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Answer-to-Question-_1_

Report

From: Tanvi Shah

To: Bethany Frank

Date: 09 November 2020

Subject: UK taxation and National Insurance Contributions (NIC) implications of the graduate trainee programs.

1) Introduction

This report is provided in response to an email received from Bethany Frank on 5 November 2020.

This report covers:

- Review of the current training program and identifying any tax and NIC issues.
- Review of the both proposals and identifying tax and NIC implications under both offered programs.

This report is restricted to the UK tax position and is based on the law as at 9 November 2020. The contents are prepared solely for the use of Greenson Group Ltd and no other person or entity may rely on them.

2) Executive Summary

- We have considered the current trainee rotation program and identified from the information provided that there might be underpayments of tax and NIC in 2019/20 and 2020/21 tax year. We recommend on this basis that review is undertaken to establish the relevant and potential underpayments and disclosure is made.

Penalties will apply for late payments and submissions.

- We have reviewed PROPOSAL A and it seems a cheaper option, however this may require more administration from the business and modified payroll would have to put in place, however in a long term and assume that you will have more training programs like this in the future, we suggest that this PROPOSAL is considered in priority due to the overall costs savings for the Greenson Group Ltd.

- PROPOSAL B is easier to administer as the trainees could be included under the current payroll. But as the trainees will be under direct contract with Greenson Group Ltd, due to limited exemptions when individuals are directly employed/ provided with training this will be more costly.

3) National Insurance Contributions (NIC)

As neither Brazil or South Africa have a Social Security agreement with UK, the trainees coming to the UK will be exempt for the first 52 weeks from National Insurance and no contributions will be due.

The UK based trainees and the employer (Greens Group Ltd) will continue to be subject to National Insurance in the UK through the assignments as they are habitually resident in the UK and the Greenson Group Ltd is also based in the UK.

4) Liability for UK employment tax

Where the trainees or employees will work for the UK business, then the UK business is liable to operate PAYE even though they are not the employer. Therefore, the overseas trainees coming to

the UK will be deemed to work for Greenson Group Ltd and Greenson Group Ltd will be obliged to operate PAYE.

Normally PAYE will be due from day one but there are certain exemptions from UK tax under a Double Tax Agreement which could be applied and one of them for short Term Business Visitors (STBV) is Appendix 4 agreement which relaxed PAYE obligations based on the number of days the trainees / employees will spent in the UK. The conditions that are need to be met are:

- The trainees/ employee has to be a resident in a country where it has a DTA with the UK;
The employee are expected to stay in the UK for less than 183 days in any 12 month period
- The trainees/ employees are coming to work in the UK for a UK company or UK branch of overseas company or are legally employed by a UK resident employer, but economically employed by a separate non resident entity, and
- The remuneration specified for the trainees/employees concerned is not ultimately borne by a UK branch or UK permanent establishment of non resident employer.

All of the conditions needs to be considered as all of them need to be met.

Current graduate trainee rotation

As per above STBV, Brazil does not have the DTA with the UK and therefore we do need to look at the other tests, as this will not be met.

Trainees coming from Brazil to the UK, should be either on the UK

payroll and withholding should be made via PAYE or application under EP Appendix 6 should have been made for tax equalisation purposes and payroll made under modified payroll.

We suggest a follow up meeting to confirm the tax implication in the UK in respect of the current program as if these costs were not paid through PAYE and no modified payroll is in place, you may be liable for tax and penalties may apply for any underpayments.

As the South Africa and UK has DTA in place, the first STBV test is met, we move to the second one now, the trainees will spend less than 183 days in any 12 month period, we look at 12 months rather than tax year for this purposes, but this condition is met in any case.

The remuneration is not borne by the UK employer and the trainees will remain under the non UK contract and the costs will not be recharged or borne by UK branch or permanent establishment, so again this conditions is met.

However, in any case if you (Greenson Group Ltd) have not applied for the agreement Appendix 4 to HMRC you should have processed the payments to the trainees via payroll and then any tax which was paid twice on the same income in the UK and in South Africa could have been reclaimed and DTA via self assessment by the trainees.

To give you an idea on taxable items in the UK for the current assignment I have analysed them below.

I suggest we revisit your tax and social security position to establish whether any disclosure should be made, for 2019/20 approach should be made to HMRC for any underpayments once we look into your position in more detail and for 2020/21 tax year you are still in time to update the payroll records via FPS

submission or agreement reached for Appendix 4 by 31st May following end of the tax year, 31st May 2021, however to uspoort any applications like this you should have detailed records of any vistors comming to the UK. We will be happy to assist you with this and provide you with detailed guidance. Please note that late payments and submission will apply. Like I said we can review this separately and establish how to proceed. The penalties can be reduced when the disclosure is unprompted, so this should be of assistance and prompt action should be taken.

Costs during the overseas rotations

- The trainees from South Africa

As the DTA in place and the trainees will be treaty residents in South Africa as they will have their center of vital interest there and also assume permanent home.

This means South Africa will have taxing rights. This means the UK had a taxing right over the income in relation to the UK workdays only.

Where the DTA is in place relief will apply where the recipient is present in another state for less than 183 days, remuneration is not borne by UK employer in this case and the remuneration is paid by, or on behalf of an employer who is not employer of the other state.

where relief applies this can be obtained via Self assessment by the individuals in question.

- The trainees from Brazil

There is no DTA, so only foreign tax credit could be obtained, so the trainees are not taxed twice at the same time, we could look

into this in more detail when we revisit the current programme as mentioned above.

- Travel

Where employees are assigned to a new workplace for a duration less than 24 months temporary workplace relief will apply. As Greenson Group Ltd will be classed as a temporary workplace this exemption will apply and extend to accommodation and subsistence. Therefore no reporting is needed for business travel on forms P11D and the amount is not liable to Class 1 NIC. Any costs of Visa and work permits will fall under this exemption as well.

- Pension

Where the employees are eligible employees the UK employer is required to auto enrolled them for pension purposes and deduct employers and employees pension contributions, however we would have to revisit this on whether this will apply for all trainees as we are not aware of the age of the trainees and how much they will earn to establish whether they had been eligible employees for this purposes. We will cover this during the PAYE review in due course.

In any case they could have opt out if they were enrolled but we would need to confirm this with you as well in due course.

I have noted this was covered and that the trainees should have been enrolled in any case but would be good if you could confirm what rates have been paid as the contribution levles are currently 8 % and the employer must pay at least 3%. If that was the case, no tax will arise in relation to the employees or employers contributions made. Please confirm if you have paid the minimum rates when you will have a chance.

- Holiday

In the UK individuals are entitled to min 5.6 weeks of holidays, this is calculated on 52 weeks period average from April 2020 and it was a 3 months average until April 2020 and relevant pay elements are taken to consideration when this is paid. If you unsure whether you provide the individuals with relevant amount of holidays we can revisit this for you but it is good to see that this has been included and consideration was taken but without further details we cannot comment whether you have provided the individuals with relevant amount of holiday and paid correctly but I can see that this has been considered, but if you would like a confirmation on this we can assist with this during additional review.

- Visas

Visas and permits would be free of tax.

As no trainee will be accompanied by the family member, and if that was the case as per details provided there will be no tax implications regarding this.

- Relevant training

The training provided will be exempt

- Medical requirement and insurance

Will be only taxable benefit in the UK if paid during the UK workdays. If that would be the case it would be taxable via P11D.

- Per diem allowance

As this was an allowance, it should have been subject to tax and National Insurance where applicable in the UK. Instead you should

have reimbursed the employees for the costs, see if this can be obtained for the 2020/21 tax year so this will reduce any potential tax liability going forward.

Overall, by looking at the current training program, I suggest we have a follow up discussion as there are some potential underpayments of tax and National Insurance which should be disclosed to HMRC.

PROPOSAL A

The trainees will become UK resident and they will more likely spent 183 days in the UK (we can double check exact days in the course). Application for Appendix EP 6 should be made and as mentioned above modified payroll put in place in order to calculate relevant tax. As the individuals will be non UK domicilied Overseas Workday Relief (OWR) will apply provided they have not been UK residents for the consecutive 3 years in previous 5 tax years for the next following three tax years. OWR should be applied via Appendix 6 and calculated before tax is grossed up this is to ensure they are not tax on worldwide income provided they a UK residents.

Where there is a DTA (South Africa and UK) loan agreement could be put in place and Grteenson Group Ltd could fund the payment of UK tax as a loan as the trainess would claim relief under self assessment in due course where taxes are paid, I will explain this in more details when we speak next time. The benefit in kind will not arise where the loan is below £10,000.

Proposed package should be amended so no per diems are paid instead the subsistence costs should be reimbursed and these will be exempt.

As mentioned under current program travel costs which fall within the 24 months exemption will be free of tax and this will include

accommodation and subsistence.

We can assist you with preparing the tax returns for the trainees, so we can discuss in details when we speak whether this is something you would like us to assist you with.

PROPOSAL B

1) where the individuals are employed by UK entity PAYE and National Insurance should be withheld accordingly (see ref.1 for National insurance Contributions (NIC) purposes). You would basically include the trainees into your existing payroll and account for tax and NIC as required under Real Time Information. So this would not be an additional costs or additional administration as with PROPOSAL A which already seems more straightforward.

2) fixed term contract, we would need to review them and get our legal team to do that for you to ensure your are compliant if that would be of assistance and if you do not have any legal support in house.

3) Where costs are borne by host country under Transfer Pricing rules these may not be available for deduction for Corporation Tax Purposes. We can review this position for you with our Transfer Pricing specialists

4) Any support provided in relation to immigration and travel arrangement would differ as the individuals will be employed directly by the UK entity the temporary rules discussed above will not apply. Non domiciled trainees coming to the UK to carry out duties in the UK will fall under the exemption for travel if these will be borne by employer, this will apply where the individual was non UK resident in previous two tax years and it was not present in the UK in previous 24 months. So consideration

needs to be taken on whether you will be using the same trainees as under current program when trying to establish when the exemption will apply. We can assist you with that in due course if needed.

5) Any round sum payments will be taxable as a salary relocation payment will not be relevant as the trainees would only be seconded for 6 months. We recommend that where possible costs are reimbursed to the trainees instead and revisiting the accommodation option such as renting the accommodation, we can than provide you with estimates how much this would cost and what benefit would arise on the trainee.

Next steps and recommendation

- Revisiting the current training program and tax and NIC implication and proceed with the disclosure to HMRC and updating the payroll for current tax year. We will arrange an initial call to discuss this in more detail.

- Proposal B seems to be more costly at this moment in time due to the accommodation allowance where Proposal A require additional administration due to organising the modified payroll. As we have discussed some changes to the proposed offers, especially under Proposal B, if you do not want to consider renting accommodation we suggest Proposal A is considered in priority as although there is some administration involved and additional fees with setting up the modified payroll and obtaining agreements from HMRC, this option will be less costly as the trainees will fall under lots of exemptions.