

E-Tax Consulting

Advising companies and individuals on UK Employment, Expatriate and Personal Taxes

Non-UK Resident Directors on the Board of UK Companies

Who should read this article

- UK companies that have Non-UK Resident Directors who sit on the Board.
- The Non-UK Resident Directors who spend time working in the UK on an ad hoc basis e.g. to attend Board meetings/carry out other Board duties.
- The Non-UK Resident Directors who are either unpaid, receive a Director fee or a reimbursement of their expenses (travel, accommodation etc) from the UK Company in coming to the UK and carrying out their Director duties.

Summary

Non-UK Resident Directors on the Boards of UK companies will be considered as employed by or office-holders of the UK companies. Therefore, there is a requirement to withhold UK PAYE on a proportion of their remuneration received on any Director duties carried out in the UK. This article provides an overview of some of the key considerations for you as an employer from both an income tax and social security perspective.

Non-UK Resident Directors (NRD) - Tax

An individual who is not resident in the UK for tax purposes is still subject to UK tax on any UK-sourced income.

Fees received for attendance at Board meetings in the UK are UK-sourced because the duties are performed in the UK. UK tax will therefore be due under UK domestic

legislation. This will remain the case even in situations where the NRD is not separately remunerated for the directorship e.g. an individual might be paid a single fee or salary for worldwide duties, so if that person attends board meetings in the UK, HMRC would expect a portion of their total income to be allocated in respect of the UK directorship and taxed accordingly.

The responsibility for withholding tax in this case under PAYE rests with the UK company.

There may therefore be instances where part the Director's income is subject to double taxation in the UK and in their country of residence. In such situations, the double tax treaty between the 2 countries should provide a credit for any double taxation suffered (capped at the tax due in the home country).

Non-UK Resident Directors (NRD) – National Insurance (NI/Social Security)

The position regarding UK NICs is determined according to where the NRD comes from and the frequency and length of visits to the UK.

NRD comes from a country within the European Economic Area or Switzerland

The general rule is that the NRD will be liable to pay UK NICs unless he/ she holds a Certificate of Coverage (A1/E101) which confirms exemption from UK NIC for the NRD and the UK company.

NRD comes from a country with which the UK has a Reciprocal Agreement on social security.

Depending on the terms of the particular agreement, the NRD may be able to obtain a Certificate of Coverage from the social security

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authority in his/her country of residence.

NRDs from a country outside the EEA and with which the UK does not have a Reciprocal Agreement on social security.

It is not possible to apply for a Certificate of Coverage. In this case, a special concession may apply (see below) if the NRD complies with the conditions.

Special Concession

The following conditions must be met to exempt the NRD from UK NI under the special concession:

- The NRD attends a maximum of 10 board meetings in a tax year;
- Each visit lasts no more than two nights at a time; or
- If the director attends only one board meeting in a tax year, the visit lasts no longer than two weeks.

Care should be taken in applying the concession, in particular where the non-resident director holds multiple directorships in the UK that may affect the number of visits.

Non-UK Resident Directors – Expenses

Companies will typically reimburse expenses for NRDs that relate to their attendance at a UK board meeting, including flights to the UK, overnight accommodation and subsistence.

The UK tax treatment of these expenses will depend on whether the UK is considered a permanent workplace. HMRC has recently provided clarification in relation to the assessment of temporary workplace for a non-executive director. The updated guidance includes an example of a non-executive director who travels to board meetings at locations that can be considered temporary if they do not have a regular geographic location.

Next Steps

The issue of tax compliance for board directors is complex from a tax and social security perspective.

Companies will need to review their Board director arrangements to ensure they are compliant and can mitigate the risks from a cost and reputational perspective.

If you have not previously considered your Non-Resident Director population from a UK income tax and social security perspective, we would recommend that you conduct a full compliance review.

It is becoming increasingly common for companies to approach HMRC on the basis of a voluntary disclosure where Non-Resident Directors are named in the accounts but are not included on the payroll. Additionally, HMRC are focussing on this area as a natural extension to the recent change in approach to Short Term Business Visitors. We would be pleased to conduct a review, discuss the appropriate actions and provide further guidance and support as required.

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About E-Tax Consulting

E-Tax Consulting was set up in 2016 to provide employment, expatriate and personal tax services. With over 11 years of Big 4 experience, we are ideally placed to provide high quality advice which is competitively priced. We value all our clients and to demonstrate our commitment, we guarantee the following: -

- **Exceptional client service** - Guaranteed same day response times to client queries without compromising on quality.
- **In-depth tax knowledge** - Over 10 years' experience working for the largest professional services firms. We provide advice to manage our clients risks whilst remaining practical and commercial.
- **Collaborative approach** - Free introductory call/meeting to better understand your needs and how we can support you.
- **HMRC contacts** - We have a wealth and breadth of experience in negotiating large settlements and securing tax refunds from HMRC across all areas of employment, expatriate and personal taxes.
- **Competitive pricing** - We value our clients and our pricing structure is competitive and on substantial projects is dependent on the feedback we receive from our clients.
- **Tailored advice** - We do not adopt a one size fits all approach and our advice is tailored to your specific circumstances.

Contact Us

Aman Sood
Director
Aman.sood@e-taxconsulting.com
+44 (0) 77 928 12038
www.e-taxconsulting.com