

## **Restrictions on the remittance basis – dual contracts**

### **Introduction**

This guidance covers rules for the taxation of overseas earnings and employment income of foreign domiciled employees who are:

- working inside and outside the United Kingdom
- claiming the remittance basis of taxation

With effect from 6 April 2014 certain income from overseas employments will be taxed according to the “arising” basis if you meet the conditions set out in section 24A of the Income Tax Earnings and Pensions Act 2003.

You will find detailed information about the remittance basis of taxation and the arising basis in section 9 of the [Guidance Note: Residence, Domicile and the Remittance Basis \(RDR1\)](#).

### **How do I know if I need to read this guidance?**

You should read this guidance if you have a UK employment and one or more employments with an overseas employer, and you:

- are resident but non-domiciled in the UK
- are claiming the remittance basis of taxation

### **How do you establish whether separate UK and overseas employments trigger the legislation?**

There are 5 Conditions to establish whether or not the legislation applies.

Your income from non-UK employment will be taxed on the arising basis if you meet each of Conditions 1 to 4 and you do not meet Condition 5.

### **Condition 1: UK employment**

You will meet Condition 1 if at any time during the tax year in question:

- you hold one or more UK employments
- and at the same time hold one or more “relevant” employments

If the “split year” treatment applies to you during the tax year in question, Condition 1 will still apply if you meet the test in the UK part of the tax year. You will find detailed information on the “split year” treatment in section 1 of the [Guidance Note: Residence, Domicile and the Remittance Basis \(RDR1\)](#).

A UK employment is an employment where some or all of the duties are performed inside the UK.

A “relevant” (or overseas) employment is one with an overseas employer where the duties are performed wholly outside the UK. If you do perform any duties in the UK they must be no more than “merely incidental” to the duties you perform overseas. You will find guidance on what is considered to be “merely incidental”, in our manual [EIM40203](#).

## **Condition 2: UK and overseas employers are associated**

You will meet Condition 2 if your UK employer is the same as, or associated with, your overseas employer.

Employers are associated if one has control of the other or both are under the control of the same person or persons.

You will find guidance on the definition of control at [CTM60210](#).

## **Condition 3: UK and overseas employments are related**

You will meet Condition 3 if the UK employment and the overseas employment are related to each other.

Employments will be assumed to be related if any of the following apply:

- it is reasonable to suppose that one employment would not be held without the other, or the employments would cease at the same time or one would cease as a result of the other ceasing
- the terms of the employments operate, to any extent, by reference to each other
- the performance of the duties of the employments are linked
- the duties from the employments are of the same type
- the employments deal with the same customers or clients
- the employee is a director, senior employee or one of the higher or highest paid employees

This list is not exhaustive. Whether or not employments are related will always be determined by the facts of each case. The following sections set out some examples of situations in which HMRC will consider employments to be related. These examples are for illustrative purposes only, each case will be looked at on its own merits.

### **When is it reasonable to suppose that employments would cease at the same time?**

HMRC will consider the commercial reality of the situation and the facts of each case in looking at whether it is reasonable to assume that one employment would continue without the other.

### **When might the terms of employments operate by reference to each other?**

Employments might operate by reference to each other in lots of different ways, and will depend on the individual circumstances. You should take into consideration the terms of your employment contract, as well as the commercial reality of the relationship between your employments.

For example, the contracts may take into account hours worked or leave taken under the other contract or may refer directly to duties performed under the other contract.

There may be other circumstances in which the employments deal with the same customer or clients, so you will need to consider your individual circumstances.

### **How can the duties of different employments be linked?**

Generally, employment duties will be linked where one employment's duties enables the other employment duties to be carried out.

For example, where an individual carries out research under one employment, and under their other employment carries out marketing work made possible by the research.

Duties of different employments may be linked in a number of different ways, and will depend on the facts of your individual circumstances.

### **When might the duties of the employments be of the same type?**

Where the duties of two or more employments are the same, but the client base or geographical location differs, the duties of the employments are of the same type. For example, marketing under a UK contract to UK clients has duties of the same type to an overseas contract involving marketing to clients in the rest of the world.

There may be other circumstances in which the duties of the employments are of the same type, and you will need to consider your individual circumstances.

## **When do employments deal with the same customer or clients?**

The employments will deal with the same customer or clients where duties are performed in the provision of goods or services to the same customer or client. For example, if you give financial advice to a client under one employment and manage that client's investments under another employment.

This might apply equally to an individual client, a group of clients or a client base.

There may be other circumstances in which the employments deal with the same customer or clients, and you will need to consider your individual circumstances.

## **What does the term senior employee mean?**

Whether you are a senior employee will depend on the facts of your case, taking into account your responsibilities and the size, nature and structure of your employer's organisation. HMRC will generally consider that employees involved in higher-level management and decision-making will be senior.

For example, the following might be classed as activities of senior employees:

- you are responsible for implementing higher-level or global business strategies
- you participate in higher-level decision-making relating to management issues, finance, corporate restructuring or governance

These indicators are not intended as a definitive list and you will need to consider your individual circumstances.

## **What does higher or highest paid mean?**

The higher or highest levels of pay refers to the total pay from your UK and overseas employments, and whether your pay level is high relative to other employees in the same group of companies. There is no absolute level of pay that is relevant – rather it is a matter of comparing your overall remuneration from all your related employments to that of your fellow employees.

HMRC considers that if you would be liable to tax at the additional rate on your combined pay (ignoring personal reliefs like donations to charities), it will be a good indication of an employee who is higher or highest paid. The UK additional rate of Income Tax is the highest rate for the tax year. Follow [this link](#) to see the UK's Income Tax rates and taxable bands.

Pay includes any amounts which would constitute earnings, an amount treated as earnings or specific employment income.

## Condition 4: Overseas tax payable as a percentage of the UK additional rate

You will meet Condition 4 unless:

- you have paid overseas tax on your overseas employment income for the relevant tax year
- the overseas tax paid would be allowable by way of credit (Foreign Tax Credit Relief) against UK tax on the income from your overseas employment, if the overseas employment income was taxable in the UK on the arising basis, and
- the amount of credit – expressed as a % of overseas income - that would be allowable is 65% or more of the UK additional rate of income tax for the relevant tax year

The UK additional rate of Income Tax is the highest rate for the tax year. Follow [this link](#) to see the UK's Income Tax rates and taxable bands.

You will find guidance on Foreign Tax Credit Relief in [Helpsheet HS263](#).

Overseas tax allowable by way of a credit includes any tax, including regional (such as State or City) tax, paid in a territory, which would be allowable as credit either under a [Double Taxation Agreement](#) or under our rules for unilateral relief. You will find guidance about unilateral relief at [INTM161030](#).

Overseas tax paid in a territory is allowable by way of a credit if it:

- relates to income for duties performed in that territory which cannot be exempt from tax in that territory under a double taxation agreement
- is paid under the rules of that territory

### How do I calculate the overseas tax payable as a percentage of the UK additional rate?

The following example shows a calculation of Foreign Tax Credit Relief as a percentage of the UK additional rate. This example uses the additional rate applicable for 2014-15. You will find details of the UK's Income Tax rates and taxable bands by following [this link](#).

Overseas employment income for duties in country Z	£500,000
Country Z tax paid on overseas employment income for duties in country Z (Foreign Tax Credit Relief) £120,000	
Effective rate of country Z tax $\frac{£120,000}{£500,000} \times 100\%$	24% (X%)
UK additional rate	45%
UK additional rate x 65%	29.25% (Y%)
As X% is less than Y% Condition 4 is met.	

### **What if I do not know the foreign tax amount when I have to submit my UK Self Assessment tax return?**

Different tax laws in overseas territories may mean that you have to file a provisional UK tax return based on expected overseas taxes.

When the actual amount of foreign tax is known you should submit an amended Self Assessment return, if necessary. You must do this within 12 months of the 31 January that follows the tax year in question.

### **What should I do if I have paid too much or too little tax to the foreign tax authorities?**

You must [tell HMRC](#) as soon as possible so that any under or overpayment of UK Income Tax can be corrected.

### **What should I do if I have paid the Remittance Basis Charge but my overseas employment income becomes taxable on the arising basis?**

If you are within the time frame to amend your return you may withdraw your claim to the remittance basis. You will find further information about this and what to do if you cannot amend your return on the [HMRC website](#).

## **Condition 5: Regulatory requirement for place of employment**

This condition is concerned with any regulatory requirements which oblige you to be employed in a particular territory to legally perform your employment duties. The relevant territory is the territory in which you perform your overseas employment duties.

You will meet Condition 5 if both your UK and your overseas employments oblige you to be employed in each territory in order to legally perform the duties of both employments.

This means that your:

- overseas employment duties cannot be legally performed in the relevant territory under the UK employment, because of a regulatory requirement of that territory
- UK employment duties cannot be legally performed in the UK under the overseas employment, because of a regulatory requirement in the UK

Whether your place of employment is dictated by a regulatory requirement will be determined by reference to the requirements imposed by or under UK law or the law of the relevant territory.

Regulatory requirements will include visa requirements, employment law and requirements imposed by regulatory bodies, if those bodies are established by or under UK law or the law of the relevant territory.

Examples of regulatory requirements include:

- in order to get a work permit in some countries, you have to have an employment contract in that country
- in order to provide certain types of financial services in the UK, you have to be employed by a person authorised by the Financial Conduct Authority

## **How do the rules affect the taxation of my overseas earnings and employment income?**

If the new rules apply to you they will take effect from the tax year 2014-15 and your income from overseas employment will be taxable in the UK. It does not matter whether this income is received in or remitted to the UK. The income:

- should be shown in full in your tax return for the year that you receive it
- will not give rise to any new Pay As You Earn or National Insurance Contributions liabilities

## **What about overseas income for tax years before 2014-15 that is received in a later year?**

The new rules do not apply to overseas earnings and income for earlier tax years paid in or after the tax year 2014-15, even if you met the dual contracts tests in those earlier tax years.

If you agreed a remuneration package before 2014-15, the new rules will only apply to overseas employment income from this package that is earned in or after 2014-15.

You should apportion deferred remuneration that spans different tax years on a just and reasonable basis. The facts will determine what that basis should be. You will find guidance about this in our manual [EIM40015](#).

### **What if the rules do not apply to me?**

Your earnings from an overseas employer for duties performed wholly outside the UK may be taxed on the remittance basis, if you make a claim to be assessed on that basis. You will find detailed information about the remittance basis in section 9 of the [Guidance Note: Residence, Domicile and the Remittance Basis \(RDR1\)](#).

It is not expected that HMRC's approach to tax return checks in respect of your employment arrangements will change substantially as a result of the rules. However, you may be required to provide information and documents to demonstrate that these rules do not apply to you.

HMRC has additional rules in respect of dual contracts and these are not affected by this legislation. Further information on these rules can be found at [EIM77030](#).

### **Do the changes affect Overseas Workday Relief?**

No. These changes do not apply to overseas income that falls within the three year period for Overseas Workday Relief. You will find detailed information about Overseas Workday Relief in [Guidance Note: Overseas Workday Relief \(OWR\) \(RDR4\)](#).

### **Contact us**

If you need further advice about these changes please email Ellen Roberts at [ellen.roberts@hmrc.gsi.gov.uk](mailto:ellen.roberts@hmrc.gsi.gov.uk)