



## Artificial use of dual contracts by non-domiciles

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### Who is likely to be affected?

UK resident non-domiciles paying 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, with a view to inclusion in Finance Bill 2014.

## Detailed proposal

### Operative date

This measure will have effect for general earnings from an overseas employment, income from overseas employment-related securities and overseas employment income provided through third parties arising on and after 6 April 2014.

### Current law

Section 22 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 defined in section 41C, with applicable limits set out at sections 41D and 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 TIOPA 2010, is less 75 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 75 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

<b>Exchequer impact (£m)</b>	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
	-	-	+85	+60	+60	+65
	These figures were set out in Table 2.1 of the Autumn Statement and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside the Autumn Statement.					
<b>Economic impact</b>	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.					
<b>Impact on individuals and households</b>	The measure will have an impact on approximately 350 non-domiciled individuals who are currently seeking to use artificial tax arrangements.					
<b>Equalities impacts</b>	The individuals affected by this measure are mostly male non-UK nationals. There are no disproportionate impacts.					
<b>Impact on business including civil society organisations</b>	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.					
<b>Operational impact (£m) (HMRC or other)</b>	There will be no significant impact on HM Revenue & Customs (HMRC).					
<b>Other impacts</b>	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 email:  
PTIConsultation.SpecialistPersonalTax@hmrc.gsi.gov.uk or contact Simon Galloway on  
03000 585154.

## **Declaration**

David Gauke MP, Exchequer Secretary to the Treasury, has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.

## EXPLANATORY NOTE

### RESTRICTIONS ON REMITTANCE BASIS

#### SUMMARY

1. This measure taxes certain overseas earnings and employment income of non-domiciled individuals on the ‘arising’ basis. In most cases this will apply where separate employment contracts have been artificially arranged to obtain a tax advantage (commonly known as “dual contracts”). This measure will have effect for income arising in tax year 2014-15 and thereafter. It will not apply to overseas income that falls within the 3-year period for Overseas Workday Relief set out at section 26 Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”).

#### DETAILS OF THE CLAUSE

2. Schedule 1 contains provision for taking certain overseas earnings, income relating to employment-related securities and securities options and employment income provided through third parties out of the scope of the remittance basis for UK resident non-domiciles. This will apply to income in respect of employment where:
  - An individual has both a UK employment and one or more “relevant” (i.e. foreign) employments;
  - The UK employer and the relevant employer are “associated” with each other;
  - The UK employment and the relevant employment are “related”; and,
  - The foreign tax rate that applies to income in respect of a relevant employment, calculated in accordance with the amount of foreign tax credit relief which would be allowed against income tax if the income were not taxed on the remittance basis, is less than 75% of the UK’s additional rate of tax (currently 45%).

#### DETAILS OF THE SCHEDULE

##### *Paragraph 1*

3. Paragraph 1 introduces the amendments to be made to ITEPA.

***Paragraph 2***

4. Paragraph 2 inserts new subsection (1A) into section 23. The effect of the new subsection is that a UK resident non-domiciled individual's (P) overseas employment income will be taxed on the "arising" basis and not on the "remittance" basis if the new section 24A of ITEPA (inserted by paragraph 3) applies.

***Paragraph 3***

5. Paragraph 3 inserts new sections 24A and 24B into ITEPA.
6. New section 24A(1) and (2) set out when new section 24A will apply and provide a signpost to the provisions which set out the consequences. New section 24A(1) also defines the terms "relevant employment" and "relevant tax year".
7. New section 24A(3) defines other terms used in this section.
8. New section 24A(4) sets out different types of employment income (certain overseas earnings, income relating to employment-related securities and securities options and employment income provided through third parties), in respect of a relevant employment. One or more of these paragraphs must apply, and conditions 1 to 4 must be met, for new section 24A to be engaged (see new section 24A(1)(a) and (b)).

***The UK employments test***

9. New section 24A(5) sets out condition 1, which is that P has a "UK employment" at some point in the "relevant tax year" or in the UK part of the year if the year is a split year.

***The associated employer test***

10. New section 24A(6) sets out condition 2, which is that P's UK and relevant (i.e. overseas) employer are either the same, or are associated with one another.

***The related employments test***

11. New section 24A(7) sets out condition 3, which is that the UK employment and the relevant (i.e. overseas) employment are related to one another and new section 24A(8) contains provisions to assist in interpreting when a UK employment and a relevant employment will be "related".
12. Some examples of scenarios in which HMRC would consider a UK employment and a relevant employment to be related to one another are:
  - Where it is reasonable to suppose that P's UK employment would cease if their relevant employment ended.

- Where P has two employments and undertakes client meetings, entertainment or marketing under the relevant employment and manages investments for the same clients under the UK employment.
  - Where P is employed in the UK and P's contract specifies that P cannot work outside the UK. P is also employed in France, and P's contract specifies that they can only work in France. P does the same type of work under their French contract as under their UK contract, so although these duties are separated geographically, the work is of the same type.
  - Where P provides financial advice to an individual under both a UK and relevant employment.
13. New section 24A(8)(f) and (9) provides that employments will be “related” where P has a senior position in at least one of their UK or overseas employments or with an associated employer. In deciding whether or not P meets this condition, regard must be had to their level of seniority compared with other employees in their organisation: to hold a senior position, P must either be a director or be in the highest tiers of seniority or remuneration compared to other employees.
14. New section 24A(10) and (11) provide that the Treasury may amend new section 24A in respect of the “related employments” test by regulations. Any such regulations will be subject the positive affirmation procedure by the House of Commons.

*The 75% test*

15. New section 24A(12) sets out condition 4. New section 24A (13) and (14) and new section 24B define terms used in relation to condition 4. Condition 4 will be engaged if the rate of foreign tax relief that would apply to the relevant employment income defined in accordance with new section 24A(4), if that income were taxed on the arising basis, would be less than 75% of the UK's additional rate of tax. For example, if the UK's additional rate of tax is 45% in 2014-15, then condition 4 will apply if the rate of foreign tax credit relief that would be given in relation to the relevant employment income in tax year 2014-15 would be less than 33.75% (75% of 45%).
16. New section 24A(15) provides that the percentage set out at new section 24A(14) may be amended by Treasury Regulations. Any such regulations will be subject to the negative affirmation procedure.

***Paragraph 4***

17. Paragraph 4 amends section 41C of ITEPA and sets out the circumstances in which overseas income from employment-related securities is taken out of the scope of the remittance basis. It applies to income arising to the tax year 2014-15 and subsequent tax years where the date of the acquisition of the securities or the option is before 1 September 2014.
18. Paragraph 4(3) introduces new section 41C(9), which sets out that if the remittance basis does not apply to employment-related securities income by virtue of new

section 24A, then section 41E will not override the amount of shares income which is determined under this measure to be taxed on the arising basis.

***Paragraph 5***

19. Paragraph 5 sets out equivalent provisions to those in paragraph 4 for income from securities or options acquired on or after 1 September 2014. The provisions will apply if the employment in question is one to which the new section 24A applies.

***Paragraph 6***

20. Paragraph 6 sets out the circumstances in which overseas employment income provided through a third party is taken out of the scope of the remittance basis. Section 554Z9 of ITEPA makes the link between the rules on employment income provided through third parties and the remittance basis in cases in which the employee ('A') is non-UK domiciled but does not meet the requirement of section 26A of ITEPA (remittance basis: 3-year period of non-residence). This paragraph amends section 554Z9 to remove this link, so the provisions will apply if new section 24A applies to the relevant employment.

***Paragraph 7***

21. Paragraph 7 makes a minor consequential amendment to section 717 of ITEPA.

***Paragraph 8***

22. Paragraph 8 contains the commencement provisions for the legislative change. It applies new sections 24A and 24B to income arising on or after 6 April 2014.

**BACKGROUND NOTE**

23. This measure supports the Government's objective of making the tax system fairer by targeting and preventing contrived avoidance by a small number of high-earning UK resident non-domiciled individuals who are creating an artificial division between the duties of UK and overseas employments in order to obtain a tax advantage.
24. This measure will tax UK resident non-domiciles on income that arises in respect of overseas employments according to the 'arising' basis if that income passes a series of tests to establish whether or not there has been an artificial separation of UK and overseas employments. The effect of this measure is to prevent the income it identifies from being eligible for remittance basis tax treatment.
25. If you have any questions about this change, or comments on the legislation, please, email: PTIConsultation.SpecialistPersonalTax@hmrc.gsi.gov.uk or contact Simon Galloway on 03000 585154 by 13 February 2013.

## **1      Restrictions on remittance basis**

Schedule 1 makes provision in relation to the remittance basis.



## SCHEDULES

### SCHEDULE 1

### Section 1

#### RESTRICTIONS ON REMITTANCE BASIS

- 1 ITEPA 2003 is amended as follows.
- 2 In section 23 (taxable earnings: calculation of “chargeable overseas earnings”) after subsection (1) insert –
 

“(1A) But none of an employee’s general earnings from an employment for a tax year are to be “chargeable overseas earnings” if section 24A applies in relation to the employment for the tax year.”

- 3 After section 24 insert –

#### **“24A Restrictions on remittance basis**

- (1) This section applies in relation to an employment (“the relevant employment”) for a tax year (“the relevant tax year”) if –
  - (a) one or more of the paragraphs in subsection (4) applies, and
  - (b) conditions 1 to 4 are met.
- (2) The consequences of this section applying are set out in sections 23(1A), 41C(4A), 41H(4A) and 554Z9(1A).
- (3) In this section –
  - (a) “the relevant employee” means the employee in respect of the relevant employment,
  - (b) “the relevant employer” means the employer in respect of the relevant employment, and
  - (c) “UK employment” means an employment the duties of which are not performed wholly outside the United Kingdom and “UK employer” is to be read accordingly,
 and the rules in section 24(5) (“associated” persons) apply for the purposes of this section.
- (4) The paragraphs referred to in subsection (1)(a) are –
  - (a) general earnings from the relevant employment which are for the relevant tax year would, apart from section 23(1A) and Step 3 in section 23(3), be “chargeable overseas earnings” under section 23(3);
  - (b) employment income in respect of the relevant employment which is treated as accruing in the relevant tax year under section 41C(2) would, apart from sections 41C(4A) and 41D, be “foreign” under section 41C(3);
  - (c) employment income in respect of the relevant employment which is treated as accruing in the relevant tax year under

- section 41H(2) would, apart from sections 41H(4A) and 41I, be “chargeable foreign securities income” under section 41H(3);
- (d) section 554Z9(2) would, apart from section 554Z9(1A) and (4) and (5), apply to employment income in respect of the relevant employment which corresponds to the value of a relevant step, or a part of a relevant step, which is “for” the relevant tax year as determined under section 554Z4.
- (5) Condition 1 is that the relevant employee holds a UK employment –
- (a) in the relevant tax year, or
  - (b) if the relevant tax year is a split year as respects the relevant employee, in the UK part of the year.
- (6) Condition 2 is that the UK employer is the same as, or is associated with, the relevant employer.
- (7) Condition 3 is that the UK employment and the relevant employment are related to each other.
- (8) Without prejudice to the generality of subsection (7), the UK employment and the relevant employment are to be assumed to be related to each other if one or more of the following paragraphs applies –
- (a) it is reasonable to suppose that –
    - (i) the relevant employee would not hold one employment without holding the other employment, or
    - (ii) the employments will cease at the same time or one employment will cease in consequence of the other employment ceasing;
  - (b) the terms of one employment operate to any extent by reference to the other employment;
  - (c) the performance of duties of one employment is (wholly or partly) dependent upon, or otherwise linked (directly or indirectly) to, the performance of duties of the other employment;
  - (d) the duties of the employments are wholly or mainly of the same type (ignoring the fact that they may be performed (wholly or partly) in different locations);
  - (e) the duties of the employments involve (wholly or partly) the provision of goods or services to the same customers or clients;
  - (f) the relevant employee is –
    - (i) a director (as defined in section 67) of the UK employer or the relevant employer,
    - (ii) a senior employee of the UK employer or the relevant employer, or
    - (iii) one of the employees of the UK employer or the relevant employer who receives the higher or highest levels of remuneration.
- (9) In subsection (8)(f) references to the UK employer or the relevant employer include references to –

- (a) any person with which the UK employer or the relevant employer (as the case may be) is associated, and
- (b) if the UK employer or the relevant employer (as the case may be) is a company, the following companies taken together as if they were one company –
  - (i) the UK employer or the relevant employer (as the case may be), and
  - (ii) all the companies with which the UK employer or the relevant employer (as the case may be) is associated.
- (10) The Treasury may by regulations amend this section so as to add to, reduce or modify the cases in which the UK employment and the relevant employment are to be assumed to be related to each other.
- (11) A statutory instrument containing regulations under subsection (10) may not be made unless a draft has been laid before, and approved by a resolution of, the House of Commons.
- (12) Condition 4 is that X% is less than Y%.
- (13) “X%” is given by the following formula –

$$\frac{C}{I} \times 100\%$$

See section 24B for the definitions of “C” and “I”.

- (14) “Y%” is 75% of the additional rate for the relevant tax year.
- (15) The Treasury may by regulations amend this section so as to amend the definition of “Y%”.

#### **24B Definitions of “C” and “I” for the purposes of section 24A(13)**

- (1) This section applies for the purposes of section 24A(13).
  - (2) “C” is the total amount of credit which would be allowed under section 18(2) of TIOPA 2010 (double taxation relief by way of credit) against income tax in respect of all the employment income falling within section 24A(4)(a) to (d) were none of that income to be, as relevant –
    - (a) “chargeable overseas earnings”,
    - (b) “foreign”,
    - (c) “chargeable foreign securities income”, or
    - (d) income to which section 554Z9(2) applies.
  - (3) For this purpose, assume –
    - (a) that all relief is claimed within the applicable time limit given by section 19 of TIOPA 2010, and
    - (b) that all reasonable steps are taken to minimise any amounts of tax payable as mentioned in section 33 of that Act.
  - (4) “I” is the total amount of all the employment income falling within section 24A(4)(a) to (d).”
- 4 (1) Section 41C (taxable specific income from employment-related securities etc: foreign securities income) is amended as follows.
- (2) After subsection (4) insert –

- “(4A) But subsection (4) does not apply to a tax year if section 24A applies in relation to the employment mentioned in section 41A(1)(a) for the tax year.”
- (3) After subsection (8) insert –
- “(9) If subsection (4) does not apply to a tax year by virtue of subsection (4A), it is to be assumed for the purposes of section 41E that it is just and reasonable for none of the securities income treated as accruing in the tax year to be “foreign”.”
- 5 (1) Section 41H (taxable specific income from employment-related securities etc: chargeable and unchargeable foreign securities income), as inserted by paragraph 5 of Schedule [j5125s](#) to this Act, is amended as follows.
- (2) After subsection (4) insert –
- “(4A) But subsection (4) does not apply to a tax year if section 24A applies in relation to the relevant employment for the tax year.”
- (3) After subsection (9) insert –
- “(10) If subsection (4) does not apply to a tax year by virtue of subsection (4A), it is to be assumed for the purposes of section 41J that it is just and reasonable for none of the securities income treated as accruing in the tax year to be “chargeable foreign securities income”.”
- 6 In section 554Z9 (employment income provided through third parties: remittance basis) after subsection (1) insert –
- “(1A) But subsection (2) does not apply if section 24A applies in relation to A’s employment with B for the relevant tax year.”
- 7 In section 717 (orders and regulations) in subsection (4) after “under” insert “section 24A(10) (assumptions about related employments),”.
- 8 Sections 24A and 24B of ITEPA 2003 (as inserted by paragraph 3) have effect in relation to the tax year 2014-15 and subsequent tax years; and the other amendments made by this Schedule have effect accordingly.