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GES NewsFlash

United Kingdom – Full-time working abroad update and revisions to HMRC6

April 6, 2011

Full-time employment abroad and duties in the UK

On March 31, 2011, Her Majesty's Revenue and Customs (HMRC) provided updated guidance on the meaning of full-time employment abroad, including the extent to which duties may be performed in the UK without jeopardising an individual's non-UK resident status. The intention is that this updated guidance will be incorporated in HMRC6 in due course.

HMRC has defined full-time working abroad meaning a genuine, full-time, foreign employment. This could be either a contract with a foreign employer or a formal secondment to a non-UK position by a UK employer.

HMRC has stated that employees who leave the UK to work full time abroad will be expected to be able to demonstrate that they are working equivalent hours to full time foreign employees, at the same level in the same line of business, and in the country concerned. It is expected that this will normally be a minimum of 35 hours a week.

HMRC acknowledges that employees working abroad may still have to physically return to the UK to perform duties in the UK, which may be more than incidental to their duties abroad. Employees are expected to show that the amount and nature of any work carried out in the UK does not prevent the overseas work from satisfying the criteria required for it to be considered full time. The evidence required to demonstrate that employees are in full-time employment abroad may include the following:

- A description of the nature of employee's work and responsibilities
- The results of employee's work
- Timetable of activities, including time spent and nature of work done in the UK
- Reports made to employers on employee's performance
- A record of the annual leave

HMRC has suggested that the number of days carried out in the UK will depend on the facts and circumstances relevant to each employee. However HMRC will generally accept that working in the UK for fewer than 10 days in a year will not by itself prevent an individual claiming they have become non-UK resident because they are working full-time employment abroad for a period spanning at least one complete UK tax year. If 10 days are worked in the UK, whether an employee is working full time abroad will depend upon their particular circumstances.

HMRC plans to publish a further revised HMRC6 incorporating these points.

Deloitte's view

The updated guidance will particularly apply to individuals who go abroad for between one and three years and rely on being employed full-time abroad to become nonresident. It is welcome insofar as it provides some certainty for individuals who perform a limited number of substantive duties in the UK. However, employers will be disappointed that it does not provide more certainty in cases where employees spend 10 or more days in the UK. Anyone who spends at least 10 days in the UK will need to carefully consider whether the duties performed are incidental or substantive and, where they are substantive, whether their particular circumstances are such that they meet the conditions to be regarded as non-UK resident.

It is important to note that the question is not simply an issue for the employee. Employers also need to satisfy themselves that they are operating Pay As You Earn correctly and accounting for National Insurance contributions appropriately.

Employers are advised to consider the new guidance carefully in order to determine which assignees are expected to meet the requirements for full-time employment abroad and where they are not, whether any changes should be made to reduce the amount of time employees are expected or advised to work in the UK.

We hope that the statutory residence test, which is expected to be introduced from April 6, 2012, will provide greater certainty for both employers and employees.

People to contact

If you have any questions concerning the issues in this GES NewsFlash, please contact one of the tax professionals as follows:

Robert Hodkinson

Tel: +44 (0) 207 007 1832

Rosemary Martin

Tel: +44 (0) 207 007 7875

Philip Paur

Tel: +44 (0) 207 007 1666

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