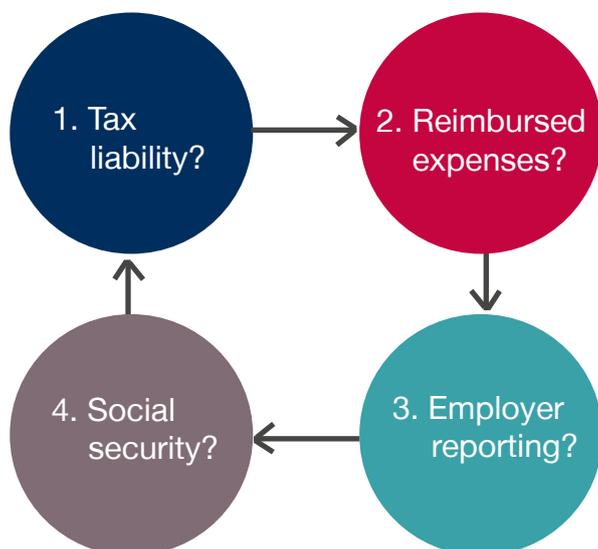




Global Insight: Non-resident directors of UK companies

Insight

Many overseas directors of UK companies visit the UK for short periods of time and do not establish tax residence in the UK. However, with a harsh penalty regime there could be potential issues that non-resident directors and UK companies should be aware of. Fortunately, some straight-forward planning does exist. This Global Insight provides an overview of the key changes and the main issues to consider.



1. Will director remuneration be subject to UK tax?

Yes. A non-resident director of a UK company is an office holder, and any income received in respect of this UK role should be treated as earnings in the UK and subject to UK wage tax withholding (“PAYE”). Double tax treaties do not usually offer any protection in this regard. However, if the individual is not remunerated in any way, either by the UK or overseas entities for the UK directorship, there should be no UK tax liability.

In certain circumstances, HMRC could try to allocate a proportion of the director’s total pay to the UK directorship role (e.g. based on the time spent working in the UK). In practice this is essentially a question of fact and is based on the commercial reality and judgement. It is recommended that the director arrangements are well documented, to ensure this risk is reduced.

Is a UK tax return due?

In many cases, yes. The current penalty regime applies to the following:

- If HM Revenue & Customs (“HMRC”) issue the individual with a UK tax return, they must file the return by the relevant filing deadline. The statutory filing deadline is the 31 January following the tax year end. A late filing penalty will be incurred if the return is filed after the deadline even if no tax is payable/ due.



- If HMRC do not issue a UK tax return but UK tax is due, then a penalty for failing to notify HMRC will be imposed unless that tax is paid by the filing deadline (and the return submitted on a timely basis). The penalty is potentially up to 100% of the tax due, but is likely to be much lower if the failure can be notified within 12 months of the tax becoming unpaid and is unprompted by HMRC.
- If a director of a UK company has no Income Tax or Capital Gains Tax liability for a tax year and no self assessment tax return notice has been issued by HMRC, then there is no requirement for the director to notify chargeability or file a tax return with HMRC for the year in question.

2. Are travel expenses and UK accommodation taxable?

HMRC takes the view that the accommodation and travel expenses of a non-resident director performing a UK director role are taxable in the UK in the first instance. This is regardless of whether the costs are borne in the UK or overseas, because the UK is treated as the regular place of work for the director role.

3. Employer reporting

The employer tax reporting approach will depend on the form in which these benefits are provided:

1. If the company provides the accommodation and travel directly (e.g. the travel and accommodation is in the company's name and settled directly by the company), these costs would usually be reported as a taxable employee benefit on Form P11D.
2. If the individual is reimbursed for the accommodation or travel expenses (i.e. the invoice for the services is in the individual's name), the company would be considered to be meeting the individual's pecuniary liability and the payment/reimbursement of these costs should be subjected to PAYE via the payroll.

The UK company providing the travel and accommodation expenses may have a PAYE obligation on this remuneration, despite not physically paying the director and, in some instances, not knowing what or exactly when they are paid. It may be possible to include the taxable expenses on a PAYE Settlement Agreement ("PSA"). This is where the company would gross-up the taxable benefit and meet the tax liability on the benefit by direct settlement with HMRC, thereby removing the PAYE or P11D reporting of these items. This can be a practical solution.

Accommodation and travel costs

HMRC have provided specific guidance in respect of the accommodation and travel expenses of directors. Whilst the UK employer should continue to report the director expenses (on Form P11D or via the payroll), directors may be able to treat these items as non-taxable subject to certain conditions, including only coming to the UK to perform a task of 'limited duration' or a 'temporary purpose', and spending less than 40% of their director role at a workplace. These conditions only apply in narrowly defined circumstances.

Travel only

If the director is unable to claim the above relief, specific relief may still be available for their travel costs to and from the UK. However, the accommodation costs in this situation would still be taxable.

4. Are UK social security taxes due?

The UK social security taxes ("NICs") position is potentially quite complex and even more so as a result of Brexit. The position may depend upon where the non-resident director has ongoing social tax obligations and what other directorships they hold as well as the location of the other directorships (if applicable). It can also depend upon whether the other jurisdiction(s) treat company directors as employees or self-employed individuals.

As a broad principle, a non-resident director who comes to work in the UK from a country or region with which the UK has a social security agreement (such as the US or the European Union) they may be exempt from paying UK NICs. Similarly (and again providing



the A1 or Certificate of Coverage is held for the relevant period), no employer NICs would arise on the director's fees.

There are also some concessions for non-resident directors who come to work for a UK company from countries with whom the UK has no social security agreement. For example, where the only work the director does in the UK is to attend board meetings and various conditions are satisfied regarding the frequency, and number of these visits to the UK are satisfied, by concession no NICs would be imposed by HMRC. However, care should be taken with this concession e.g. if the non-resident director is also a director of another UK company.

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