

# The UK Is Still An Attractive Place To Work – Tax Reliefs For Inbound Assignees

**At the time of writing this article, with the UK due to leave the EU shortly, a great deal of questions remain about the continuing attractiveness of the UK for business. Concerns have been, and continue to be, raised in relation to the impact the withdrawal from the EU may have on the ability of the UK to attract inward investment and businesses in the same numbers as it has historically achieved. At the employee level there continues to be substantial tax reliefs and advantages available through careful planning, which will make the UK an attractive ‘tax perspective’ destination for inbound assignees. The UK is still very much ‘open for business.’**

The various tax reliefs have been available for a number of years but are worth remembering from an employer perspective as they can continue to make an assignment to the UK an attractive proposition for employees when considering comparative net income levels on a country by country basis.

Naturally, where tax equalisation applies any reduction in the amount of UK tax payable benefits the employer, however, the resulting reduction in effective employment cost provides the employer with a greater monetary cushion with which to pay the employee.

## Non-Domiciled Individuals And The Remittance Basis

The laws surrounding the concept of domicile are complex and it is not the intention of this article to give more than superficial detail in this area.

As a general rule, a UK tax resident individual who was born abroad to a foreign father, who does not intend to remain in the UK permanently or indefinitely, is unlikely to be domiciled in the UK.

The UK continues to offer very favourable tax rules for individuals who, although they are tax resident in the UK, are not domiciled here – the so-called ‘non-doms’.

These individuals, where eligible for the remittance basis of taxation, are only taxable on foreign income and gains if they are remitted to the UK. The foreign income can in certain circumstances, and for a limited

period, include earnings attributable to employment duties carried on outside of the UK once the individual is UK tax resident.

## Overseas Workday Relief

Whilst individuals who are tax resident and domiciled in the UK are generally subject to UK income taxes on the full amount of their earnings, a valuable tax relief is available in certain circumstances for those individuals who are not UK domiciled who come to the UK to work. This relief relates to the employment earnings that are attributable to work duties performed overseas (outside the UK) and is known as Overseas Workday Relief (OWR).

The employee needs to have been non-resident in the UK for three UK tax years prior to starting work in the UK to be eligible for the relief

The employee is generally the beneficiary of the available OWR, except in situations where a net pay/tax equalisation arrangement is in place, in which case there can be significant tax savings for employers

The relief is available to non-domiciled employees for the first three tax years of residence in the UK provided they are:

- Resident but not domiciled in the UK in the tax year, and
- Are taxed on the remittance basis for that tax year, and

- Carry out employment duties both inside and outside of the UK for that year, and
- Have their salary paid into an overseas ‘qualifying account’.

The employee needs to have been non-resident in the UK for three UK tax years prior to starting work in the UK to be eligible for the relief.

Whilst employers can obtain advance clearance from HMRC to operate PAYE only on the percentage of total earnings attributable to UK duties (a ‘section 690 ruling’), it is becoming more common for the relief to be claimed via the individual’s Self-Assessment Tax Return. A reconciliation or true-up of the actual OWR position will in any event take place within the UK tax return as the PAYE advance clearance works on estimated percentages as actual UK/non-UK workdays will not be known at the time of application.

The relief allows employment income relating to work duties performed outside of the UK to be taxed on the remittance basis. This means that income relating to the duties performed outside of the UK are only taxed if the income is brought into the UK. There are complex rules on what constitutes remitting funds to the UK and guidance should be sought before doing so. Clearly where a sizeable percentage of work duties are performed outside the UK it makes it more worthwhile pursuing OWR.

Where feasible, flexing the timing of a UK assignment may help maximise the amount of OWR relief available. For example, sending an individual to the UK on 6 March might result in OWR being available for a maximum period of 25 months, whereas deferring the assignment start date to 7 April results in OWR being available for an extended maximum 36 month period. The additional tax savings accruing could be significant.

## Structuring And Record Keeping

There are complexities around structuring that need to be navigated in order for a successful claim to be made.

If an individual wishes to claim OWR it is advisable for a new overseas bank account to be established to receive the salary, and these details must be provided to the employer. A common practice is for individuals to set up an account in the Channel Islands or the Isle of Man as these territories are treated as offshore

for the purposes of UK tax yet are within the UK bank system making transfers seamless.

Under OWR rules the account should be formally 'nominated' and relevant details provided to HMRC. This allows special rules to be applied to the 'qualifying' account in order to ease the claiming of OWR, such that the remittance position can be reviewed on an annual basis at the end of the UK tax year. If an account is not 'qualifying' there is a significant additional burden of having to review the eligibility for overseas workday relief based on each separate remittance of funds to the UK during the tax year.

To be a 'qualifying' account, the salary account must not receive any other income except the following: -

- Salary of the employee claiming the relief, relating to both UK and overseas duties (it cannot receive the salary of their spouse/partner)
- Income or gains from employment related securities (this does not generally include most co-investment and carried interest funds distributions)
- Interest earned on the account.

The account must also not have a balance of more than £10 when it receives a payment of employment income on which OWR will be claimed.

In terms of record keeping it is important for the individuals to keep schedules of their working time throughout the year and record UK and non-UK workdays. In respect of the non-UK workdays the more information that is retained the better, and our recommendation is for an individual to retain itineraries for all work, detailing the date and nature of any meetings (including attendees), as well as copies of expenses claims made and tickets for travel. OWR can be a valuable tax relief and therefore it is a common target for HMRC enquiry into tax returns filed by non-domiciled individuals. Record keeping is key as HMRC can partially or completely deny the relief if insufficient evidence is in place to support the claim of an overseas workday.

Clearly records will also need to be kept of all remittances to the UK. This would include salary and taxable benefits provided directly in the UK, transfers of funds to the UK and use of a credit card to acquire goods and services in the UK. Anti-avoidance rules apply for those seeking to circumvent the rules for determining the amount of the remittances. Where individuals do not need all of their current employment income to be received in the UK in order to be available to spend, or where they have other funds available to supplement current employment income, it makes eminent UK tax sense to leave such surplus funds outside the UK in order to maximise OWR.

Some employers may believe that it is wrong or inappropriate to pay individuals

outside the UK. However, it is very important to note that OWR is a specific UK tax relief that is clearly set out in UK tax legislation. Such legislation is designed to encourage individuals to be based in the UK for work purposes. Many countries around the world offer comparable tax advantages to entice employers and employees. Providing the employer operates PAYE as directed by HMRC, any variation made by their employee in the number of non-UK workdays or in the level of remittances is a taxation matter for the employee and is their personal responsibility – not that of the employer. There is nothing whatsoever inappropriate or illegal for an employee to choose to be paid outside the UK – as long as the employer in deducting the right amount of UK PAYE and the employee is paying the right amount of UK tax.

### Temporary Workplace Relief

The other major relief available to individuals coming into the UK for work is Temporary Workplace Relief (TWPR). This is also referred to as Detached Duty Relief but for the purposes of this article we will use TWPR.

Employees coming to the UK on a temporary assignment from an overseas jurisdiction can be determined to be attending a temporary workplace if the duration of their attendance at this workplace is not intended to exceed a period of 24 months.

TWPR allows individual to gain a deduction from earnings for reasonable travel expenses (including subsistence) incurred and includes items such as those below: -

- Accommodation
- Fuel Bills
- Council Tax
- Water Bills
- Subsistence
- Home to office travel (usually considered private commuting and taxable).

It should be noted that the expense deduction relates only to the individual and not to the expenses of family members accompanying them on their assignment. A suitable discount/reduction to reflect their presence and, any additional cost, needs to be taken into account in any claim.

The expense deduction can generate substantial tax savings for the individual, and in cases where the employer has agreed to provide the benefits as part of the secondment contract, the saving is passed to the employer.

### Assignment Planning

To support a claim for TWPR it is necessary for the documentation relating to the assignment to be fully consistent with the facts and claim that the intended period of the assignment is for less than 24 months.

The documentation most likely to be reviewed in the case of an HMRC enquiry

into an individual's Self-Assessment Tax Return are the assignment letter and rental arrangements. Should these documents suggest an assignment period of longer than 24 months then the relief will be withdrawn.

In situations where the intention to remain in the UK for a period of less than 24 months subsequently changes, the relief is withdrawn from the point at which the change of intention occurs. As such, correspondence on any decision to remain in the UK beyond the 24 month period should be retained in order to substantiate the date on which the intention can be demonstrated to have changed and therefore retain access to the relief for the longest permitted possible period.

HMRC will also consider other factors which may indicate when the change of intention occurred, such as enrolling children in a new school – or extending their UK schooling arrangements – applying for new jobs/positions etc. Assignees are recommended to bear this in mind and to properly document the changing intention if the decision is verbally agreed.

### Other Reliefs To Consider

Beyond the two main reliefs described above there are a number of other reliefs that contribute to continuing to make the UK a popular destination for international assignments as follows: -

### Relocation Cost Exemption

There is an exemption for 'qualifying' relocation costs up to an amount of £8,000 when an employee is relocating.

'Qualifying' costs are tightly drawn within the legislation but include the following broad categories of expense: -

- Expenses of the disposal of the employee's former residence
- Expenses of the purchase of the employee's new residence
- Bridging loans in relation to the purchase and sale of employee residences
- Transportation of personal belongings
- Travel and subsistence relating to the relocation
- Certain domestic expenses for purchases of replacement goods for a new residence where the existing goods are unsuitable for use.

As the definition of a 'qualifying' cost is tightly drawn, it should be noted that this is an area where care should be taken to ensure that the tax relief is actually available. A common misconception is that long-term storage of belongings is a 'qualifying' cost but this is not the case, and has tax implications where provided.

The expenses must be incurred by the employee and reimbursed by the employer, or the benefits must be provided directly by the employer and be paid before the end of the tax year after the one in which the

employee began performing the new duties or began the new employment.

Please note that the initial costs of travelling to the UK to take up the assignment are also not taxable in the UK, in addition to any 'qualifying' relocation costs.

### Home Leave

Relief is available for the costs incurred in visiting the home location while on a UK assignment if the assignment lasts for at least a period of 60 days.

Travel costs must be provided directly by the employer or the costs must be incurred by the employee and reimbursed by the employer.

The employee can take an unlimited number of trips back to the home location per annum. The family members are however restricted to a maximum of two return trips per annum.

### Personal Allowances

The UK provides a tax-free personal allowance of £12,500 (2019/20) which certain expatriate individuals may be able to benefit from when coming into the UK. Eligibility for the personal allowance can be impacted by the levels of UK and foreign income of the individual.

### General

As mentioned at the outset, the UK tax system is such that tax reliefs extend

beyond employment income. Foreign (non-employment) income and gains are only taxable in the UK if they are remitted to the UK – one can simply leave such funds to accumulate outside the UK. Additionally, assets are only subject to UK Inheritance Tax to the extent that they are sited in the UK.

These tax reliefs persist for seven UK tax years before time limits start to impact the level of benefit and the tax advantages are gradually withdrawn. This extended period will usually cover all typical international assignment arrangements.

### Summary

Naturally the future attractiveness of the UK as a place to do business is still very much in dispute and dependent on the terms of any withdrawal of the UK from the EU. Irrespective of this there is much the UK has to offer from a UK tax perspective to individuals coming to the UK to work, either as non-domiciled individuals or as short term assignees.

It is necessary for careful planning and structuring to be undertaken, together with robust practices to be maintained in relation to record keeping, but if appropriate steps are taken it remains possible for individuals coming to the UK to take advantage of very generous tax reliefs and significantly reduce their UK tax liability in the process.



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