

GES NewsFlash

United Kingdom — Short term business visitors and PAYE reporting



March 28, 2014

Overview

In view of stricter HM Revenue & Customs (HMRC) compliance requirements, employers who do not currently have a valid Short Term Business Visitor Agreement (STBVA) with HMRC may wish to put one in place by 31 May 2014. All employers bringing short-term staff to the UK may wish to review their procedures for 2014/15 in view of HMRC's tougher approach, described below.

As explained in our GES Newsflash of January 2014 ([here](#)), HMRC has confirmed that where a UK business has a Pay As You Earn (PAYE) reporting obligation in relation to a Short Term Business Visitor (STBV) to the UK, the UK business is required to operate PAYE from day one unless the business has in place a valid STBVA.

Previously, HMRC was prepared to accept that employers could assess for themselves whether or not the STBV was exempt from UK tax under the terms of a relevant Double Tax Agreement (DTA) and operate PAYE only where exemption would not apply. However, this more relaxed approach has been withdrawn for the 2013/14 UK tax year (6 April 2013 – 5 April 2014) and future tax years. As a result, employers who adopted the more relaxed approach for previous tax years may now need to consider whether or not they are at risk of being viewed by HMRC as having failed to operate PAYE correctly.

Employers who do not have a STBVA for 2013/14 have until 31 May 2014 to:

- Apply for the STBVA and
- Submit a full report for 2013/14 in accordance with the terms of the STBVA

In other words, for 2013/14 only, the application and the required report can be submitted at the same time. For all future years, any STBVA must be applied for by the end of the relevant tax year and the required report must then be submitted by 31 May following the end of the relevant tax year. HMRC will generally agree to allow an STBVA to apply retrospectively for the tax year to which it relates, but this places a requirement on UK businesses to have processes that will facilitate retrospective tracking to support the submission of the year-end report detailing certain information for those individuals for whom any PAYE reporting obligation has been relaxed.

In another change from previous practice, HMRC has confirmed that where:

- A PAYE obligation exists in relation to a STBV,
- The STBV is present in the UK for more than 60 days, and
- Their employment costs are "ultimately borne" in the UK,

HMRC no longer accepts that (for 2014/15 onwards) the individuals can be included

in an appendix to the STBVA to highlight that PAYE has not been operated even though the strict conditions of the STBVA have not been met. In these cases, HMRC now requires the STBV to make an individual claim to exemption under the relevant DTA. The expectation is that PAYE will not need to be operated provided the signed claim is submitted on a timely basis. The precise format of the claim form has not yet been finalized.

Deloitte's view

As a result of HMRC's revised approach, STBVs now present an increased PAYE risk to businesses in the UK. This has direct implications for the obligations placed on UK businesses by the Senior Accounting Officer (SAO) regime. Under this regime, the SAO is required to establish and maintain appropriate tax accounting arrangements and certify that such arrangements have been in place throughout the company's financial year. Tax accounting arrangements include those in place for tracking STBVs and ensuring that the company meets its PAYE obligations in relation to such individuals.

Employers who do not have a STBVA for 2013/14 may wish to apply for one by 31 May 2014. In this case, steps should be taken to ensure that the required reports can also be submitted by this date.

With the possible withdrawal of personal allowances for most nonresidents from April 2015, the cost to employers of not getting their compliance right is likely to rise.

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