

Q&A

The responses below are general guidance on tax, social security and payroll matters only and should not be relied upon. Advice should be sought before taking any action in order that all facts and circumstances may be considered.

- 1. We have an employee who has a holiday home in Spain and wants to go out there for two weeks with this family and he will take his laptop and do work there, rather than work from home in the UK. Is that ok?**

For this short duration of time, there should be no issues from a tax, social security or payroll perspective. PAYE/NIC should continue as normal. Any duties in Spain should be exempt under the UK/Spain double tax treaty provided that the employee works in Spain for 183 days or less in any 12-month period, is paid from the UK and the cost of the employee's remuneration are not borne by a branch or subsidiary in Spain.

- 2. We have a Swiss national whose employment contract with our UK-based company started on 13th July but our UK office is closed until 31st August, so he is currently working from home in Switzerland. Can he be paid on the UK payroll for July and August?**

In summary, in these circumstances, yes you can. Technically, it would be possible for you to apply for a No Tax code for PAYE on the basis that the individual is non-UK resident and is not working in the UK. However, by the time you get the code through, it is probable that the individual will have started work in the UK. However, I would point out to the employee that they will need to review their personal tax position as, in these circumstances, they will have a tax liability in Switzerland on the income that they have been paid from the UK (on the basis that they are currently resident in Switzerland and are performing duties there). They would need to claim a refund of the PAYE (by filing a tax return) and settle the Swiss tax due (by filing a tax return in Switzerland). There are other ways to manage this and happy to have a chat (no cost) if you would like to talk through. However, from a pure UK employer compliance perspective, in these circumstances, I would suggest PAYE/NIC as normal. If they are still overseas after August, I would rev-review as there may be other considerations.

3. How concerned should employers be about GDPR with employee working in other locations?

This is really a legal matter and so not something on which I can provide you with any guidance. Some of our clients are considering this and consulting with lawyers to make sure any risks are covered off. As far as I am aware there is no relaxation to the GDPR rules as a result of COVID-19 so I would suggest is certainly something to cover off.

4. What about where someone does that more regularly (with the Spain working example in the Q1) and regularly splits their time between their properties in Spain and UK?

If an employee is working between Spain and the UK and they are a UK resident and national, then normally they will be exempt from income tax in Spain on their duties there under the UK/Spain double tax treaty where the individual spends less than 183 days or less in Spain in any 12 month period. This assumes that the individual is paid from the UK and the cost of the employee's remuneration is borne in the UK. However, you must be careful in these scenarios, however, because it is possible that the employee's duties in Spain trigger a corporate presence for the UK employer (which would mean registration of a branch, payroll in Spain etc.). Also, depending on the circumstances, it is possible that the individual becomes resident in Spain and non-resident in the UK under the double tax treaty. This would completely change the tax position.

Finally, care also needs to be taken regarding social security which is governed by EU regulation in these circumstance (we are still bound by EU regulations in this area until 31 December 2020). Normally, social security will be due in the country in which the individual is 'ordinarily resident' (i.e. normally lives), provided that they work at least 25% of their duties in that country. Assuming that they normally live in the UK and perform at least 25% of their duties in the UK, then UK NIC should be due and no social security should be required in Spain (provided that a valid Form A1 is obtained from HMRC). However, depending on the circumstances, it is conceivable that the social security obligation may switch to Spain. If this happens, even where there is no corporate presence in Spain, the UK company would be obliged to register for social security in Spain under the EU rules.

5. What defines a point of presence in another country?

The response to this answer depends on the context and what you are considering. However, when looking at whether people may be exempt from tax in another country under a double tax treaty, you need to consider all time that an individual is physically present in a territory (working and non-working) when determining whether they fall at or beneath the 183 days threshold.

6. Would you recommend completing an A1 sooner if an employee is likely to be outside the UK for nearer 6 months?

Ideally, yes. Whilst I think it is not normally essential (i.e. because Form A1 can be obtained retrospectively), I think for a little effort it is worth getting this in place now, especially if there is a possibility that the position may be extended.

- 7. We have a staff member who we sponsored from the US and came to the UK end of Feb'20 to the UK to work. Her 1st payroll month was Mar'20 so didn't qualify for Furlough. Is that right? Also, she is now being terminated as the company is not doing too well. Is there anything that can be done with her visa as she will be jobless and will have to return home?**

Correct, you would be unable to claim where there was not payroll prior to 19 March 2020. The visa is an immigration matter and do would need legal input. However, as guidance, normally a visa issued by the employer under a sponsorship licence would be specific to that employer.

- 8. Are organizations applying for A1/Certificates of coverage for their displaced temporary workers?**

In my experience, no. Generally, employers are waiting to see how long displacements last. Form A1s can be applied for retrospectively.

- 9. What is National Insurance position for people who have gone back from the UK to another EU country and now commute between the UK and that country**

Regarding daily commuters, the position is always tricky (even pre-COVID-19) within the EU. The reason for this is that, where someone lives in another EU Country (say, France), but works for a UK Company, it is possible that they trigger social security obligations in France for the UK Company where they also perform duties in France (e.g. from home, in the evenings, at weekends etc.). COVID does not change this and may make compliance issue more difficult where, for example, the commuter now does much more work from home in another EU country.

- 10. We have an employee who wants to travel across a number of different EU countries over a 6-month period. Is this ok?**

From a tax and social security perspective, this is fine. Assuming they are normally UK resident, are on the UK payroll and continue to work, they should continue to be subject to PAYE and NIC via payroll. Generally, the employee should not trigger tax overseas on the basis that we have a double tax treaty with all EU countries and that enables exemption from tax in the host country where you spend 183 days or less in that country (amongst some other conditions).

As a precaution, I would suggest the employee obtaining Form A1 from HMRC if the employee is going to be working in each country. Some of the EU countries have become much stricter when it comes to social security and asking individual to prove that they contribute to the UK system (which is, in effect, what the Form A1 does).