

## Crown employees working overseas

### Section 299 Income Tax (Earnings and Pensions) Act 2003

The following guidance has been produced by HMRC.

#### Section 299 legislation

Legislation at section 299 ITEPA 2003 exempts from tax allowances paid to Crown employees where these allowances have been certified as compensation for the 'extra cost' of living overseas to perform the duties of that employment.

#### [section 299 ITEPA 2003](#)

Any amount exempted for tax under section 299 ITEPA 03 is also exempt for NICs under parallel NIC legislation.

Any allowances paid to crown employees that are not included on a valid section 299 certificate are subject to tax and NIC in the normal way\*

Any allowances paid to non-crown employees are subject to tax and NIC\*

The legislation applies specifically to allowances paid rather than to employer provided benefits.

#### How is a Section 299 Certificate obtained?

Responsibility for drawing up the section S299 certificate lies with the individual Crown body. To be valid the certificate must be given by one of the authorities listed in section 299 (2) ITEPA 03. These are:

- (a) the Treasury,
- (b) the Secretary of State,
- (c) the Lord Chancellor,
- (d) the Chancellor of the Exchequer,
- (e) the Minister for the Civil Service,
- (f) the Lord President of the Council,
- (g) the Lord Privy Seal, or
- (h) the Attorney General.

Delegation may apply where the signatory has been granted authority from one of the above listed authorities on their behalf.

#### What should be included in a Section 299 Certificate?

There is no set format for the document but the allowances to be certified as the 'extra cost' of Crown employees should be listed and the document certificated by the named authority, signed and dated.

Each allowance paid must be considered separately against the conditions of the exemption before certification.

### **Is there assistance available while drawing up a Section 299 certificate?**

While responsibility for drawing up the certificate lies with the Crown body, HMRC can provide general advice around legislation, correct treatment of allowances and understanding what represents an 'extra cost'

If you have a dedicated Customer Relationship Manager (CRM) please contact them initially. Otherwise please send queries, using the GD Technical Query stencil where appropriate to:

[govdepartments.pbg@hmrc.gsi.gov.uk](mailto:govdepartments.pbg@hmrc.gsi.gov.uk)

### **Is there a statutory definition of the 'extra cost' of living overseas?**

There is no definition of the term 'extra cost' in section 299. In the absence of a statutory definition the ordinary meaning of 'extra costs' is used.

In order to meet the conditions for exemption under section 299 each separate allowance must represent compensation for the additional costs a Crown servant may incur on being posted abroad.

Where an allowance cannot be certified as the 'extra costs of being obliged to live outside the UK in order to perform the duties of the employment' *the normal provisions for tax and NIC* will apply

### **Do I need to send the Section 299 Certificate to HMRC?**

While there is no obligation to send the signed section 299 certificate to HMRC, doing so will mean that HMRC is aware of the allowances certified and therefore exempt from tax and NICs.

Departments and associated bodies should have procedures in place to satisfy themselves that the conditions for exemption are met and the certificate should be available to HMRC on request as part of an employer review.

### **How long does a Section 299 Certificate last?**

There is no set timescale on the validity of a section 299 certificate. However, if there are any changes to either the allowances paid or to the Crown employer then an updated certificate should be considered.

### **Can a Section 299 Certificate apply retrospectively?**

No. Even if conditions for exemption would have applied, payment of allowances made prior to the date the certificate is signed then these payments will be subject to tax and NICs\*.

Under PAYE regulations payment will be the earliest of the

- Date payment physically made, or

- Date individual became entitled to the payment

<http://www.legislation.gov.uk/ukpga/2003/1/section/686>

**No section 299 certificate in place, but allowances have been paid to crown employees working overseas without deduction of tax and NICs. What do I do now?**

If you have a dedicated Customer Relationship Manager (CRM) please contact them to discuss.

Otherwise, please send confirmation of the position to:

[govdepartments.pbg@hmrc.gsi.gov.uk](mailto:govdepartments.pbg@hmrc.gsi.gov.uk)

quoting reference S299 in the subject line/heading

**Further queries?**

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**\*Unless business expenses under normal rules or exempted under alternative legislation**

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