



Advice for employers with staff working overseas during COVID-19: Act Now!

By Dan Pipe - 30 October 2020

Employees working remotely outside the UK during Covid-19 may create – and may already have created – expensive tax liabilities for themselves and their employers.

Employers with staff abroad should act now to understand and mitigate those risks – which substantially increase once workers have spent 6 months abroad.

The foreign country in which the employee is currently working may seek to tax some or all of their income from the employment, based either on the fact that a substantial number of days have been worked in that other country or in some cases on the basis that the employee has become a tax resident there under local law. Generally, the longer an employee spends abroad, the greater the risk that a liability to income tax arises in the other country. In many cases the UK will have a double tax treaty with the foreign country, which may give the UK exclusive taxing rights. However, this depends on the detailed facts and, even when available, this type of protection will typically only last for the first six months that the employee is working abroad. A double tax treaty should prevent the same income from being taxed in both countries, though to engage this protection the employee will usually need to make a proactive claim.

The main concern for the employer will be whether, if there is an employment tax liability in the foreign jurisdiction, it has an obligation to operate local payroll withholding. The rules vary widely between countries and may depend, among other things, on whether the employer has other activities in the foreign country and precisely what the employee's working arrangements are.

Social security liability is generally assessed separately from income tax. The rules differ greatly depending on whether the other country is a member of the EU or EEA, or if the UK and the other country do or do not have a reciprocal social security agreement that covers liability for contributions. Generally, the risk of a foreign liability increases the longer an employee works outside the UK. Again, the employer's main concern will be whether it has an obligation to collect and/or pay contributions in the foreign jurisdiction. The

situation where the employee is currently working in the EU or EEA is complicated significantly by the expiry of the Brexit transition period at the end of this year.

Employers will also need to consider two corporate tax risks. First, an employee working abroad may in some circumstances constitute a permanent establishment of the employer in that other country, exposing part of its profit to corporate taxes there. Second, if a UK company has directors based abroad, there is a risk of the company also acquiring corporate residence in another country.

What complicates the position for employers is that the risks outlined above depend to a large degree on the domestic law of the foreign jurisdiction, the terms of any tax treaties or reciprocal social security agreements between the UK and that other country, and the detailed facts about the employee's tax background and working arrangements. Every employee's situation will therefore be different, and specific advice in both the UK and the foreign jurisdiction will be needed in every case. While many countries have relaxed their own rules to some extent in recognition of the unusual situation with COVID-19, each country has taken a different approach and it is not safe to assume that tax authorities will overlook potential tax revenue.

Broadly, all of the risks identified above increase the longer the employee's foreign working continues. Many employers are now asking staff who opted to work outside the UK for part of this year to return to the UK. However, where there is a business case for continuing an employee's foreign working arrangements, this is usually possible with some care once – with appropriate advice – the tax position is established and support is put in place to manage the issues going forward. As COVID-19 disruption continues, it would be easy for employers to inadvertently trigger expensive foreign tax liabilities by allowing a temporary remote working arrangement which was set up in March to continue without assessing the tax risks. This can be avoided by taking stock now of which employees are working from outside the UK and analysing those arrangements so that informed decisions can be taken.

Even if you do not have staff currently working abroad many employers are currently developing working at home policies which should require staff to obtain permission to spend significant periods working outside the UK. See our [working from home policy checklist](#) to find out more about the other issues to consider.

This is a highly specialised area where good quality advice is essential. We have deep expertise on these issues, and good contacts with foreign advisers in most jurisdictions. If you would like to discuss your own situation, please get in touch with [Dan Pipe](#) or your usual GQ|Littler contact.