

Non-resident directors –
achieving compliance
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Aim for this session

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2  **Attributing remuneration**

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Types of UK directors

- All UK companies are required to have at least one Director under UK company law
- UK company law places seven statutory obligations on each Director including:
 - Promoting the success of the Company,
 - Exercising independent judgement and
 - Avoiding conflicts of interest
- There is no legal distinction between Executive Directors and Non-Executive Directors

Executive Directors

- Involved in the day-to-day management of the company
- Often full time employees with a specific role and title such as Chief Executive Officer (CEO) or Finance Director (FD)

Non-Executive Directors

- Independent of the day-to-day management of the company
- Often part time with no specific role or title
- May be full time senior employee of parent or holding company, appointed to sit on the Board of the UK subsidiary or group company

Independent Non-Executive Directors

- Similar to 'non-independent' Non-Executive Directors but with no role within the wider Group
- Often brought in because of specific talent or experience, and to provide an independent view

Most
common
non-resident
directors

Types of UK directors

Common set ups

UK headquartered organisation

- May have independent non-executive directors who are non-resident
- More rarely, senior individuals working for overseas entities could be appointed as a non-executive director of the UK entity

UK taxability

- All UK duties for an independent non-executive director will be director duties. No treaty exemption will be available for these director duties performed in UK.
- For non-executive directors, even if there were duties performed in the UK which were not statutory director duties it would be difficult to apply a treaty exemption if it was a global role for a UK headquartered organisation.

Non-UK headquartered organisation

- If it common to have employees of the parent company appointed as non-executive directors of the UK subsidiary (for example one employee might be on the board of multiple subsidiaries)

UK taxability

- To the extent an individual is performing UK director duties in the UK, these UK workdays will be taxable
- If an individual may be performing work in the UK as part of their global role on behalf of the non-UK entity, it is possible that these duties will be exempt under a tax treaty
- In the rare case where individual only performs duties which are exempt under a tax treaty an employer could include them on a STBV report (and not run a payroll)

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Does your business have any non-resident directors?

A

UK HQ organisation –
we have NRDs

D

Non-UK HQ organisation –
we have NRDs

B

UK HQ organisation –
we don't have NRDs

E

Non-UK HQ organisation – we
don't have NRDs

C

UK HQ organisation –
I don't know if we have NRDs

F

Non-UK HQ organisation –
I don't know if we have NRDs

Types of UK directors

Other arrangements

Directors providing services through personal service companies

- Even when paid to a personal service company, director fees are within scope of PAYE as they constitute payment of fees in respect of an office.

Directors providing consultancy services as well as directorship duties

- We would need to explore if the consultancy services is genuinely self-employed income or whether the individual should be treated as an employee:
 - If self-employed there would not be any payroll or reporting required for the company (but the individual may have personal obligations)
 - If an employee the company will be subject to the usual tax, payroll and social security requirements

Attributing remuneration

Separate directorship fee

- If there is a separate fee for the UK directorship duties we do not need to consider any other remuneration they receive (assuming any non-director UK workdays are exempt under a tax treaty)
- If the individual has a wider role, there needs to be a 'commercial rate' allocated to the UK directorship. This should be:
 - Similar to independent non-executive directors at the same organisation, or
 - Benchmarked based on industry, role and extent of duties required
- If some of the directorship duties are performed outside of the UK only the UK workday portion of the directorship duties needs to be taxed

No separate directorship fee

- Non-executive directors may be appointed but have no separate fee allocated to this role
- HMRC do not accept that an individual would take on this UK directorship for no fee so would expect a time apportionment of their global compensation
- This includes share plans and long time incentives so can mean UK reporting is required for a number of years after an individual has given up a UK directorship

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Does your business pay a separate fee for non-executive non-resident directors?

A

Yes

B

No

C

N/A or Don't know

Payroll options

Assuming there are UK director duties performed in the UK, the options are:

Normal UK payroll		Normal UK payroll with s690		MPAYE (Appendix 6)	
Useful for	<ul style="list-style-type: none">• Separate director fees• If some director duties were performed outside of the UK relief could be claimed for these on a tax return	Useful for	<ul style="list-style-type: none">• This allows a portion of an individual's compensation to be processed through UK payroll• Useful for non-resident directors who are not paid a separate fee	Useful for	<ul style="list-style-type: none">• For tax equalised non-resident directors• This allows estimated taxes to be processed through UK payroll (to be reconciled on the tax return)
Limitations	<ul style="list-style-type: none">• If a non-resident director is not paid a separate fee all of their compensation would need to be processed through UK payroll	Limitations	<ul style="list-style-type: none">• Application for s690 needs to be made (it can cover up to 3 tax years)• Strictly, the employer must wait for HMRC approval before applying the s690 %	Limitations	<ul style="list-style-type: none">• Can only apply if the non-resident director is genuinely tax equalised• Depending on company rules, it may not be possible to tax equalised a UK director

National insurance

EU/EEA:

- Rules can be complex – particularly where there are multiple directorships or they are regarded as ‘self employed’ in home country
- We can use apply for a multi-state A1 – provided the individual spends at least 25% of their working time in their country of habitual residence and is regarded as ‘employed’ in their home country. This will exempt the NRD from UK NIC.
- The domestic exemption cannot be used

Rest of the world:

- The 52 week exemption requires you to be employed outside of the UK so would not be applicable to a non-resident director a UK company
- We therefore have to rely on the domestic exemption

Reciprocal agreements:

- Typically, a certificate of coverage can be applied for – providing exemption from UK NIC
- For US residents, we require the US to treat the director fees as self-employed income in order to utilise Article 4(4) of the agreement – which would typically be the case
- The domestic exemption cannot be used

Domestic exemption:

- Under NIM12013 concession, a UK Non-Resident Director of a UK company has no liability to Class 1 NIC on earnings, if:
 - The director’s only UK visits are for board meetings, and
 - The Director attends up to 10 board meetings in a tax year with each visit lasts no more than 2 nights at a time; or
 - The Director attends only 1 board meeting in a tax year and the visit lasts no more than 2 weeks.
- The limits are strictly applied, per tax year, per individual (rather than per directorship)

Non-resident directors

The 'Banana Group' is a South African headquartered organization. Banana Ltd (the UK entity) is a subsidiary of the South African parent company. Thomas, a South African resident is CEO of the parent company but also a non-executive director of the UK subsidiary.

Thomas comes to the UK for quarterly board meetings, arriving on a Sunday and leaving on a Wednesday (with Monday and Tuesday being workdays) each trip.

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Will Thomas benefit from the domestic exemption?

A

Yes

B

No

- As Thomas's visits are 3 days in total (and there is more than one trip) he will not meet this domestic exemption.
- Employer and employee Class 1 NIC needs to apply, the rules on this are unclear but typically we would apply the national insurance only to the UK workday portion of Thomas's income (please note there is an element of risk with this approach)

Expenses and benefits



Expenses and benefits generally

- If a UK Non-Resident Director has a separate service agreement with the UK Company, any benefits provided under the separate agreement are received in respect of duties performed in the UK and therefore subject to UK tax. A Form P11D should be prepared by the UK Company.
- If a UK Non-Resident Director does not have a separate service agreement, HMRC would generally expect global benefits to be time-apportioned, although subject to the facts and circumstances a different approach may be appropriate e.g., sourcing by reference to where a benefit can or can't be enjoyed.



Travel costs to/from the UK to perform Director duties in the UK

- The UK is likely to be a permanent workplace and so the travel costs to/from the UK will not normally be allowable under the normal rules relating to business travel
- If the individual is non-domiciled, the 'home leave provisions' (s.373) might apply. Providing the individual never becomes UK resident, the 5-year cut off doesn't apply.
- Alternatively, it might be possible to claim under the rules relating to travel between group companies (s.340) or using the temporary workplace rules (s.338) for visits to different sites or for trips with no UK director duties



Accommodation/subsistence provided in the UK

- The 'home leave provisions' cover travel costs to the UK only (e.g., flights and any hotel accommodation and subsistence provided in connection with the journey). It does not cover the cost of providing accommodation/subsistence in the UK.
- As a result, the cost of providing accommodation and subsistence in the UK, including overnight stays in hotels, is a taxable benefit, unless relief is available under normal rules (s.338)

Non-resident directors

Scott works for the US parent company but is seconded to the UK subsidiary for 2 years to become the UK subsidiary's CEO.

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Will the UK be regarded as a temporary workplace for Scott?

A

Yes – as the assignment is less than two years

B

No – as Scott takes on a statutory directorship of the UK company

This is debatable.

As the UK directorship is effectively a local contract the UK should be regarded as a permanent workplace in respect of this directorship.

Our view is this prohibits any temporary workplace relief claim but it could be possible to take the alternative argument and claim relief in respect of the assignment related executive role.

Key considerations for UK Companies



- Important to get the UK PAYE and reporting in respect of all Directors right, including UK Non-Resident Directors
- HMRC does not accept that individuals perform Director duties for no remuneration and will look to time apportion global compensation where no separate fee can be identified
- PAYE should be operated by the UK Company but a s690 direction or MPAYE can be used as and where appropriate
- National Insurance Contributions need to be accounted for on first principles but it may be possible to use a social security agreement or the concession in NIM12013 to exclude the Director from UK NIC. The parameters of NIM12013 are strictly applied
- Travel costs may be exempt but conditions apply and should be checked
- Subsistence costs paid or reimbursed will normally be taxable in full



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