

Do you have UK employees travelling for business trips to the US?

21 June 2022

UK companies with business visitors from overseas group companies will have just submitted their Appendix 4 Short Term Business Visitor report to HMRC.

But what about UK employees undertaking business trips overseas? Many countries, including the US, do not have similar arrangements to Appendix 4, but they do have associated and typically more onerous reporting requirements. Here are four to consider if your employees travel to the States for work:

1. Payroll

Strictly speaking, there is a payroll requirement in the US from the first day that the 'Short-Term Business Visitor' (STBV) arrives. The employer is therefore responsible for any deductions of US federal and state income tax and social security due.

However, if there is a Double Tax Treaty (DTT) in place between the two countries being the home employing country of the employee and the country of the business trip (as it is in this case, with the UK for example as there is a UK/US DTT), provided the relevant conditions are met it is likely the US workdays will be exempt from federal income taxation. But there is still a reporting requirement as payroll needs to document the earnings that are exempt through the DTT.

Many US states do not recognise the DTT, and so treaty exemption may not apply at the state level. Nor do many states have a de minimis threshold below which there is no state income tax due but, as this threshold varies from state to state, it is important the position is reviewed to ensure no income tax liability arises at the state level.

2. Social security

Social security coverage is required for all individuals working in the US. However, where there is a social security agreement between the two countries concerned it may be possible to claim an exemption from US social security, so the individual pays only social security in their home country.

In strict terms the exemption is claimed by obtaining a certificate of coverage, but there are significant backlogs at the US Social Security Authorities (SSA) and delays of about six months have been seen to date. Many employers are therefore applying for a certificate of coverage only where individuals spend more than 30 days in the US in a 12-month period. This is a pragmatic decision, and one for employers to consider for themselves given that a certificate of coverage is required from day one of overseas working.

The certificate of coverage application can be made retrospectively, but it's important to note that social security agreements may not exempt employers from paying US unemployment taxes.

3. Immigration

It's vital to secure the right to work in the jurisdictions where any employment duties are undertaken. Otherwise, it can lead to employees being stopped by United States Customs and Border Protection and prevented from re-entering the country.

That being the case, employers sending an STBV to the US must review the employee's visa before they travel to ensure it is the correct type and covers the trip in question.

Certain visa types may attract an automatic tax charge in the US. Care should be taken as this could result in STBVs being taxable in the US, even if the DTT conditions are met.

4. Permanent establishment

A permanent establishment (PE) could be created if an individual is employed outside the US, but works in the US for the benefit of a non-US employer. This can lead to the non-US employer being required to:

- register in the US;
- pay US corporation tax; and
- make annual US corporation tax submissions.

The DTT can provide an exemption, but coronavirus has rapidly changed the interpretation of the wording of the DTT. As a result, businesses must review the position, certainly for their most senior employees and for those who can conclude or form contracts while in the US.

The number of STBVs is likely to increase in the new world of remote working. While the DTT offers some protection, the US authorities are looking harder and in more detail at multinational organisations. They want to see that these organisations can demonstrate they have a process in place for monitoring, reporting and assessing STBVs so as to manage the risks of non-compliance.

STBVs have always been a risk area for organisations with global business travellers, as travel has restarted following the pandemic, organisations should review policies and tracking processes and consider compliance obligations and risk.

For further information or any queries, please contact [Joanne Webber](#).