



GES NewsFlash

UK — Full time employment abroad and duties in the UK: An update

May 25, 2011

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Summary

On 17 May 2011, Deloitte met with HM Revenue & Customs (HMRC) to explore further HMRC's guidance on the meaning of full-time employment abroad.

By way of background, an employee who leaves the UK to work outside the UK under a full-time contract of employment that spans at least one complete UK tax year will normally be regarded as not resident and not ordinarily resident for UK tax purposes. The key question for many employees is not whether they are employed full time abroad but rather whether duties back in the UK have the potential to jeopardise their non-UK resident status.

As explained in our GES Newsflash of 1 April 2011, HMRC released guidance on 31 March 2011, which stated that "HMRC will generally accept that working in the UK for fewer than 10 days in a year will not by itself prevent an individual claiming they have made a break with the UK because they are working full time abroad." This statement raised a number of questions which were discussed at the meeting on 17 May:

- The guidance is not intended to signal a wholesale change in approach and in general HMRC do not expect the 10-day test to result in a significant number of employees having to reassess their residence status.
- The reference to "fewer than 10 days" is a reference to fewer than 10 substantive workdays. Days spent in the UK performing duties regarded as merely incidental to the main duties performed outside the UK do not count towards the nine-day limit.
- A day will count as a substantive workday if a single substantive duty is performed in the UK during the day.
- The 10-day test is a guide, not a definitive watershed. HMRC will consider the full facts and circumstances although they would not be drawn on what

these facts and circumstances might be or how much weight would be attached to each.

- Each tax year needs to be considered separately which means that an individual working outside the UK could be regarded as in full-time employment abroad for one or more of the years under consideration but not for the entire period.
- Individuals should take the guidance into account when preparing their 2010/11 UK tax returns.

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Deloitte's view

This advice is as far as HMRC are prepared to go in providing general guidance. Individuals seeking to rely on the full-time employment abroad test should review their position carefully. There are aspects of the guidance that provide some comfort and aspects that are not so helpful. We welcome HMRC's primary focus on whether the individual is employed full time abroad (as opposed to part employed in the UK). This should reduce, if not remove, concerns that dealing with "substantive" e-mails or telephone calls on 10 separate days in the year makes an employee resident. HMRC says that the full facts and circumstances need to be borne in mind and we would expect one of these to be the length of time an individual spends performing particular duties in the UK. Unfortunately, there is no guidance as to what is the maximum acceptable time to HMRC beyond nine days.

HMRC will apply the guidance to 2010/11 and 2011/12 tax returns and any open returns for past years. Individuals with 10 or more substantive workdays in the UK during 2010/11 should review their position carefully before filing their UK tax return for the year and take professional advice as and where appropriate. Individuals proposing to apply for a Pay As You Earn (PAYE) "no tax" code on going abroad should also take this guidance into account in reviewing whether they are likely to break UK residence.

Employers should also consider carefully the potential impact the guidance may have on their assignee populations. Where possible, contracts and assignment letters should make plain that the individual is employed full time abroad — if that is the case — and assignees should be warned about the tax impact of spending too much time working back in the UK. If the employee is resident, employers should satisfy themselves that they are operating PAYE and accounting for National Insurance contributions correctly.

People to contact

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