# Non-Resident Directors
## Global Mobility Compliance

JOHNSTON CARMICHAEL

### Current landscape

A Non-Resident Director (NRD) is a Statutory Director of the UK company with a tax residence status falling outside of the UK. It is common for NRDs to hold several Directorship positions globally and/or be contracted on a non-executive basis by the UK company.

As global working travel increases in a post pandemic word, it is becoming more common for NRDs to travel to the UK to attend to UK office holder duties. Whilst relief under the Double Tax Agreement (DTA) may be available for inbound employee business travel, there is no similar relief opportunity for a non-resident individual attending to UK office holder duties.

Details of UK office holders and their country of residence is public record and readily available to HM Revenue & Customs (HMRC) via Companies House. Clearly due to these factors there is a significant risk to the UK business in the form of managing UK compliance requirements.

### UK income tax position

UK Presence
By default, an NRD's physical presence in the UK to perform directorship duties triggers a UK income tax liability—even if no cost recharge is made by the overseas employer.

No Specific Pay ≠ No Tax
Even where an NRD is not separately remunerated for UK directorship duties, this does not exempt them from UK tax.

HMRC does not accept the absence of specific UK pay as a defence. Clear documentation may help ringfence visits as employment-related, but this is not a 'silver bullet'.

Attribution of Global Pay
In the absence of clearly evidenced segregation of UK duties (i.e., to demonstrate a distinction between directorship and employment duties), HMRC may attribute a portion of the NRD's global pay to UK workdays to determine the taxable amount.

PAYE Withholding Obligations
The UK company is responsible for PAYE on UK duties. Unless HMRC agrees otherwise (e.g. via a s690 direction), PAYE must apply from day one, based on full global remuneration.

Treaty Relief Limitations
Where UK visits involve both UK directorship and global employment duties, treaty relief may be available for the employment portion—but not for directorship duties.

Documenting Positions
If duties are not clearly ringfenced with supporting documentation, HMRC is likely to treat UK presence as directorship-related, resulting in a full UK income tax charge on relevant remuneration.

## UK social security position

Global social security rules are entirely separate from income tax and should be considered independently. Without proactive planning, both the individual and employer risk dual social security liabilities in both the home and host countries.

The UK has a network of Social Security Agreements (SSAs) with certain countries. Where an SSA exists, a Certificate of Coverage may be available to exempt the individual from UK National Insurance contributions (NIC). This should be reviewed on a case-by-case basis and is typically the first step in reducing NIC exposure for both the business and the individual.

If a non-resident director (NRD) arrives from a country without an SSA, a limited domestic concession may be available to prevent NIC liabilities for both parties. HMRC recently updated the criteria for this concession in its CA44 guidance (CA44: National Insurance for Company Directors), confirming it applies only to directors from non-SSA countries. The qualifying conditions are narrowly defined. In summary, the key conditions are as follows:

- The individual is from a country with which the UK does not have an SSA, and
- Only performs duties in the UK as a a company director attending board meetings, and
  Either
  (a) Attends a maximum of ten board meetings in a UK tax year, and each visit lasts no more than two nights, or
  (b) Attends only one board meeting in a UK tax year and that visit lasts no more than two weeks.

The concession is very strictly applied and a charge to NIC will arise if the above conditions are not met. Careful planning of the home country agreement status with the UK is needed and if hailing from a non-agreement location, a review of the domestic concession requirements to assess potential exposure to UK NIC.

### UK accommodation and travel expenses

Travel and Subsistence Expenses
If a UK company covers an NRD's travel, accommodation, or subsistence for UK board duties, HMRC typically treats the UK as a permanent workplace resulting in related expenses being taxable.

Review and Reporting Obligations
Taxable expenses must be reported to HMRC, with income tax and NIC applied where due. P11D reporting may be required if not processed through payroll.

Employer Responsibilities
Employers should retain clear records and evidence to support their treatment of expenses and demonstrate compliance with HMRC reporting requirements.

### Concluding thoughts

Due to HMRC focus in this area, it is more crucial than ever for UK businesses to be mindful of its tax compliance obligations in respect of NRD populations. As records of this information are available online, it is an 'easy win' for HMRC to review NRD populations and raise questions around the UK company's compliance approach.

Because of this, we would encourage company representatives dealing with employer compliance in this area to seek professional support early to pro-actively assess the income tax and social security reporting obligations.

We would recommend holding further discussion with your Johnston Carmichael Global Mobility specialists to review the best approach for your business to manage its NRD populations.

## Get in touch

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