

BUSINESS IN THE UK **A ROUTE MAP**





chapter 08

**THE EMPLOYMENT OF STAFF,
INCLUDING LOCAL HIRE AND
EXPATRIATE (INBOUND AND
OUTBOUND)**

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EMPLOYING STAFF FOR THE FIRST TIME

There are a number of aspects to consider when employing staff for the first time:

- Decide how much to pay the employee: they must be paid at least the National Minimum Wage
- Check if they have the legal right to work in the UK (employers may have to do other employment checks as well)
- Check if there is a legal requirement to apply for a Disclosure and Barring Service (DBS) check (formerly known as a Criminal Record Bureau (CRB) check) if the business operates in a field that requires one, eg working with vulnerable people or security

- Get employment insurance/employers' liability insurance as soon as a business becomes an employer
- Send details of the job (including terms and conditions) in writing to each employee - employees must be given a written statement of employment if they are employed for more than one month
- Tell HM Revenue and Customs (HMRC) by registering as an employer - registration can take place up to two months before new staff are paid
- Check if employees need to be automatically enrolled in a workplace pension scheme.

A Norwegian food company was looking to grow operations in the UK. With just one employee on its payroll, the company was aiming to increase in size and therefore, was seeking greater understanding of UK payroll compliance requirements and payroll legislation.

In the UK, PAYE and NIC must be deducted (and payments sent to HMRC) each time employees are paid. The company required assistance with the registration of a PAYE scheme with HMRC and help to consolidate employee data to enable payroll set-up. The company is now better positioned to achieve further growth through its expansion within the UK market.

PENSION AUTO-ENROLMENT

Under UK employment law, most workers must be automatically enrolled into a workplace pension scheme by their employer when they start work. Although employees can personally opt out in the first month, if they do not they will be enrolled in the scheme.

Once an employee is enrolled, both the employer and the employee must make monthly pension contributions to a qualifying pension scheme (in addition to paying NIC). For employers the minimum contributions in 2019/20 are 3% of earnings between £6,136 and £50,000 but this is a tax deductible expense for the business. Employees must contribute the amount needed to make the total minimum contribution 8% eg if the employer contributes 3%, the employee will need to contribute 5% but if the employer contributes 7%, the employee need only contribute 1%. The employee will also get tax relief on their contribution.

HEALTH AND SAFETY

UK employers have to comply with a number of health and safety standards in relation to their employees - read more about UK health and safety rules for employers at: <https://www.hse.gov.uk/simple-health-safety/index.htm>

PAYROLL REQUIREMENTS

All UK payrolls must operate under a system of Real Time Information (RTI). This means that all employees' pay and deductions must be reported to HMRC on or before each payday.

To set up a payroll, a business must first register as an employer with HMRC either online or over the phone. The business will then need to choose payroll software. For businesses with fewer than 10 employees, HMRC provide free software. Businesses with more than 10 employees, should purchase software that is recognised by HMRC.

Employers must collect employees' details (eg full name, address, date of birth, and National Insurance Number) and keep these for a minimum of three years from the end of the tax year they relate to. HMRC must be informed about new employees. Employers can use the new starter checklist to provide the information and register them on the payroll using the monthly Full Payment Submission (FPS).

For each pay period, employers must report and record their employees' pay, including any deductions (eg NIC). Employers must also record the employer's NIC payment. This should all be reported on payslips and reported to HMRC on the FPS.

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There is an employment allowance to reduce the NIC during the year by up to £3,000, but it cannot create a repayment. If a business employs an apprentice aged under 25 using an approved training programme, employer NIC is no longer payable up to the Apprentice Upper Secondary Threshold (See [Chapter 6](#)).

Once an employer has registered a payroll, it will receive notification from HMRC with the employer's PAYE reference number and Accounts Office reference. The employer will need these to make the relevant payments of tax and NIC to HMRC. The payments can be made electronically, and by post (only if the employer has less than 250 employees).

In some circumstances, the Direct Collection scheme can apply to employee NIC. The collection of NIC would be quarterly during the year. Any income tax due will be collected through self-assessment.

An employer will also then need to enrol for PAYE Online in order to file monthly payroll reports and receive other information directly from HMRC, such as tax coding notices. Alternatively, a business may choose to use a payroll provider or bureau. An employing entity is also responsible for ensuring that an individual is engaged on the correct basis. In other words, the employer must decide if an individual can be engaged on a self-employed basis, ie paid directly without deduction of PAYE and NIC.

A leasing management platform company has recently established a new office in the UK with only a handful of employees. Known for creating innovative leasing technology for the commercial real estate industry, the company helps landlords and brokers increase visibility, save time, and reach more tenants. They do this by providing real time leasing analytics on the performance of real estate portfolios.

Having not conducted business in the UK before, the company had little information about UK statutory requirements of setting up a business, including payroll legislation.

Working with BDO, a full reconciliation of payroll calculations and employee data was undertaken. In addition, BDO advisers were able to offer on-going statutory advice, registering a PAYE scheme with HMRC and assisting with the resolution of liability payments from the previous tax year. As a result, the company is now looking to expand their operations further.

All UK based payroll services can be supported internationally via BDO's global payroll services.

OFF-PAYROLL WORKERS

Many business operating in the UK for the first time will initially wish to use consultants and agents rather than directly employing their own staff. This is a low impact way to operate but care should be taken that the workers used are genuinely treated as self-employed or operating correctly through their own company under UK employment and tax laws - mistakes in this area can be costly. The Government has already tightened the rules for off-payroll workers used by public sector organisations (eg the National Health Service and other Government departments) and these rules are being extended to medium and large sized organisations in the private sector from 6 April 2020.

WHEN – will a worker be treated as self-employed?

In theory, whether an individual is treated as an employee or self-employed is a matter of fact dictated by the nature of the arrangements in place between the individual and the engager. In practice, this is often a contentious issue in the UK as new business models in the 'gig' economy have evolved. It is vital to take expert advice on contractual arrangements with any workers a business uses so that the business can achieve certainty on what taxes it should pay and what rights the workers can claim.



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SHARE PLANS AND INCENTIVES

The UK is quite unique in that it offers a number of tax advantaged share schemes for employees. The main intention of these schemes is to move share-related gains out of income tax and into capital gains tax, which are taxed at a lower rate for those employees resident in the UK.

There are two discretionary schemes under which the company can grant an option to acquire shares: the Enterprise Management Incentive (EMI); and a less generous scheme, the Company Share Option Plan (CSOP). It is important that companies seek advice if they are interested in implementing one of these schemes as a number of conditions must be met, for instance, in relation to the size of the company or how it is controlled, before the company can qualify.

Read about [BDO's reward services](#).

NON-UK EMPLOYEES

If there are non-UK based employees working for a UK business, there are a number of factors to consider:

IMMIGRATION

The citizens of nearly all EEA countries, as well as citizens of Switzerland, have the right to live and work in the UK. This includes setting up a business. This 'freedom of movement' for EU and EEA nationals is expected to change when the UK leaves the EU although, currently, a transitional agreement is expected to maintain these rights until 31 December 2020. Citizens of British Commonwealth countries have a similar entitlement if one of their grandparents was born in the UK.

EU, EEA AND SWISS CITIZENS RESIDENT IN THE UK BEFORE BREXIT

EU, EEA and Swiss nationals will have until 30 June 2021 (31 December 2020 in the event of a no-deal Brexit) to apply for settled status provided they were legally resident in the UK before 1 January 2021 and have established five continuous years of legal UK residence by the time they apply. Unless the application is declined on the grounds of criminality (or because the individual was not legally resident at Brexit day), the UK Government will be obliged to grant all such applicants settled status.

Those who will not meet the five-year residence test before the application deadline will not qualify for settled status but can instead get a pre-settled status. This will allow them to remain in the UK until they have established five years residence and can then apply for settled status.

The Government says it wants to make the application process as streamlined as possible and that it will cost no more than it would to apply for a UK passport.

Details of the EU Settlement Scheme can be found at www.gov.uk/settled-status-eu-citizens-families.

EU, EEA AND SWISS CITIZENS ENTERING THE UK AFTER BREXIT

In the event of a no-deal Brexit (or any Brexit transitional period ends), the ability to move between the UK and the other EU member states will be restricted. After Brexit, EU citizens moving to the UK will need to apply for a 36 month temporary immigration status if they want to remain in the UK after 31 December 2020. Applications for the European Temporary Leave to Remain (Euro TLR) will be free and can be made after arrival in the UK.

EU citizens arriving in the UK after Brexit who do not apply for Euro TLR must ensure they leave the UK by 31 December 2020, unless they have obtained UK immigration status under the new points-based system being introduced from 1 January 2021.



NON-EU CITIZENS ENTERING THE UK AFTER BREXIT

Individuals from non-EEA countries moving to the UK for business purposes need to obtain a visa to allow them to live and work here. The UK authorities operate a tiered points-based system for skilled migrant workers with a range of different visas available, and the employer must be licensed to be able to offer a legal employment contract to a foreign worker. For example, a Tier 2 general work visa allows an individual to work in the UK for up to six years provided they continue to work for the same sponsoring employer. Depending on the individual's circumstances and the type of visa needed, application costs range from hundreds to thousands of pounds and it can take up to 30 days for an application to be processed. Details of the tiered system can be found at www.ukba.homeoffice.gov.uk.

VISAS FOR SOLE REPRESENTATIVES OF AN OVERSEAS COMPANY

Well-established companies based outside the UK can apply to send a senior employee (who is not a controlling shareholder) to help establish a trading presence in the UK. However, it may be preferable to apply for a visa under the highly-skilled worker programme as this type of visa is generally more flexible.

INVESTORS

Investors are able to qualify for a visa based on their ability to invest £2m in the UK.

Funds must be invested in UK government bonds, share capital or loan capital in active and trading UK registered companies. Investment should not be in companies mainly engaged in the investment, management or development of property.

INNOVATORS

The innovator visa is for those wanting to set up a business in the UK. Individuals must be able to show that the business idea is new and viable; individuals investing in an existing business will not qualify. Individuals must also obtain endorsement from an authorised endorsing body.

Unless being provided by the endorsing body, an individual must have at least £50,000 investment funds.

Read about [BDO's expatriate tax services](#).



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HEALTHCARE

Free healthcare is available to all UK residents which is a major advantage to employers.

Furthermore, under the National Health Service (NHS), every civilian lawfully living in the UK is entitled to register with a local medical general practitioner (GP) on the NHS panel responsible for his or her geographical area. In addition to providing general medical advice or treatment, the local GP is an important link between the patient and the rest of the NHS. If the patient requires surgery, in-patient treatment or other specialist consultation and treatment, he or she will be referred to the appropriate specialist by the GP.

Although the service provided by the NHS is generally adequate for minor ailments or treatment requiring emergency attention, many people take out private medical insurance in order to receive more prompt treatment. This also gives them more control over the timing of any hospital visit required and the standard of accommodation provided. However, the cover provided by insurance will often not include major surgery or the treatment required for serious chronic conditions.

All nationals from outside the EEA coming to live in the UK for longer than six months must pay a 'health surcharge' to gain access to

the NHS (payable at the same time their visa application is made online). Certain groups are exempt from the surcharge, including Australia and New Zealand nationals, and Tier 2 Intra-Company Transfer visa-holders.

After Brexit the Government intends to introduce a new immigration system for those coming to the UK, including EEA nationals. At the date of [publication](#) it is not known which EEA nationals the health surcharge will apply to post-Brexit.

LOCAL TRANSFERS TO THE UK

This is the simplest scenario for inbound employees to the UK. They will move onto UK payroll with immediate effect, and will be subject to UK PAYE withholding tax and National Insurance deductions.

There are no particular tax consequences associated with this. However, a tax reconciliation is likely to be required at the end of the tax year, as the individual will be issued with an 'emergency tax code' when they join the UK payroll because they have not previously been employed in the UK. This may not capture their personal circumstances adequately, so an under-payment or over-payment of PAYE withholding may arise.

SHORT-TERM ASSIGNMENTS/VISITS TO THE UK (LESS THAN 6 MONTHS)

It is a common misconception that PAYE withholding is not required for short-term business visitors to the UK. However, the default position is that employers are obliged to start withholding tax from the individual's first day working in the UK.

Many countries have a 'double taxation agreement' in place with the UK. The majority of these agreements allow an exemption from UK tax for employees working for short periods in the UK, assuming that a number of conditions are met, most importantly:

- The individual works in the UK for less than 183 days in a year
- The costs of the individual's employment remain in their home country (broadly speaking).

Under these circumstances, it may be possible to put in place an arrangement known as a 'Short-term Business Visitors Agreement' (STBV) with HMRC which offers a relaxation of these strict PAYE rules.

If STBV treatment is not available, either because the employee comes from a country with which the UK does not have a double tax agreement, or because they do not meet the conditions of the agreement, then the employer must withhold PAYE from the employee's first UK work day. This can cause issues in terms of dual withholding (in both home and host countries) and requires additional compliance (including filing tax returns) to avoid double taxation of the same income.

HMRC has published guidance indicating that where employees who do not qualify for STBV treatment spend fewer than 30 work days in the UK each tax year, it will be possible to report and tax an appropriate amount of their annual salary via the UK payroll in a single submission at the end of the tax year. To do this the employer will need to enter into an agreement with HMRC first.

Read about [BDO's international assignment services](#).

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LONG TERM ASSIGNMENTS TO THE UK (MORE THAN SIX MONTHS)

Where an employee remains employed in their home country but comes to work in the UK for more than six months, they will almost certainly be subject to PAYE on their salary (regardless of whether their salary is paid outside the UK), because of the host employer's obligations. Liability to UK National Insurance Contributions would need to be reviewed.

If the employee remains taxable in their home country, double taxation (and possibly dual withholding) is likely to occur. Clearly, this could have a cash flow impact on the individual, and the employer may then decide to settle the UK tax on the individual's behalf. The home country should accept a credit for UK taxes paid to ultimately restrict this double taxation burden (via the home country tax return). The resulting refund relating to the credit would be payable back to the employer. However, the home country will only give credit

for taxes up to the employee's marginal rate of tax (for example, if the UK tax is 40% but the home marginal rate is 35%, credit will only be given for 35% - so the balancing 5% will be lost). Whether the individual is responsible for the shortfall or not is a policy decision for the employer to make.

Certain assignment-related tax relief claims may also be available to such employees, such as temporary workplace relief or overseas workday relief. Any assignment policies should be carefully structured to ensure that relevant claims are not prevented and the opportunity for tax efficiency lost.

SOCIAL SECURITY

The general principle of social security is that individuals pay contributions where they work. There are exceptions for individuals working outside their home country for temporary periods. For these purposes, the world can broadly be split into three parts:

EEA and Switzerland: where an individual is posted temporarily to the UK from another EEA country (currently 2 years), they should remain subject to social security in their home country. An 'A1 certificate' (previously known as E101) should be obtained from the home country authorities to support this position.

Currently, any individual covered by the EU regulations will only be subject to the social security legislation of a single member state at any particular time - so there can be no double contributions on the same income. The basic rule is that contributions are paid where work is performed. Until the terms of any post-Brexit agreements are clear, it is perhaps safest to assume that on a no-deal Brexit social security arrangements will be determined by any continuing social security agreement between the UK and the relevant EU member state. The UK does not have existing agreements with all member states, so there may be double charges in some circumstances.

Reciprocal agreement countries: there are certain countries which have 'reciprocal social security agreements' with the UK, including the US, Japan, and Canada. Where the individual is posted temporarily to the UK from one of these countries, they remain subject to social security in their home country. A 'Certificate of Coverage' should be obtained from the home country authorities to support this position.

Other countries: individuals coming to the UK on a temporary posting are subject to an exemption from UK National Insurance for the first 52 weeks of their assignment.

Read about [BDO's international assignment services](#).



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