Green Card holders, it will only be necessary for the employee to provide evidence of continuing residence in the US.

Visitors to the UK for 151 to 183 days

Applications will be made on a named individual basis for authority to include the employee in this arrangement. The application will be made as soon as it can reasonably be anticipated that the employee will be present in the UK for more than 150 days. The application must include:

- All of the information requested for visitors up to 90 days and confirmation that the statement from the overseas tax authority will follow by the relevant 31 May
- A statement by the employee giving reasons why he/she considers himself/herself to be resident in the treaty partner country by reference to the appropriate article in the Double Taxation Treaty

How we can help?

Non-compliance with this legislation and failure to operate PAYE in respect of overseas business visitors can lead to substantial penalties from HMRC.

Moreover, with the STBV only applicable for employees visiting from countries where there is a double taxation agreement, HMRC has recently stated that it believes many employers are non-compliant in respect of the operation of PAYE for business visitors from non-agreement countries. This is likely to be one of the issues that HMRC raises if your organisation receives a compliance check.

Our Global Mobility team can help you understand everything you need to know about the tax position of internationally mobile employees.

We support organisations with expatriate and internationally mobile employees across more than 150 countries. We offer a complete global mobility service, including advice on the timing of International assignments, cost comparisons and remunerations strategies.

To find out more, please contact us.



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