

HMRC activity – are you
ready for the challenges?

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Agenda for the session



HMRC activity on employer compliance is nothing new, but there has been a marked uptick in the number of enquiries we are seeing



There is also a more uncompromising attitude, and an unwillingness to recognise what has been accepted by HMRC in the past, much less be bound by it



We will illustrate this by means of two particular areas of focus:

- Social security – HMRC are suggesting cash compensation should be apportioned based on where the individual was insured during the earnings period; and
- Pensions – HMRC are challenging the exemption from UK tax of employer contributions to foreign pension schemes

NIC sourcing for earnings for Internationally mobile employees (IMEs)

Overview of HMRC guidance



What has changed?

- HMRC published guidance in September 2025 clarifying how National Insurance Contributions (UK social security) should be applied to incentive earnings paid to IMEs (e.g. bonus payments).
- HMRC has advised the guidance reflects the position that is and always has been the correct interpretation of the law from their perspective.



Previous vs. new approach

- **Previous:** For any pay taxed as “general earnings”, it had generally been understood NICs should be applied on an ‘all or nothing’ basis. However, our experience is that some clients applied different positions.
- **HMRC’s view:** NICs should be applied on an apportioned basis – based on the period for which the employee was ‘UK insured’ – i.e. period liable to UK NIC.



Which earnings are impacted?

- Impacts anything which is taxed as “general earnings” – includes:
 - cash bonus
 - deferred cash/phantom plans
 - some share awards
 - ... even salary
- Should **not** be any impact for share awards categorized as “securities options” or “restricted securities”. NIC apportionment rules already applies to these.

NIC sourcing for earnings for Internationally mobile employees (IMEs)

Impact on different types of earnings

Bonus / Deferred Compensation

- Determine the relevant earnings period for the specific payment concerned. This will normally be the performance period.
- Was the employee liable to NIC during this period?
- If yes, calculate the portion of the payment on which NIC is due based on days liable to NIC during earnings period over total days of earnings period.
- Input this portion into UK payroll for NIC to be calculated at appropriate rates.

Salary

- There is no impact where an employee is liable to NIC for the whole pay period to which the salary relates (normally monthly or weekly).
- However, if NIC liability starts/ends part-way through the pay period, then amount of salary should be apportioned.
- Practically this may be difficult for payroll to process for 52-week cases (where taxable & NIC'ble salary is likely to be different).



Termination payments

- Genuine ex-gratia payments which are taxable under s401 should not be affected.
- However, consideration needs to be given to any other elements of the termination package being delivered and each part would need to be assessed based on the specific period to which it relates.

Other

- Any other incentive pay arrangements which are liable to income tax in the UK as 'general earnings' and have a relevant earnings period – e.g. phantom share plans or awards which are only settled in cash.
- Can some cash awards be considered a spot-bonus? e.g. joining bonus, or genuinely not linked to a performance period?

NIC sourcing for earnings for Internationally mobile employees (IMEs)

What challenges are we seeing arise from this HMRC guidance:

- Practicalities of implementing apportionment of earnings for NIC via UK payroll
- Interaction with global policy for delivery of bonus payments. If your company currently delivers bonus payment wholly in host country, are you considering moving to split-delivery to align both tax and NIC?
- Potential conflict with other country interpretations and risk of double social security charge
- What to do about prior tax years?

NIC sourcing for earnings for Internationally mobile employees (IMEs)

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What is your company considering regarding the potential impact from this guidance for prior tax years?



A

No action – our company is not affected



B

No action at the present time – we are taking the position that we applied consistent historic position and similar number of inbound/outbounds



C

Further investigation – we are reviewing potential over/underpayments for prior years



D

Other - we are still considering

National Insurance – HMRC activity and behaviour

In addition to the guidance on the sourcing of earnings for NI purposes, we have experienced a significant increase in HMRC activity focusing on both National Insurances processes and reporting of earnings.



We are currently assisting with a number of HMRC Compliance checks into inbound expats & National Insurance - and have seen:

- Requests for copies of A1/CoCs to evidence application 'X' code in payroll, and detailed check of validity and dates of certificates
- HMRC using other data to compare against RTI payroll reporting (e.g. looking into detailed start/end dates of assignments).
- HMRC querying why earnings on a 7A NIC Settlement Return (NSR) may not match a Tax Return
- Questions regarding 52-week exemption calculation and process
- Detailed questions into the treatment of certain pay items (e.g. NI treatment of visa extension costs for extensions).

Pensions and HMRC Employer compliance reviews

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Which of the following applies to your organization?

A

Currently subject to HMRC employer compliance review

B

Subject to employer compliance review in last 2 years or so, but now concluded

C

Have not experienced an employer compliance review since the pandemic

Pensions

In what circumstances is relief available on contributions to non-UK pension schemes?



There are three sets of circumstances (plus one transitional relief rarely seen) under which UK tax relief may be available for contributions into non-UK pensions:

- Exemption under s307 ITEPA 2003 for employer contributions into schemes providing death and/or retirement benefits only
- Migrant Member Relief (MMR)
- Relief under a double tax treaty with an appropriate provision: Austria, Canada, Chile, Columbia, Cyprus, Denmark, Faroe Islands, France, Ireland, Moldova, The Netherlands, Slovenia, South Africa, Switzerland and the USA

Tax relief for non-UK pensions schemes

What is your current practice?

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Or use QR code



In which ways do your expatriate employees obtain tax relief on home country pension contributions? Please select all that apply



A

Employer pension contributions are exempted from income tax under s307 ITEPA 2003



B

Relief under a double tax treaty is claimed



C

Migrant Member relief is claimed



D

Participation in home country scheme is suspended while on assignment



E

None of the above – employer contributions are taxed where they are earmarked for the employee

Pensions

Past practice



In the past, HMRC tacitly accepted that exemption under s307 could apply to employer contributions into non-UK pension schemes



This followed on from discussions that took place at a sub group of HMRC's expatriate tax forum on 14 May 2007, when HMRC indicated they would follow a pragmatic approach on the matter



Many non-UK pension schemes will allow early distribution in cases of hardship, or for other specified reasons (e.g. Swiss schemes allow for loans to purchase your home), and HMRC are now arguing this prevents the scheme benefits from being for death and/or retirement only

Pensions

Why does it matter?

Where schemes qualify for relief, there is no tax charge on contribution provided that the pension input is less than the annual allowance level

Where they do not:

- No tax relief is available on contributions made, and employer contributions will be subject to tax as disguised remuneration under PAYE if there is any earmarking of the contribution; and
- There may be additional charges on later earmarking and/ or distribution

HMRC are arguing that in a number of s307 cases, PAYE should have applied, and as non-UK pensions are an offshore matter, they can pursue liabilities going back to 2015/16 (under transitional law) or the previous 12 UK tax years position

Pensions

What aspects are being debated?



HMRC have made us aware of their current view on s307, but from what date can it apply?



Given there is actually very limited HMRC published guidance, and much hangs on how the phrase “death and/or retirement benefits” is interpreted, do employers have a legitimate expectation that the past can stand?



If the current interpretation applies historically, how long is the period for which it can apply?



In most cases, the tax returns will have included white space notes indicating that contributions were being made to non-UK pension schemes, but were the notes specific enough about the terms of the scheme to be a good defence?

Pensions

Conclusions

- HMRC are still negotiating with various Firms, the CIOT and other interested parties about the various aspects listed above, so generally we are not recommending settlement at this stage
- We anticipate the Courts would support HMRC in case of legal action, because the law has not changed since Pensions A-Day (6 April 2006), only the way in which HMRC are applying it
- Although the offshore time limits law was not designed for this sort of issue it is drafted widely enough to catch it, so there is a real risk of collateral damage
- Therefore, we recommend considering what other reliefs might apply (e.g. Migrant Member Relief) to avoid extending the period that is being disputed

HMRC activity and behaviour - Conclusions

There are several key take-aways which we would highlight based on the discussion from today, as follows:

1

Time – The back and forth with HMRC on the compliance checks could take several years to resolve.

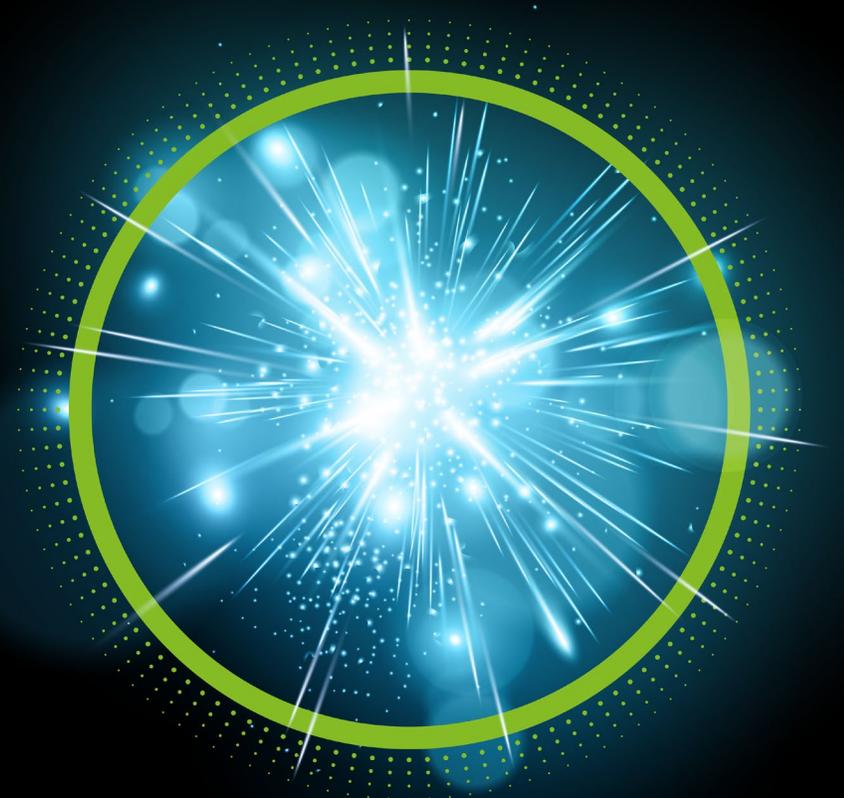
2

Costs – We would anticipate potentially significant internal and/or advisor costs would be accumulated over time in responding to HMRC, particularly due to the level of detail and persistence HMRC is exhibiting. In some cases, the costs of responding are much higher than the actual tax/NI at stake, but it can be difficult to find a pragmatic outcome.

3

Where next? – Given HMRC's arguable change in practice on the matters we have highlighted, we are conscious there are potentially other areas where HMRC could seek to explore (e.g. tax treatment of payments to overseas social security schemes).

Questions





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