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United Kingdom – Review of SP1/09 Measures, Overseas Work-Day Relief in Finance Bill 2013

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The U.K. tax authority, Her Majesty's Revenue & Customs (HMRC), has published today (28 March) in Finance Bill 2013 further revisions to the proposed legislation on Statement of Practice 1/09 (SP1/09) regarding how to calculate remittances and, as a consequence, Overseas Work-day Relief.[1]

In October 2012, the U.K. government published a consultation paper and draft legislation designed to incorporate the Statement of Practice 1/09 (SP1/09) into legislation. A second consultation was published in February 2013.

As we reported in *Flash International Executive Alert* 2012-185 (12 October 2012), and *Flash International Executive Alert* 2013-031 (13 February 2013), HMRC has wanted to incorporate SP1/09 into legislation for some time, but questions have been raised by several interested parties on how best to achieve this aim.

Background

Resident but Not Ordinarily Resident Employees

As covered in *Flash International Executive Alert* 2012-185, currently employees can be regarded as U.K. resident and ordinarily resident (ROR) or resident and not ordinarily resident (RNOR). The distinction is important because, with one exception involving employments with no U.K. duties, ROR employees are taxable on their worldwide earnings whether or not remitted to the United Kingdom. RNOR employees are taxable on their earnings for U.K. duties, whether or not the employee's earnings are paid in the United Kingdom.

RNOR employees, however, can elect for the remittance basis such that their earnings for non-U.K. duties are only taxed in the United Kingdom if remitted to the United Kingdom. This relief is commonly known as "overseas work-days relief" (or "OWR").

The statutory rules for calculating the relief are, however, complicated, and consequently, to relieve the administrative burden for the taxpayer, SP1/09 provides for a simplified calculation.

SP1/09

The current OWR relies on being resident but not ordinarily resident and claiming the remittance basis. Following the introduction of a statutory residence test from 6 April 2013, the concept of "ordinary residence" will be abolished for most purposes. (For more details of the statutory residence test, see our report released today, *Flash International Executive Alert* 2013-056, 28 March 2013.) It is, however, the government's intention to continue with OWR and legislation is now included in the Finance Bill 2013, which was released today, to put the relief on a statutory footing.

Conditions to Qualify for OWR

A U.K tax year is from 6 April to 5 April. Employees will be able to claim OWR from 6 April 2013, even if they are currently regarded as ROR, provided they meet the new conditions. These are that: they are non-U.K. domiciled, claim the remittance basis, and meet one of the following conditions:

a) Non-U.K. resident for the whole of the previous three tax years, or

b) U.K. resident for the previous tax year, but non-U.K. resident for the whole of the three tax years before that, or

c) U.K. resident for the previous two tax years, but non-U.K. resident for the whole of the three previous tax years before that, or

d) Non-U.K. resident for the previous tax year, U.K. resident for the tax year before that, but non-U.K. resident for the three tax years before that.

Conditions a) to c) mean that for employees who arrive in the U.K. after 5 April 2013, they can qualify for OWR in the year of arrival and the following two years provided that they were non-U.K. domiciled and non-U.K. resident throughout the three U.K. tax years prior to arrival. Employees who currently qualify for OWR and arrived in the U.K. after 5 April 2011, will continue to qualify for relief provided they continue to meet the conditions.

Overview of Legislation

The legislation published in Finance Bill 2013 confirms the statutory position of the "special mixed fund" rules which will apply, as previously reported, when the following conditions are met:

- the employee qualifies for OWR (this replaces the requirement in SP1/09 that he or she be RNOR);
- the employee claims the remittance basis and has earnings for U.K. and non-U.K. work-days ("mixed employment income");
- the employee nominates an account for use as a mixed fund to which the special mixed fund rules will apply; and
- only certain types of income and gains are paid into the account.

Where **all** these conditions are met, the special mixed fund rules will allow an employee to set aside the transaction-by-transaction basis of the normal mixed fund rules, and instead, the employee will be able to aggregate transfers from the account on an annual basis (or for part of a year, if the account is not a qualifying account for the whole of the U.K. tax year). Employees who do **not** meet the simplified special mixed fund conditions will be required to operate the more complicated existing mixed fund rules in full.

Nominated Accounts

Individuals will be required to nominate an account to which the simplified special mixed fund rules for calculating remittances will apply. The nomination of an account can be made after the end of a tax year up to 31 January following the tax year in which sums are paid into the account. It is not clear whether the nomination will or can be made on the tax return for the year or if it has to be made separately. It is possible to nominate joint accounts. However, the account cannot contain employment income from more than one individual.

It will also be possible for a taxpayer to nominate an existing account. Nonetheless, the cash balance in an existing account must be below £10 immediately before the qualifying date. This date is the first date on which sums exceeding £10 are paid into the account that are general earnings relating to the tax year during which the individual qualifies for OWR and has some U.K. and non-U.K. duties. These U.K. and non-U.K. duties must be performed during the U.K period if the year is a split year.

KPMG Note

It is likely that the £10 limit will mean that it will be simpler for most employees to open new bank accounts and "ring fence" the earnings qualifying for relief. This mirrors the current practice.

Number of Qualifying Accounts

The Finance Bill 2013 confirms that taxpayers will be permitted to have only one qualifying account at any one time.

KPMG Note

In our previous report, *Flash International Executive Alert* 2013-031 (13 February 2013), we mentioned that the government was consulting on a potential "pooling" system. However, the Finance Bill 2013 does not contain any pooling provisions.

Tainted Accounts

Only certain types of income may be held in a qualifying account. As soon as non-permitted income is transferred to the account, it becomes "tainted" and no longer qualifies for the special mixed fund rules. The legislation allows for two "errors" – that is, the transfer to a qualifying account of non-permitted income within a rolling 12-month period, without the account becoming tainted. These errors are allowed provided the income is transferred out of the qualifying account in one single transaction within 30 days of the individual becoming aware of the error or within 30 days of when an individual could reasonably be aware of the error.

Next Steps

The Finance Bill 2013 will go through several readings in the U.K. parliament before it reaches its final agreed form when the Bill will receive Royal Assent, which is expected in late July.

Footnote:

1 See: http://www.publications.parliament.uk/pa/bills/cbill/2012-2013/0154/13154.pdf .

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