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Non Resident Directors The Complete Picture

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Do you have non-resident individuals who are Directors on the board of a UK entity and visit the UK to attend board meetings or perform other UK Director duties? Have you considered the UK income tax and social security withholding and reporting obligations for these individuals?

HMRC have increased their focus on this area of compliance as many companies are not aware of the associated income tax and social security obligations. Please see below for a high level summary of the key issues to consider when managing the UK income tax and social security compliance obligations in respect of Non Resident Directors.

Income tax and PAYE withholding

As Non Resident Directors will be employed by or will be office holders of the UK entity, the UK entity needs to consider whether there is a requirement to apply the UK PAYE Regulations. HMRC consider the attendance at board meetings and the performance of other Director duties in the UK as substantive duties and that the earnings attributable to such duties are therefore taxable in the UK. Consequently a UK PAYE withholding obligation arises.

For Non Resident Directors, consideration should therefore be given to the following;

- What the individual is doing whilst in the UK (performing UK directors duties v performing a global role)
- Whether or not the director's duties are performed in the UK and overseas
- How the individual is paid (salary / directors fees / personal invoices or invoices via a personal service company)
- How to quantify the earnings attributable to UK workday activity
- The corresponding UK withholding requirements under Real Time Information, including any appropriate PAYE applications to HMRC

- Reporting of any UK taxable benefits/expenses
- How HMRC interpret company accounts information relating to directors
- The individual's personal tax filing and reporting obligations
- Whether the individual will be expected to fund any UK taxes arising on taxable UK workdays
- Mitigation of any double taxation that may arise.

Social Security

The international social security rules do not necessarily follow the income tax rules. Strictly any person present in the UK and actively pursuing gainful employment under a contract of service is liable to Class 1 National Insurance (NI) on earnings paid. This is regardless of where that contract is held or entered into.

It should be noted, however, that there is a concession for NI related to non resident directors who are visiting the UK for board meetings only (provided certain conditions are met). There may also be some specific exemptions available under international social security agreements.

For Non Resident Directors, consideration should therefore be given to the following;

- Where the individual is resident for social security purposes and whether a social security agreement is in place between this country and the UK
- The nature, number and frequency of their UK visits
- Whether an exemption from UK National Insurance is available under the HMRC special concession or under a certificate of coverage
- How the individual is paid (salary / directors fees / personal invoices or invoices via a personal service company)
- The corresponding UK withholding requirements under Real Time Information
- Whether the individual will be expected to fund any UK NI arising

Disclosure

For listed companies that are subject to the Directors' Remuneration Reporting Regulations in the UK, there are also potential disclosure implications that may arise from the way in which remuneration, and in particular benefits, are taxable in the UK. In certain cases, the tax analysis can impact the "single-figure" remuneration disclosure for Board directors. As companies gear-up to prepare a second Remuneration Report under the new regime, this may be a point which need to be considered in further detail.

Next steps

If you have not previously considered your Non Resident Director population from a UK income tax and social security perspective we would recommend that you conduct a full compliance review. It is becoming increasingly common for companies to approach HMRC on the basis of a voluntary disclosure where Non Resident Directors are named in the accounts but are not included on the payroll. Additionally, HMRC are focussing on this area as a natural extension to the recent change in approach to Short Term Business Visitors.

We would be pleased to conduct a review, discuss the appropriate actions and provide further guidance and support as required.

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