

Working from home while overseas

Employers saw many employees working abroad throughout 2020, primarily to be with their families during the COVID-19 pandemic. However, owing to the initial urgency many employers did not formalise any contractual arrangements, owing to more pressing matters taking priority.

It is imperative that employers review the arrangements to help mitigate any potential risks. This factsheet considers the key Income Tax and National Insurance issues.

What are the employer's obligations?

Employers must be aware of their responsibilities, even though the employee may have returned to their home country as a matter of personal choice. The employer will need to consider the Income Tax and social security ramifications of an employee working in another jurisdiction. The following identifies the key points that the employer must consider, which in turn minimises the risk for non-compliance.

Income Tax

The Income Tax treatment and reporting obligations will be determined by several factors, including:

- Where did the employee work?
- How long did they work abroad?
- Do they intend to continue working abroad, certainly during the 2021/22 tax year?

Where the employee has stayed in the host country long enough to be liable to pay local taxes, it may be possible for the employee to pay taxes as part of the tax return. Depending upon the length of time the employee is spending in the host country, or the specific reporting obligations in that country, the employer may be required to operate a payroll there.

Social security

The basic rule is that social security contributions are due where the employee works.

There are certain 'easements' depending upon whether the employee is working in an:

- EU/EEA country; or
- Reciprocal agreement country¹

Under the easements it may be possible to obtain either an A1 certificate (relevant to EU based employees) or letter of continuing coverage (relevant to employees based in a reciprocal agreement country). However, it will be necessary to consider the basis upon which an employee was permitted to work in the host country and (where applicable) whether the social security administrators in both UK and host country will sanction the relevant certificates needed to permit the continued payment of social security in the UK.

The position can be further complicated for those employees who are working in countries where the UK does not have any social security agreements in place. No easements are available with these countries and depending upon how long the employee is planning on working abroad could dictate that social security will be due in that country.

However, it will be necessary to consider the basis upon which the employee has been allowed to work abroad, together with the employee's longer-term plans before determining where social security should be paid.

A further point the employer may need to consider is whether additional benefits need to be provided to ensure the employee has access to medical care.

Permanent establishment

Another area of concern is whether an employee, especially a senior employee who can enter into binding contracts on behalf of the business, could create a permanent establishment of the UK business on the host country. This could lead to part of any UK profits being subject to overseas taxation.

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Non-UK resident employees

Businesses should not overlook the position of any employees from your overseas operations who stayed in the UK during the pandemic. Whilst there were some concessionary easements covering the number of exceptional days the employee was 'stuck' in the UK during the pandemic, those easements have now come to an end.

Non-resident employees are required to submit a Self-Assessment tax return to HMRC for the 2020/21 tax year and maintain sufficient evidence to demonstrate they were unable to leave the UK. HMRC have stated that a day spent working in the UK will continue to be treated as a UK workday and, as such, liable to UK Income Tax.

Other points to consider

Whilst this article is intended to highlight the Income Tax and social security issues, employers must also consider the following:

- What changes must be made to the employment contract?
- Does the employee have the right to work in the host country?
- What duty of care arrangements are in place for the employees' health and safety in the workplace?
- Where employees are working outside the UK for prolonged periods, could they acquire employment rights in the host country?
- What type of data security arrangements do employers need for employees working outside of the UK?

Conclusion

Many employers allowed their employees to return home to be with their families during the most challenging times. Now, employers must consider the consequences of their actions but also develop robust strategies should they continue to allow employees to work at home, but abroad.

Employers may be required to incur additional costs for ensuring compliance both in the UK but the host country too, which had not been anticipated.

¹ Barbados, Bermuda, Canada, Chile, Isle of Man, Israel, Jamaica, Japan, Jersey & Guernsey, Mauritius, New Zealand, Philippines, Republics of former Yugoslavia, South Korea, Turkey and USA.

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