



Artificial use of dual contracts by non-domiciles

Who is likely to be affected?

UK resident non-domiciles paying income tax on the remittance basis who use separate employment contracts for UK and overseas duties with the same or associated employers. In most cases separate contracts will have been artificially arranged in order to obtain a tax advantage.

General description of the measure

The measure will tax non-domiciles on the overseas employment income it identifies according to the 'arising' basis. In other words, the income caught by this measure will cease to be eligible for remittance basis tax treatment.

Policy objective

This measure supports the Government's objective of making the tax system fairer. It targets and prevents contrived arrangements by a small number of high earning UK resident non-domiciled individuals who create what are typically artificial divisions between the duties of a UK employment and an employment overseas in order to obtain a tax advantage.

Background to the measure

This measure was announced at Autumn Statement 2013. Draft legislation was published for technical consultation in January 2014.

Following technical consultation, a number of changes will be made to the legislation to reflect concerns that the initial draft caught arrangements that were not set up for tax avoidance purposes. The legislation will be amended to prevent charges arising on nominal directorships if they (or their associates) own/control less than 5 per cent of the company's ordinary share capital. The legislation will also be amended to clarify that an income tax charge cannot arise on income related to employment duties performed in tax years prior to 2014-15. The legislation will also take into account employments held for legal/regulatory reasons. Finally, the threshold in the comparative tax rate test will be reduced from 75 per cent to 65 per cent.

This Tax Information and Impact Note (TIIN) updates and replaces the TIIN published on 16 January 2014.

Detailed proposal

Operative date

This measure will have effect for general earnings and employment-related securities income from an overseas employment and overseas employment income provided through third parties arising on and after 6 April 2014. Income which arises on or after this date but which is related to employment duties performed in a year prior to 2014-15 will not be subject to this legislation.

Current law

Section 22 Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) provides that, for remittance basis users, general earnings that are 'chargeable overseas earnings' (as defined in section 23) are not subject to tax in the UK unless they are remitted.

Chapter 5A of the same Act applies the remittance basis to taxable specific income from employment related securities that is 'foreign securities income'. Foreign securities income is determined by sections 41C to 41E.

Section 554Z9 of the same Act applies the remittance basis to employment income from a foreign employer which is provided through a third party. Section 554Z2 sets out the amount of income provided through a third party that is considered to be employment income.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to:

- take certain 'overseas' employment income out of the definition of 'chargeable overseas earnings';
- take certain employment related securities income out of the definition of 'foreign securities income'; and
- take certain overseas employment income that is provided through a third party out of the calculation of third party employment income to which the remittance basis applies.

This will apply to income associated with an overseas employment where:

- an individual has both UK and overseas employment(s) either with the same employer, or where the UK employer is "associated" with an overseas employer;
- a UK and an overseas employment are "related" to each other; and
- the foreign tax rate that applies to the income associated with an overseas employment, calculated in accordance with the amount of foreign tax credit relief available against that income under section 18 of the Taxation (International and Other Provisions) Act 2010, is less than 65 per cent of the UK's additional rate of tax (currently 45 per cent).

Where income associated with an overseas employment meets all the above criteria in a tax year, then the income that this measure identifies will be taxed in the UK on the arising basis. Foreign tax credit relief available against any UK tax charge will be available in the usual way. Income from each overseas employment will be considered independently – in other words, the income and foreign tax credit relief available for all overseas employments are not aggregated for the purposes of the 65 per cent test.

This measure will not apply to overseas income that falls within the three year period for Overseas Workday Relief set out at section 26 ITEPA 2003. If income associated with an overseas employment falls outside the parameters of this targeted measure, the existing rules will continue to apply.

Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	-	+75	+55	+55	+60
	<p>These figures are set out in Table 2.2 of Budget 2014 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Autumn Statement 2013.</p> <p>This measure supports the Exchequer in its commitment to protect revenue.</p>				
Economic impact	The measure is not expected to have any significant economic impacts. Its effect will be to hinder the use of artificial tax arrangements by a small number of individuals.				
Impact on individuals and households	The measure will have an impact on approximately 350 non-domiciled individuals who are currently seeking to use artificial tax arrangements.				
Equalities impacts	The individuals affected by this measure are mostly male non-UK nationals. There are no disproportionate impacts.				
Impact on business including civil society organisations	This measure is expected to have a negligible impact on businesses and civil society organisations. It is directed at a small number of individuals seeking to use artificial tax arrangements in conjunction with their employers. There will be no effect on compliant employers.				
Operational impact (£m) (HMRC or other)	There will be no significant impact on HM Revenue & Customs (HMRC).				
Other impacts	Other impacts have been considered and none have been identified.				

Monitoring and evaluation

This measure will be kept under review through the monitoring of information collected on tax returns and tax receipts, and through ongoing communication with affected taxpayer group representatives. HMRC will also monitor behavioural responses to the measure.

Further advice

If you have any questions about this change, please contact Simon Galloway on 03000 585154 (email: PTIConsultation.SpecialistPersonalTax@hmrc.gsi.gov.uk).