

Short-term business travel to the United Kingdom

Short-term business visitors (STBVs) coming to the United Kingdom (UK) often trigger unexpected tax and reporting obligations for themselves and their employers.

Such visitors are generally employees working in the UK for a short period of time who continue to maintain tax residency in their home jurisdiction, where they hold strong ties. These reporting obligations can place significant administrative and tax burdens on multinational companies that may be unaware of their exposure to penalties and other regulatory risks. It's therefore important that employers and employees are aware of the tax implications of working in the UK, and plan travel and reporting accordingly.

Tax residency

UK tax residency is determined by a statutory residency test (SRT), which is a set of rules that determine whether an individual is tax resident for a particular tax year, based on the number of days they are present in the UK and how many ties they have to the UK. If an individual is tax resident in the UK under the SRT, but also tax resident in another jurisdiction, the applicable tax treaties will need to be considered. As the UK tax year is from 6 April to the following 5 April, and is therefore not co-terminus with many jurisdictions, an individual can have multiple residency positions during a tax year if provisions in a tax treaty apply.

Individuals who are tax resident in the UK are taxable on worldwide income and gains, unless they are domiciled outside the UK and claim the remittance basis of taxation. An individual claiming the remittance basis is only taxable in the UK on income and gains which either arise in the UK or are transferred to or enjoyed in the UK. Domicile is a legal concept with specific meaning to UK tax law, and in some cases detailed review of an individual's personal history will be required to establish legal domicile. There are also tax costs involved with claiming the remittance basis and the rules are complex. Those seeking to apply the remittance basis of taxation should therefore take professional advice.

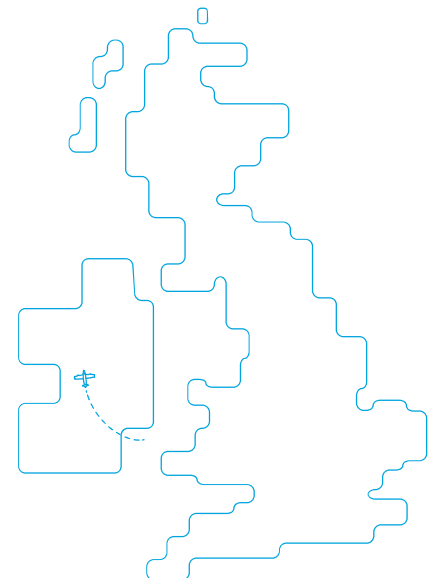
Individuals who are not tax resident in the UK are only taxable in the UK on UK source income and certain UK gains. UK source income includes employment income associated with any days working in the UK, even if the work is performed for a non-UK employer and relates to non-UK clients. STBVs generally fall within this category.

Documentation

We advise employers to maintain records of employee travel and to regularly review their global business travellers to identify potential issues. The UK tax authority (HMRC) will expect employers to have clear records of employee travel, and a review of these records will often form part of any compliance review.

Immigration

Internal immigration controls should be in place to ensure that STBVs are only carrying out business activities permitted by their visa or work permit status in order to avoid putting the business at risk. Border controls globally are becoming more stringent, which engenders a greater risk of non-compliance.



Things to consider

Reporting requirements

In the absence of an alternative arrangement agreed with HMRC, UK income tax and social security (national insurance contributions, or NICs) must be withheld through the Pay As You Earn (PAYE) system on earnings for any days a short-term visitor spends working in the UK.

These alternative reporting arrangements remove the administrative burden of applying PAYE to short-term visitors. There are different arrangements for when there is a relevant tax treaty between the UK and the visitor's home country, as described below. In all cases, there are conditions that need to be met by the employer and employee for the alternative arrangements to apply.

Treaty Based Visitors

The UK has tax treaties with many countries, which often apply to ultimately exempt any tax burden on a short-term visitor to the UK. STBVs from countries where there is a valid tax treaty with the UK can therefore be reported on an Appendix 4 agreement. This alleviates the need for other reporting.

The information required for the Appendix 4 report depends on the number of days each visitor spends in the UK. For visitors with a substantial amount of time in the UK, further evidence of home country residence may be due. It may also be necessary to obtain in-year approval from HMRC that the Appendix 4 agreement can apply to that visitor.

The Appendix 4 agreement cannot apply in some situations, such as when costs are recharged to the UK entity or when the employee comes from an overseas branch of a UK employer.

Non-treaty Based Visitors

Where there is no treaty to apply, or if the conditions of the Appendix 4 agreement are not met, a visitor's employment income is subject to UK tax and PAYE reporting from day one.

While there is no exemption that can be applied, there is an administrative easement via a special payroll arrangement known as an Appendix 8 payroll. This annual payroll submission covers all visitors for the preceding tax year.

As all visitors are reported at the same time after their travel for the entire year is known, the Appendix 8 payroll significantly reduces the administrative burden on visitor reporting. It also removes the strict deadlines which would otherwise apply under real-time information reporting.

Important thresholds

60 days – Appendix 4 inclusion criteria are less strict where the visit to the UK is less than 60 days in total. Additionally, the Appendix 8 agreement cannot be applied for individuals with more than 60 workdays in the UK in the tax year.

90 days – Business visitors who exceed 90 days in the UK will need to provide evidence of continuing residence in their home country with the Appendix 4 report.

150 days – Business visitors who are expected to exceed 150 days in the UK need to be confirmed with HMRC as soon as it is expected that the employee will exceed this threshold (ie before the Appendix 4 report is completed).

183 days – After 183 days the treaty exemptions cease, and an individual cannot be reported on an Appendix 4 agreement. For many countries, this test is on a rolling 365-day period, not just the UK tax year.

Transfer Pricing

In situations where individuals are generating profit through the activities being undertaken on short-term travel in the UK, the organisation may need to apply a transfer pricing methodology to recognise any attributable revenue and expenses.

Things to consider (continued)

Social Security and certificates of coverage

The UK's social security system, national insurance (NI), follows different rules to tax. The UK has reciprocal agreements for social security with some countries. Such agreements allow employers to apply for a certificate of coverage, which keeps the individual within home country social security throughout the duration of the certificate.

In the absence of a reciprocal agreement, certificate of coverage, or other international agreement, the default rule in a business visitor situation is that NICs are not required for the first 52 weeks which a visitor works in the UK as long as they:

- remain not ordinarily resident or ordinarily employed in the UK; and
- as part of their employment pursued outside the UK, for an employer with a place of business outside the UK, work for a limited time in the UK.

While this will cover most short-term visitors into the UK, for longer assignments, or for visits where the criteria may be in doubt, UK social security may be due from day one of UK work. It is possible for a visitor to be exempt from tax due to a tax treaty, but still be subject to UK social security. If this is the case, a 'social security only' payroll may be required.

Away from home expenses

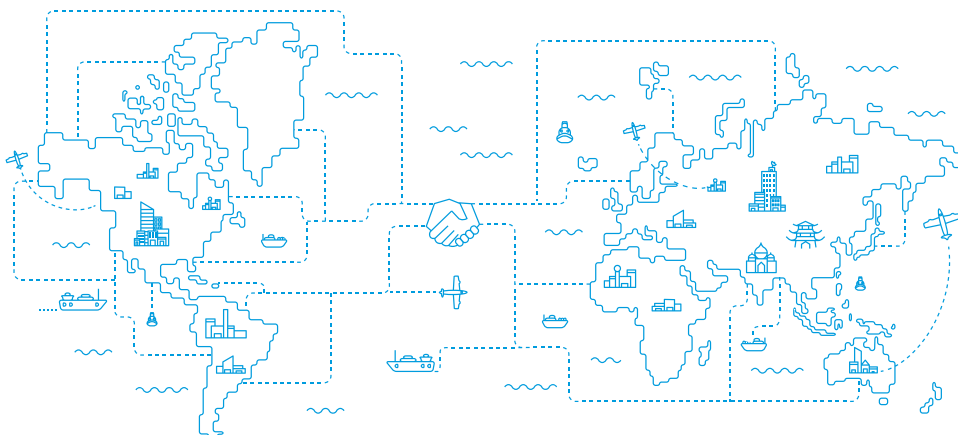
Typically, employers will pay or reimburse the travel and other expenses incurred by their employees while away from home. If the reimbursed expenses necessarily relate to short-term business travel, they will not generally be included in the employee's taxable remuneration for UK tax purposes. However, certain arrangements may give rise to taxable remuneration that is required to be reported either via PAYE, or under other benefit reporting systems (eg form P11D or under a PAYE Settlement Agreement).

Permanent establishment

Depending on the business activities carried out by the STBV, it is possible for the individual to create entity-level tax filing and payment obligations for the employer. This could occur if the employee's activities constitute a permanent establishment (PE) or taxable presence.

If a foreign company has a PE in the UK, the company will be taxed on the profits that are generated through activities in the UK. This creates a potential exposure to tax audits focussed on determining the revenues associated with the activities conducted in said jurisdiction.

While treaties may provide relief where the STBV's activities do not constitute a PE, companies must check the facts and circumstances of each situation against local laws and employers should develop a mitigation or compliance strategy as appropriate.



Checklist

- ✓ **Payroll tax exposure:** Payroll compliance should be monitored by the company. Globally mobile employees are considered an area of risk of non-compliance by HMRC. It is advisable to have an employee agreement in place documenting the length of the employee's short-term travel.
- ✓ **Immigration risks:** It is imperative that STBVs adhere to immigration laws globally. Any visa/work permit requirements should be identified prior to travelling to other jurisdictions.
- ✓ **Corporate tax risks:** The employee's activities in the host country can create tax filing and payment obligations at the corporate level. The applicable tax treaty should be reviewed, as a mitigation strategy may need to be put in place.
- ✓ **Regulatory risks:** Local requirements must be considered to reduce the possibility of triggering any regulatory issues in the host country.
- ✓ **Reputational risks:** There is increased pressure on multinationals to show that they have a process in place for monitoring STBVs and managing risks of noncompliance.



How can RSM help?

Non-compliance with local requirements may lead to financial and reputational risks and exposures that could put business objectives and projects at risk if international jurisdictions refuse an employee's entry. Failing to meet local requirements may hinder expansion to new markets, lead to monetary penalties and expose the organisation to legal challenges from employees and authorities.

The reporting obligations described above need to be carefully managed to ensure that all requirements are met and that tax liabilities are minimised. Organisations may want to establish a compliance checklist in connection with their short-term business travellers.

What we can do

RSM offers a senior professional-led service that can advise on the data collection, record keeping, and risk management surrounding STBVs to the UK.

We utilise bespoke software to manage large populations of visitors and proactively advise on thresholds. We also utilise more practical reporting methods with clients who only need to manage a handful of globally mobile employees. Our international experts will provide clarity regarding the complex tax compliance requirements that business travellers face globally.

Other jurisdictions

While this document focusses on travellers to the UK, RSM has the international presence and expertise to provide clarity on the complex tax requirements involved with business travellers around the world.



Anne-Marie Welch

Head of Employer Solutions Group

+44 (0) 20 3201 8000

Anne-Marie.Welch@rsmuk.com

25 Farringdon Street,
London, EC4A 4AB

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rsmuk.com

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