

Non-resident directors of UK companies and the tax implications

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In an increasingly globalised world, it is quite common for UK companies to have overseas-based individuals on the UK board. Travelling to the UK to attend in-person board meetings may not have happened during the pandemic, so with the anticipated relaxation of travel restrictions and the return of the in-person board meeting, now is a good time to check your compliance processes.

Background

Non-UK resident directors of UK companies visiting the UK to perform duties associated with their board role are office holders, so salaries or fees paid to them are subject to PAYE.

This is the case if the overseas director spends only one day working in the UK during a tax year, or if they visit the UK to attend a single board meeting in a year. It applies even if nothing is paid by the UK company and/or there is a separate remuneration agreement for UK duties.

Tax treaties often do not offer protection from UK tax in these circumstances. Non-UK resident directors must be considered separately to other short-term business visitors to the UK, particularly as board directors cannot be reported under a Short Term Business Visitor (STBV) Agreement (Appendix 4).

Employee and employer Class 1 NIC may also be due under PAYE on salaries or fees paid to non-UK resident directors. For NIC, however, there are potential concessions and regulations which, if relevant, may ultimately mean that there is no liability for UK Class 1 NIC on the director's earnings.

The Issue

HMRC is aware that UK companies with non-UK resident directors who work in the UK often overlook the requirement to operate PAYE on their earnings, or make the incorrect assumption that an STBV report can be used.

As a result, this has become an area of compliance which we are increasingly seeing HMRC check during reviews of company records. It is also relatively easy for HMRC to spot. For instance, a simple check of Companies House records or a UK company's website will often enable HMRC to identify a UK company that has an overseas director who may be working in the UK.

Further complexities can arise where the overseas director is paid a single salary in respect of a global role involving employments and directorships with numerous entities. This is because it will be necessary to establish the proportion of that salary which is attributable to the director's UK duties.

In addition, there can be employment tax and NIC obligations and liabilities to consider in relation to expenses and benefits provided to the director while they are working in the UK.

Non-compliance can lead to significant and unexpected liabilities for UK companies. For example, where PAYE is not applied but should have been, and HMRC finds that the UK company did not exercise reasonable care, HMRC can go back six tax years to recover the underpaid tax and NIC from the UK company, together with penalties and interest charges.

What should companies do?

All UK companies with overseas based directors who may start to travel to the UK again on board business should consider reviewing existing arrangements to ensure that tax and NIC obligations are being met. In particular, UK companies in this situation should consider:

- how to calculate the appropriate level of earnings (including expenses and benefits) which are attributable to UK duties, and how these earnings should be reported to HMRC;
- the requirement to obtain a special direction (s690 application) from HMRC, which will allow the company to deduct tax only from that part of the director's salary or fees which are

attributable to estimated UK duties;

- whether the director's earnings are liable to employee and employer Class 1 NIC, or whether concessions or regulations apply which remove this requirement;
- discussing the double taxation issues with the director concerned where they are also paying tax on these earnings in another jurisdiction; and
- alerting the director to their requirement to complete a personal tax return in the UK in respect of the UK directorship and how to mitigate any potential double taxation.

If you have any questions or concerns about the employment tax and NIC treatment of non-UK resident directors, please contact [Jo Webber](#) or [Ainsley Wainwright](#), who can help you to review the position.