KEY POINTS

What is the issue?

Many companies and organisations are allowing employees to work both overseas and in the UK.

What does it mean for me?

Individuals working in the UK could be subject to UK taxation on their earnings at rates of up to 45 per cent.

What can I take away?

The potential tax implications to consider for those who spend time working in the UK, even in situations where the employer or permanent establishment of the business is situated abroad.

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Work smarter, not harder

REENA BHUDIA CONSIDERS THE POTENTIAL UK TAX IMPLICATIONS FOR THOSE SPENDING TIME WORKING IN THE UK

In December 2022, the UK Office of Tax Simplification published a policy paper (the Paper) that considered the trends of how people are choosing to work following the COVID-19 pandemic,[1] including across borders.

The Paper observed that, in order to remain competitive and retain staff, many companies and organisations are allowing employees to work both overseas and in the UK.

The focus of this article will be the potential tax implications to consider for those who spend time working in the UK, even in situations where the employer or permanent establishment of the business is situated abroad.

TAXATION OF EARNINGS

Unlike the general rules for income tax, the taxation of earnings focuses on where duties are carried out rather than an individual's residency status.

The general rule is if an individual carries out duties in the UK, they will be taxable in the UK upon receipt of the earnings. This would be irrespective of their residence and domicile status.

However, if they are UK resident and not UK domiciled, the earnings from their UK duties will be taxed on an arising basis. By contrast, the earnings arising from their overseas duties can be taxed under the remittance basis (RB), subject to the RB claim being made. This means that earnings relating to overseas duties will only be taxed in the UK if they are remitted to or enjoyed in the UK.

RB can be claimed in respect of earnings when the conditions for s.26A (overseas workday relief, OWR) or s.22 (chargeable overseas earnings) of the *Income Tax (Earnings and Pensions) Act 2003* (the Act) are met.

OWR

To qualify for OWR, the individual must meet the following criteria:

- They have been non-UK-resident for three consecutive tax years.
- The year in which RB is claimed must fall within one of the three subsequent tax years following the three consecutive years of non-UK residence.
- Their duties are partially or wholly carried out outside the UK.

Example

Catriona was seconded to the UK by her Italian employer. She moved to the UK on 28 February 2022 and started her employment on 6 March 2022. As the head of UK and European operations, she was required to work in France, Italy, Spain and

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the UK. She had never previously been a UK resident.

In 2022/23, Catriona spent 322 days working, of which 80 days were spent overseas and the remaining 242 days were in the UK. Catriona earned a salary of GBP100,000, as well as a bonus of GBP30,000 and a house supplied by her employer at the value of GBP40,000 (GBP170,000 total).

Catriona was not resident in the UK in the previous three tax years before moving there (2019/20–2021/22). She spent 183 days in the UK in the 2022/23 tax year; therefore, 2022/23 will be her first year of UK residence.

The conditions for OWR are met because:

- in 2022/23, she was UK resident but not UK domiciled;
- she was non-UK resident for the previous three tax years; and
- 80 days were spent working overseas, which means part of her duties were carried on outside the UK.

WHAT DOES THIS MEAN?

Under the OWR provisions, the earnings relating to overseas duties are GBP42,236.[2] This can be taxed under the RB, i.e., it will only be taxed in the UK if it is enjoyed in the UK. It is therefore advisable that Catriona's earnings are paid into an overseas bank account. If they are paid to a UK bank account, the overseas earnings will be treated as being remitted to the UK and therefore Catriona becomes taxable on this.

Her remaining salary of GBP127,764 relates to UK duties. Therefore, she will be taxed on this income on an arising basis upon receipt.[3]

Catriona can continue to claim OWR for tax years 2023/24 and 2024/25. However, she will not be able to claim OWR relief for the 2025/26 tax year.

That said, if she were to become non-resident for tax years 2025/26 to 2027/28 (inclusive), she can subsequently claim another three years of OWR for 2028/29, 2029/30 and 2030/31, subject to the other conditions being met.

SPECIAL MIXED FUND RULES

Where an individual receives funds from a number of sources and has many transfers in and out of their account, it can be difficult to keep track of remitted funds and can become a burden for the taxpayer, as well as their advisor.

This has been made somewhat easier by the introduction of the special mixed rules under s.809RA–s.809RD of the *Income Tax Act 2007*. Under the special mixed fund rules, an overseas account specifically used to manage earnings is known as a 'qualifying account'. Instead of tracing every single transaction and remittance, the taxable earnings are calculated annually. UK earnings will always be treated as being remitted first before foreign earnings.

'Unlike the general rules for income tax, the taxation of earnings focuses on where duties are carried out rather than an individual's residency status'

In order for an overseas account to be treated as a qualifying account, the following conditions must be met:

- the earnings must be paid to an overseas account;
- the overseas account must be a 'clean' account, i.e., the maximum balance it can have before the earnings are paid in is GBP10;
- only employee earnings or interest accruing on the earnings can be paid into this account; and
- one must nominate the qualifying account to His Majesty's Revenue and Customs (HMRC).

Using the example above, Catriona remits GBP90,000 from her qualifying account to the UK on 10 April 2023. Catriona's UK earnings amounted to GBP127,764. The house provided by the employer will be treated as being remitted to the UK, which leaves Catriona with remittable UK earnings of GBP87,764 from the cash account. The available UK earnings in the cash account will be matched against the GBP90,000 remittance first and the remaining balance will be matched against foreign earnings. This means GBP87,764 in UK earnings will be remitted tax-free, as UK tax will have been applied at source to that element of her salary, and the balance of GBP2,236 will be matched against the foreign earnings, which becomes taxable under the RB.

To avoid remitting overseas funds from a previous tax year, it would be advisable to set up new qualifying accounts for each tax year.

CHARGEABLE OVERSEAS EARNINGS

OWR can be claimed for three-year consecutive periods at a time. It is therefore possible that an individual ceases to meet the conditions for OWR but continues to have UK and overseas earnings. Where this happens, earnings will be taxed on an arising basis unless the earnings qualify as chargeable overseas earnings. If the conditions for chargeable overseas earnings are met, then the overseas earnings will not be taxable in the UK unless remitted to the UK.

To qualify for chargeable overseas earnings, the following conditions must be met in a tax year:

- the RB applies for the tax year in question;
- the conditions for OWR are not met;
- the employment is with an overseas employer; and
- the duties of employment are performed wholly outside of the UK.

Practically speaking, it is difficult to qualify for RB under this relief because of the requirement for duties to be performed wholly outside the UK while being UK resident. Historically, employers have attempted to get around this by having dual contracts: one for UK duties and one for overseas duties. However, HMRC does look closely at this, as it has concern for any artificial arrangements inflating overseas earnings that do not reflect the commercial reality. Specific anti-avoidance legislation was introduced in 2014 for dual contracts to counteract this.

OTHER CONSIDERATIONS

- Incidental duties carried out in the UK will be treated as being performed overseas.
- Overseas employees may be required to operate pay-as-you-earn (PAYE) and national insurance contributions in the UK if their employer has no permanent establishment or branch presence in the UK.
- An employer can apply to HMRC for direction under s.690 of the Act to operate PAYE on a percentage of earnings relating to UK duties.

CONCLUSION

Clients considering taking secondment to the UK should be encouraged to obtain UK tax advice, ideally before moving to the UK. Valuable tax reliefs are available to reduce one's burden in the UK, provided the appropriate claims are made.

It is not uncommon for HMRC to check that these reliefs have been applied correctly, so it is essential that records are in good order and up-to-date.

#INTERNATIONAL CLIENT #RESIDENCY OR DOMICILE #TAXATION #UK

1 bit.ly/47xuUpy **2** GBP170,000 x 80/322
3 GBP170,000 x 242/322