JOINT EXPATRIATE FORUM ON TAX AND NICS: 3 JULY 2013

Auditorium, 1 Horse Guards Road, London SW1A 2HQ

Chair: David Richardson (HMRC) and Philip Paur (Deloitte llp)
Secretary: Elisabeth Adams (HMRC)

MEETING NOTE

1. Note of April meeting and Q and A log

1.1 Members requested that the answer to q.1 in the Q & A log be expanded to explain the term entity.

Action Point: HMRC to provide an updated response in the next Q & A log

1.2 Members discussed the answer to q. 1 in the Q & A log concerning short term business visitors and asked if an overseas branch of a UK parent company is regarded as an overseas entity.

Action Point: HMRC to provide an updated response in the next Q & A log.

1.3 Members discussed the answer to q. 5 in the Q &A log concerning the £10,000 limit for unremitted overseas earnings provided by the exemption in s.828 ITA 2007. If members had evidence that the limit was causing practical difficulties, they could advise HMRC accordingly.

1.4 Members discussed the answer to q.7 in the July log concerning Migrant Member relief and specific employment income. Some members expressed concern that in certain circumstances, some payments (e.g. share options or termination payments) might trigger a PAYE liability. HMRC queried whether this was a minor occasional problem or a more serious one for employers. Some members thought it unlikely that an employer would realise that a tax liability was due resulting in non payment of tax. HMRC asked members to provide some evidence of the circumstances (particularly share options) in which this problem could occur.

2. Statutory Residence Test (SRT) legislation, guidance and online tool

1.5 HMRC provided an update on legislation which was debated by the Finance Bill Committee on Tuesday 18th June. The debate was relatively short with questions on (i) the length and complexity of the legislation, (ii) applicability to NICs, (iii) Other Government Department residence rules, (iv) transitional issues and (v) exceptional circumstances. The legislation had passed through Report Stage on Tuesday 2 July with no debate. HMRC thanked members for their contribution to the development of the SRT from initial consultations through to the final legislation.

1.6 There had been 11 Government amendments on the SRT and 5 on the abolition of ordinary residence (OR). SRT amendments included an order of priority for split year cases and some transitional rules. The Explanatory Notes for these amendments can be found at https://www.gov.uk/government/publications/finance-

bill-2013 and Royal Assent is expected in July. Questions on the legislation may continue to be sent to HMRC policy officials for the time being but responsibility will move to the Advisory Group shortly.

1.7 HMRC asked members of the forum to bear in mind that people live their lives in an almost infinite variety of ways and have different work patterns. It was unrealistic to expect the legislation to be changed to meet exceptional, obscure cases. In response to a question HMRC confirmed that for the purposes of the SRT the tax year may only be split once.

1.8 Final versions of the guidance covering the SRT and the abolition of Ordinary Residence will be published after the Finance Bill has received Royal Assent. A new version of HMRC6 guidance renamed RDR1 will also be published reflecting Budget changes from 2012 and the introduction of the SRT in 2013.

1.9 Updates to HMRC's web guidance will form part of the ongoing programme to move HMRC guidance to gov.uk. HMRC expects to update and finalise the guidance notes for RDR1 (the new HMRC6), RDR3 (covering the SRT), RDR4 (covering OR) and the RDRM (the Residence, Domicile and Remittance Basis Manual) in the last quarter of this calendar year.

1.10 Once on gov.uk, the guidance will be periodically updated by HMRC to address new queries, add new examples or make HMRC's interpretation of the legislation clearer. Any changes will be clearly publicised.

1.11 A pilot version of the online tool, the Tax Residence Indicator (TRI) was published on 30th May after user testing including volunteers from the Forum. Again, HMRC thanked members for their contribution. Members were asked to send any feedback on using the tool to Hilary Pogson (email Hilary.Pogson@hmrc.gsi.gov.uk). The tool landing page received around 4,000 hits in its first week, with around half of those going on to look at the TRI itself.

1.12 The next version which will take the TRI out of pilot status and reflect the final legislation is expected to be published in September and will be publicised by a 'What's New' message on HMRC's website and members will be advised by email.

Action Point: HMRC to email members when final version of tool published.

1.13 Members were reminded of the answer given at q. 2 of the Q & A log (3 July 2013) explaining the circumstances in which HMRC would be bound by an answer given by the TRI.

1.14 SP1/09 legislation and FAQs

1.15 The legislation passed through Finance Bill committee without amendment, so the final legislation is the same as the version published in March which was discussed at the last meeting in April. HMRC thanked Forum members for their contribution to the development of the legislation.

1.16 Initial FAQs on the special mixed fund rules have been published on HMRC's website. A worked example on a 'split-payroll' scenario was circulated to members as promised at the last meeting. HMRC apologised for the delay in publishing the FAQs and thanked members for their comments on the initial draft which resulted in a number of changes to close some of the gaps in the guidance.

1.17 Some suggestions for additional questions have already been received and HMRC expects publication will prompt some further questions so an update will be published when there is a suitable batch of changes to make. HMRC noted that on publication, the numbering of the questions had been lost which is confusing and will endeavour to rectify this for the next version.

1.18 HMRC pointed out the FAQs are interim guidance, and as such they range from the very basic to the quite technical. HMRC are responding individually to detailed technical questions submitted by members and any queries that clearly represent holes in the current guidance will be added to the next update. HMRC does, however, request that for the time being technical questions should stay close to common or real-world scenarios as much as possible as their priority is to provide guidance for the most common circumstances although appreciate that the boundaries of the legislation will need to be explored and the more unusual hypothetical situations covered when the technical manuals are updated later in the year.

1.19 Members asked whether different record keeping was required to evidence work days for SRT and for apportioning earnings under s.41ZA as this could be onerous for individuals to record '3hour' days and 'real' days. HMRC explained that the day counts for SRT and Overseas Workday Relief (OWR) are separate. The day counting for OWR is made on a just and reasonable basis and can include half days where the individual works in more than one country in the day. HMRC requested members to provide actual examples if there are difficulties in keeping separate records when both sets of rules might come into play.

Action Point: HMRC to provide clarification of evidence required.

1.20 Members discussed the split payroll issue dealt with in the FAQs. HMRC confirmed that a simplified version of the example sent to members after the last meeting would be included in the next version of the FAQs. HMRC acknowledged that the rules could result in some hard edges and requested practical examples of these which would assist HMRC in reviewing the rules.

1.21 Members asked HMRC to clarify in the FAQs the order in which the single remittance and single offshore transfer take place at the end to the tax year under the Special Mixed Fund rules. HMRC agreed to look at this and clarify the FAQs on this point in the next update.

1.22 Members requested that the FAQs included an example on situations of a split payroll where an individual held one account within the UK and one offshore.

Action Point: HMRC will aim to publish an update to the FAQs before the next meeting.

1.23 Members asked whether HMRC would adopt a light touch approach to compliance with SP1/09 as individuals have had to apply the rules since April but without the benefit of the FAQs which had only recently been published. HMRC requested specific scenarios before agreeing that a relaxed approach was appropriate.

1.24 HMRC confirmed that using an existing account containing less than £10 immediately prior to nomination would not be possible if the employee had previously deposited current year general earnings from the same employment in it.

Action Point: members to submit any relevant scenarios as soon as possible.

Action Point: HMRC to confirm their approach.

2. Real Time Information (RTI) Project

2.1 HMRC thanked members who had attended the subgroup meeting on 20 June and provided an update on RTI. More than 1 million PAYE schemes have joined since 6 April 2013. HMRC has identified around 219,000 employers who were due to report in real time and have not done so and sent letters to these employers towards the end of June. Some of the very largest employer schemes have joining dates of between June and September and almost all businesses will be reporting in real time by October 2013. There are some exceptions for paper filers and some non standard schemes who will join in April 2014. Information has been coming into HMRC and flowing through to DWP.

2.2 The temporary relaxation for employers with less than 50 employees has been extended from October to April 2014 to give affected employers more time to comply and will avoid the need for them to make changes mid year. The relaxation is for those employers who pay employees more than once per month but only run their payroll towards the end of the month. The relaxation is to allow the Full Payment Submission (FPS) to be submitted when the payroll is run or no later than the end of that tax month.

2.3 From April 2014, all employers need to plan to be reporting in real time, but HMRC is continuing to work with businesses over the coming months to identify whether there are any specific circumstances with on-or-before reporting that it needs to cater for in the longer term.

2.4 HMRC's Basic PAYE Tool (BPT) has proved popular with over 184,000 users and is available where the number of employees is 9 or fewer and for Earlier Year Updates (EYUs) for larger schemes where the commercial software does not include functionality to amend returns after the year end.

2.5 HMRC is aware of some minor issues. A charge will be generated if an employer does not notify HMRC through an Employer Payment Summary (EPS) that no payments have been made to employees. Some duplicate employments have been

created but numbers are very small and HMRC is working with affected businesses. Annual payers are not expected to send their first FPS until the month in which payments are made to employees. If, however, the employer sends FPS's in other months, the "annual" basis will automatically be withdrawn.

2.6 At the sub group meeting members had queried the requirement in the regulations to pay over the deductions reported even where they subsequently reduced after the due date. HMRC are confident that section 684 of ITEPA 2003, which requires the Commissioners of HMRC to make regulations about, amongst other things, the collection of tax, gives HMRC the vires for regulations 67G and 67H. These regulations, read alongside the RTI reporting obligations, require the employer to report the amount of tax due and then pay over the amount of tax that they have reported, and so the regulations are concerned with the collection of tax. Even where the amount actually deducted is different from the tax reported as deducted – for example because of a Bacs recall – there is an obligation to report the payment on or before it is made and HMRC is entitled to require employers to calculate the amount owing for that tax period on the basis of the information reported to HMRC. If a correction is needed the employer can either report it in a new FPS at the time they make the correction, in which case the amount reported will be the same as the amount the employer knows they have deducted, **or** the error will be corrected in an FPS submitted in the following month, and the employer will adjust the amount they pay in that next month accordingly.

2.7 HMRC advised of some specific expatriate issues. HMRC is aware that there are still outstanding renewal requests for EP Appendix 6, 7A and 7B Applications. However, resources do not permit the issue of routine reminders at this time but will send reminders where cases are identified as part of day to day work. HMRC requested members to remind their clients as necessary. HMRC will continue to allow late renewal applications until the end of September.

2.8 Personal Tax International (PTI) has set the quarterly signal for all known employers who pay quarterly but are conscious that not all such employers are known. Debt Management and Banking (DMB) will advise PTI where they identify employers and relevant employers can also advise PTI via email to Pam Hughes (Pam.Hughes@hmrc.gsi.gov.uk) and Pat Kelly (Pat.Kelly@hmrc.gsi.gov.uk).

2.9 Starters and leavers in 2012-13 who were not notified to PTI on form P46 (EXPAT) cannot be reported to PTI once the employer has migrated to RTI. A request for a UTR should be sent on form SA1 (with 64-8) including details of (i) start and leaving date, (ii) PAYE reference of P14, or (iii) confirmation that PAYE was not operated. If a new scheme reference is used for the 2013-14 year and the old scheme is not subject to alignment and was not closed off by P45, please let PTI know, so that the "old" employment can be closed. Changes of name and address should be notified separately as they are not captured from an FPS.

2.10 HMRC is aware that some payroll software does not support EP Appendix 5 Arrangements and allow for the Foreign Tax Credit Relief (FTCR) to be taken into account. HMRC is currently looking to identify those Software Developers so that they can be contacted. HMRC will also be contacting known EP Appendix 5 users. HMRC will not allow employers to use EP Appendix 5 unless their software

supports the correct FPS reporting from 6 April 2014.

2.11 Some employers may be contacted by DMB due to an apparent underpayment. It is not possible to identify the issue before the call but DMB have briefed their staff so employers should advise the DMB caller that “The discrepancy is due to the fact we are an Appendix 5 employer and our software will not allow us to report the correct tax position for some employees. HMRC are aware of this issue”.

2.12 Members asked if HMRC could compel software providers to provide this function but HMRC did not consider this was possible as these arrangements are made under Appendices. HMRC intends to contact individual employers to advise them that their software must support EP Appendix 5 and expects that employers will be in a position to influence providers to supply the necessary software.

2.13 The Expat FAQS will be updated by the autumn. Any suggestions for new questions will be welcome and should be sent to Pam Hughes. Some suggestions already made include notifying HMRC when an employee returns from overseas assignment and emergency code applied, the EP Appendix 5 issue and a general review to bring up to date. HMRC will share a draft with members before publication.

Action Point: HMRC will share a draft with members before publication.

3. NT tax codes

3.1 HMRC thanked those members who contributed to the discussions during the meeting held on 30 April 2013 at Deloitte's office and thanked Philip Paur for hosting the event. The meeting notes had been circulated to members. Although there are issues in relation to whether an outbound assignee has ongoing tax liabilities, everybody agreed that the most sensible way forward was for employees to obtain an NT tax code from HMRC where they expect to be not resident in the UK or qualify for split year treatment under the overseas work criteria. This protects the employer from needing to make judgements on whether the employee is non resident.

3.2 HMRC wants to issue NT tax codes quickly and aims to turnaround requests within 15 working days of receipt. The forms P85 are processed by specific teams in PT Operations in Manchester (not PTI). As detailed in the meeting notes, extra information to accompany form P85 had been identified which would assist HMRC including the relevant addresses to which the P85s should be sent. Two particular issues which have created problems previously have been movement of employees from one PAYE scheme to another special outbound scheme as if the P85 is processed whilst there is no live employment record, a NT tax code has been refused and the P85 does not take into account ongoing NICs obligations.

3.3 HMRC had requested specific examples where it is thought that the P11D process has overridden the NT tax code as the process owner confirmed that this should not happen. HMRC also agreed to consider guidance for form P11D completion

where code NT applies.

3.4 When the NT tax code is issued for the first time, a letter is sent to both employer and employee. The employer is advised to operate the NT tax code backdated where appropriate and to change the code to emergency code on a month 1 basis when the employee stops working abroad and comes back to the UK**.** The employee should also let HMRC know that the individual has returned to the UK. (Employees or their agents may also wish to let HMRC know where Self Assessment tax returns will not be required for years after the year in which the assignment has ended).

3.5 HMRC confirmed that self assessment of NT tax codes was no longer possible by the employer simply applying NT of its own initiative. Applications should be sent no earlier than 8 but no later than 3 weeks prior to the individual going abroad in order for them to be issued in time. HMRC acknowledged that short notice assignments, could result in insufficient time to issue the NT codes. In response, if the earnings were considered not to be taxable employers might treat them as falling outside the scope of PAYE and not report them. HMRC said that if this is done, it is done at the employer's own risk. Penalties may be imposed where the subsequent application to apply the code is refused.

3.6 Members feedback has indicated that there has been improvement but HMRC will continue to monitor the position.

4. Offshore employment intermediaries consultation

4.1 HMRC outlined the consultation which was published on 30 May and closed on 8 August. Broadly the consultation proposes that in the first instance an offshore employer is liable for the tax and NICs. Where the offshore employer doesn't make all of the relevant income tax and NICs payments, the UK based intermediary who places workers with the end client will be liable for the debt and will become the employer for tax purposes going forward. Where there is no UK intermediary or the intermediary goes into liquidation, then the end user of the labour will become liable for the debt and the employer for tax and NICs purposes prospectively.

4.2 HMRC are currently looking at the issues arising from the consultation. They are considering how the new legislation affects internationally-mobile employees. The intention is to allow those arrangements where the host employer is currently accounting for the tax and NICs in full to remain in place. Where the UK host employer accounts for the tax and NICs in full, this will remove the record keeping requirement. In response to a question, HMRC did not think that where the host employer rules currently operate there would be a new requirement to report benefits provided abroad. Legislation will be included in the NICs bill and HMRC will hold meetings to discuss the draft legislation. Members interested in attending these should contact Sarah Radford (Sarah.Radford@hmrc.gsi.gov.uk) or email Paye.policy@hmrc.gsi.gov.uk.

Action Point: HMRC to circulate details of consultation meetings to members

Post meeting note: The NICs bill was published in draft on 16 July and HMRC held round table events to discuss the draft legislation.

4.3 HMRC confirmed there was no intention to widen the scope of the existing arrangements but considered that the proposals would be an improvement by removing some of the issues around host composite services and personal services and by aligning tax and NICs.

5. Compliance and procedural matters

5.1 HMRC confirmed that all individuals must keep full records to support their annual Self Assessment for overseas workdays. These records will be for the full tax year. HMRC will request those records reasonably required to evidence part of or all of the return made in respect of overseas workday relief, this will mean evidence of work done overseas in the form of diary entries or detailed itineraries supported by travel documentation including times of departure from and arrival in the UK on travel days counted as overseas workdays.

5.1.1 Members asked whether a sampling approach would be more efficient but HMRC considers that the current process is effective and does not plan to change this approach.

5.2 Following a suggestion at a customer engagement event regarding the level of electronic business HMRC are able to provide, PTI agreed to run a 6 month Shared Workspace (SWS) pilot. HMRC met with representatives from Deloitte who were keen to be involved and volunteered to take part in the programme. The pilot has raised issues of security for both HMRC and Deloitte who have had to obtain agreement from clients to share their data with HMRC via a Shared Workspace owned by HMRC.

5.3 However, HMRC's business processes are in place and the Shared Workspace room has been set up and the pilot is due to go live on 1st August with a full review after a 6 month period. The initial pilot is for a few named clients only.

5.4 Those involved in the pilot consider there will be real benefits for HMRC, agents and employers. HMRC and Deloitte will review the pilot after the first six months and provide an evaluation of the issues and benefits.

Action Point: Forum to consider evaluation when available.

5.5 PTI wished to draw members attention to their new phone number 03000 533148 but their fax number remained 0161 261 3198.

5.6 Members had been provided with an information note concerning an educational project to provide customers with information about remittances including some examples of situations where remittances may occur. A copy of the draft letter and examples had been circulated with the note. HMRC confirmed that letters would initially be sent to PTI's 4,500 customers who claimed the remittance basis and paid the remittance basis charge later this month but customers dealt with by

HMWU or LBS would not be included.

5.7 HMRC thanked members for their helpful comments on the letter which would be incorporated where possible.

6. Any other business

6.1 The OECD consultation on tax treaty termination payments might be of interest to members for example the treatment of payments made to employees brought back to the UK before receiving a termination payment.

Action Point: Members to advise Elisabeth Adams if they wish to discuss this at the next meeting.

7. Date of next meeting

7.1 The next meeting will be held on 8 October 2013 at 2pm in the Auditorium, 1 Horse Guard’s Road, London SW1A 2HQ.

HM Revenue & Customs Joint Forum on expatriate tax and National Insurance contributions Q & A Log: introduction

These logs contain answers prepared by HM Revenue & Customs (HMRC) staff in response to questions raised by members of the Forum.
Where possible these answers will refer to guidance published elsewhere. The responses given in these logs are not expected to be comprehensive or provide a definitive answer in every case. If you have a specific query about a particular case you should contact HMRC in the normal way.
HMRC base these answers on the law as it stood at date of publication and will incorporate answers given into the appropriate guidance manuals where necessary. HMRC will publish amended or supplementary guidance if there is a change in the law or in the department's interpretation of it. HMRC may give earlier notice of such changes through a Revenue & Customs Brief or press release. Taxpayers and their advisors should check that the answers given in this log have not been superseded by amended or supplementary guidance.
Subject to those qualifications readers may assume the answers apply in the normal case; but where HMRC considers that there is, or may have been, avoidance of tax the answers will not necessarily apply.
Neither this log nor its publication affects any right of appeal a taxpayer may have.

Expats Forum: Q & A Log – 3 July 2013

No	Question	Answer
1.	**Short term business visitors** **Some of my UK employees were assigned to a separate foreign legal entity overseas, but continued to hold contracts of employment with the UK Company. Some of those employees subsequently returned to the UK as short term business visitors working for and at the expense of that foreign employer. Can Article 15(2) (b) be satisfied in these situations?**	Who the employer is for the purposes of double taxation arrangements is a question of fact that needs to be determined first and the consequences for applying the double taxation arrangements then follow accordingly. In the United Kingdom we look at substance over form so the fact the contract of employment may be held by, say, a service company in the United Kingdom does not prevent their 'employer' for the purposes of the double taxation arrangements being an overseas entity. If the 'employer' is a non UK resident entity then it is possible for Article 15(2) (b) to be satisfied if the individual carries out duties for that employer in the United Kingdom. If the overseas employer has a branch in the UK Article 15(2)(c) would need to be considered If the employee is genuinely working for the overseas employer whilst in the UK we would expect any recharges between the companies to reflect that position.
2.	**Tax Residence Indicator tool.** **If an error in the Tax Residence Indicator (TRI) means that it gives the wrong answer, will HMRC be bound by the answer it gives?**	The current version of the TRI is a pilot version and HMRC will not be bound by it. Once the final TRI is published, if it gave a wrong answer HMRC would usually be bound by it if: • The taxpayer had input all relevant information, and it was all correct; • The taxpayer relied on the answer the TRI gave, by doing or refraining from doing something as a result, and • The taxpayer would suffer detriment if HMRC sought to apply the correct answer, to the extent that it would constitute an abuse of power.

No	Question	Answer
3.	**<u>SRT: split year Case 7 (partner of someone ceasing full-time work overseas)</u>** **In circumstances where the worker satisfies both Cases 5 and 6 will the Case 6 date be relevant for the partner under Case 7 even where the worker's own split actually applies from an earlier Case 5 date?**	Yes. Case 7 can apply to the partner even if Case 6 does not actually provide the split year date to the person ceasing full-time work overseas because of Case 5 taking priority.
4.	**<u>SP1/09-Apportionment of income</u>** **Sch 6 FB 2013 introduces a new just and reasonable apportionment for remuneration that we understand is intended to continue the workday split basis adopted under SP5/84 and SP1/09. What measure of workdays is HMRC attending to apply for this purpose? For example:** **a) Will full days of work only count, or will HMRC expect employment income to be apportioned across all days on which more than three hours work are performed? If so, will three hour plus days count as full workdays or half workdays?** **b) Similarly, where an individual has a business meeting in another European city that takes most of the day he is still likely, even taking an early morning flight and a late evening flight to return on the same day, to have more than three hours of UK work because of airport check in times etc. In the past such a day has been an overseas workday, but will it continue to be so for apportionment of income? Or will the principle of disregarded days be applied?** c) **Assuming that HMRC does not expect such days to be wholly disregarded, how is income to be apportioned? For example, if the only UK work performed is travel and check in, will HMRC accept these are a form of incidental duties that may be ignored for the purpose of apportioning the income? Alternatively, if all duties are to**	There seems to be a degree of confusion over the impact of statutory residence test (SRT) definitions on the approach to identifying, when an individual qualifies for overseas workdays relief and wishes to use the special mixed fund rules, the amount of income relating to overseas and UK duties. We do not intend that the operational approach to the apportionment of earnings that we have taken under SP5/84 and SP1/09 will alter from 2013/2014 as a result of FB13. I Individuals may therefore continue to use the same basis of apportionment as they did with SP1/09 as long as it meets the 'just and reasonable' test. Turning to the specific questions – (a) It is frequently realistic to count to count half work days as half work days. We do not expect this to change and we do not intend to apply the 3 hour workday definition as a means to determine a full workday for the purpose of apportioning earnings. We do not therefore think that a day on which an individual does, say, 3.5 hours work is necessarily a full work day either in the UK or overseas for the purposes of apportioning earnings. (b) We agree the day in this example would have been an overseas workday and reasonably it still would. (c) Where an individual chooses to use the 'rule of thumb' (EIM77020 practical issues – international business travel) to allocate travel days and uses it consistently, we will continue to regard it as a reasonable basis on which to do so.

No	Question	Answer
	be counted, will such days be apportioned on the basis of working hours as a whole? Or can the existing rule of thumb adopted by PTI International regarding the timing of flights and apportionment of workdays continue? We are concerned that any more detailed apportionment is likely to be onerous both in terms of record keeping and calculation of any relief available.	
5.	**<u>SP1/09 - Apportionment of income</u>** **We understand that draft s41ZA ITEPA 2003 will allow for a "just and reasonable "apportionment of general earnings, but how will HMRC apply this in the context of an employee with more than one employment contract? For example, would HMRC expect an apportionment across the different employment contracts to be a better basis than applying a workday split in this scenario? Or would HMRC expect to see a workday split applied to each employment contract to apportion the earnings?**	Apportionment has to be applied separately to each individual employment. This approach was set out clearly in previous consultation and is reflected in the FAQs.
6.	**<u>Remittance basis</u>** **Increase the £10,000 limit for unremitted overseas earnings for the purposes of the exemption in section 828A ITA 2007 to reflect the increased in the personal allowance since 2009.**	The purposes of the exemption introduced by section 828A FA 2009 was to allow low income migrant workers to be taxed on the remittance basis without making a claim. The £10,000 de minimis for unremitted foreign income is unrelated to the level of personal allowances, and was agreed in consultation with Tax Aid and the LITRG. HMRC is not aware of any representations that this limit is creating problems in practice, but this is being kept under regular review in the same way as other areas of the tax system.
7.	**<u>Migrant Member relief, specific employment income and Part 7A</u>** **Could HMRC clarify its practice in applying the TE/EI formula to contributions to overseas pension schemes where the member has specific employment income?**	HMRC confirms that in the appropriate fraction TE/EI in paragraph 11 of Schedule 34 to Finance Act 2004, amounts of specific employment income are excluded from TE whether or not they are taxable. This income is though included in EI. Only the appropriate fraction of an employer contribution paid to a relevant non-UK scheme counts as a pension input amount and is taken into account when deciding how the annual allowance charge, the lifetime allowance charge and the unauthorised payment changes apply. This has been the position since the legislation was first introduced in 2006-07. Since 2011-12, the part of the contribution paid to a relevant non-UK scheme, which

No	Question	Answer
		does not count as a pension input amount by virtue of the employee receiving taxable specific employment income as described above is not excluded from being treated as the value of the relevant step by SI2011/2696 . This amount may accordingly count as PAYE employment income when the scheme earmarks the contribution received from the employer with a view to taking a later relevant step (a section 554B ITEPA 2003 relevant step) subject to the provisions in Chapter 2 of Part 7A. However in practice an individual would be affected by this operation of TE/EI only when:- • the individual's employer pays a contribution in a tax year in respect of the individual to a "currently-relieved non-UK pension scheme" as defined in paragraph 8(3) of Schedule 34 to Finance Act 2004; and • the individual receives specific employment income from the employer who paid the contribution; and • that specific employment income is received before the employer paid the contribution. It is our assessment that in virtually all cases the appropriate fraction continues to work as intended because there will only ever be a tiny number of active members of relevant non-UK schemes, whose tax position in relation to a pension contribution would be affected by their having previously received specific employment income in the tax year. HMRC is reviewing its guidance to see whether and how it could be improved in this area.
8.	<u>EP Appendix 6</u> **Although the current EP Appendix 6 Arrangement only permits inclusion of employees whose general earnings are fully tax equalised, would HMRC be willing to extend the arrangements to include non tax equalised income from share awards which is taxed as general earnings?**	HMRC has no objection to allowing employers to continue to use EP Appendix 6 where employees receive income from restricted share awards which is not tax equalised and those shares are subject to a general earnings charge (Section 62 ITEPA 2003) at award as well as subsequent charge as specific employment income (Chapter 2 of Part 7 ITEPA 2003) when conditions are removed or varied.