Leaving The UK? Tax Issues To Consider When Working Outside Of The UK

In our Autumn 2019 article, ahead of the then impending Brexit 'deadline' of 31 October 2019, we put forward a case that the UK was very much 'open for business' for inbound assignees and continued to be an attractive destination for assignments, if only from a UK tax perspective. This case hinged on the substantial UK tax reliefs and tax advantages available by virtue of the assignee's personal circumstances and with tax planning.

Since writing that article, the Brexit 'deadline' has been extended and at the time of writing this later article a General Election looms. In this current article, we now look at general tax considerations for outbound assignees. Similarly, there may be reduced UK tax liabilities and significant non-UK tax reliefs available, again depending on the assignee's personal circumstances and with tax planning.

The tax advantages and reliefs available to outbound assignees can vary from the most simple being that an individual moves from a relatively high-tax jurisdiction (i.e. the UK) to a low-tax jurisdiction (e.g. Hong Kong or Singapore) and perhaps reaps the benefit of the lower income tax burden, to more structured and prescriptive forms of relief such as specialist expatriate tax regimes available in a number of countries.

Leaving The UK – The Domestic Tax View

Depending on the length of the overseas assignment, it may be possible for the assignee to break tax residence in the UK. In a significant number of cases where this is possible there is also likely to be the opportunity to split the tax year into a period that is chargeable to UK income tax, and a period thereafter where certain income will not be chargeable to UK income tax. There are three cases by which an individual can qualify for split year tax treatment, each having prescriptive conditions to be met in order to qualify. The cases are as follows: -

- **Case 1:** Starting full-time work overseas
- **Case 2:** Partner of someone starting full time work overseas
- **Case 3:** Ceasing to have a home in the UK

It is important to note that in order to qualify under Cases 1 and 2, an assignee or their partner have permitted residence days and workdays limits that they must not exceed for the split year treatment to be applicable.

Splitting the UK tax year and becoming non-UK tax resident can be tax advantageous. For those who qualify for a personal allowance, this allowance does not get pro-rated for periods of UK tax residence and non-UK tax residence in a spilt year. Refunds of Pay As You Earn can be generated solely from the application of a full personal allowance to the chargeable period. If an individual files a UK tax return then a refund can be claimed via self-assessment. For individuals who do not file a UK tax return as all of their income has historically been taxed via PAYE they could be potentially missing out on refunds of UK income tax unless a departure form, P85, is filed with HM Revenue and Customs.

It should be noted that the splitting of the UK tax year and the advantage that it can create by reference to the personal allowance also works in reverse when an assignee returns to the UK. If the correct tax coding for PAYE purposes is not in place from the outset, it is possible that the individual will have overpaid PAYE in the year of return and could be due a UK tax refund.

The UK tax rate bands are similarly not apportioned for spilt UK tax years and this in turn can also generate UK tax refunds in years of departure from and return to the UK. Arrival and departure tax years in the overseas location may also qualify for the full, un-apportioned, availability of annual allowances, exemptions, reliefs and tax bands, which will result in a lower effective overseas tax rate.

For those moving to a low tax jurisdiction that are responsible for their own taxes or have been assigned under a Tax Protection policy rather than a Tax Equalised policy the overseas employment income, non-chargeable in the UK, is then subjected to a lower rate of tax enabling the assignee to reap a windfall in the form of higher net pay during the assignment period. Clearly this is not the case if someone moves to a higher tax jurisdiction. The assignee should check whether tax equalisation will be applied by their employer whilst they are on an overseas assignment as this may neutralise any tax advantages that arise.

A further consideration for those planning on being out of the UK for a more substantial period of time is that while non-UK tax resident an assignee is not subject to Capital Gains Tax in the UK. For individuals intending to and who go on to be outside of the UK for a period of not less than 5 complete tax years, disposal of assets in a non-resident period can lead to substantial tax savings. Gains made in the non-resident period crystallise on return to the UK if the 5 complete tax year absence criteria is not met. Care also needs to be taken if a non-UK tax resident assignee decides to dispose of their personal residential home, as while there may not be any UK tax to pay on this, there is the requirement for the transaction to be reported on a Non-Resident Capital Gains Tax return.

In terms of income that remains taxable in the UK to a non-resident, the most common example of this is in the form of rental income, where an assignee rents out their private UK home during a period of absence from the UK. In terms of employment income, it is important to watch out for trailing income in the form of bonus payments or equity compensation that could remain taxable in the UK under sourcing methods following departure from the UK. Workdays undertaken when returning to the UK may also be taxable depending on the nature of those workdays. Non-incidental UK workdays will typically be taxable whereas incidental UK workdays will not.

Low-Tax Jurisdictions

In the UK, the top rate of income tax is currently 45% for earnings in excess of £150,000 per annum, with graduated rates operating prior to that top threshold. As such the UK is generally considered to be a high-tax jurisdiction.

There are a number of lower tax jurisdictions to which individuals are regularly assigned. These include jurisdictions such as the United Arab Emirates where there is no income tax, Hong Kong which has a top income tax rate of 17% and Singapore which has a top income tax rate of 22%.

There is also the impact of tax rate thresholds to consider when determining whether a jurisdiction is a low tax or high tax jurisdiction. For example, while the top rate of US Federal income tax is 37%, the tiered threshold at which an assignee starts to pay the top rate of tax is set far higher than in the UK for example, and so despite the possibility of state taxes on top of Federal taxes in the US, there is still a possibility of a reduced tax burden in comparison with the UK.

It should not go without comment that at the time of writing we are in the midst of a general election campaign where it is acknowledged by one of the major parties that they would intend to lower the threshold at which the highest rate of income tax becomes payable in the UK, potentially widening the gap between the amount of tax an individual can expect to pay in the UK versus the amount of tax that might be payable in an overseas jurisdiction.

For assignees who are not on a tax equalised assignment, ceasing to be UK tax resident can be fiscally attractive due to the reduced rates of income tax that apply in many countries.

From an employer perspective, care needs to be taken when assigning individuals to low-tax jurisdictions. This is due to the attractiveness of the higher net pay experienced whilst on assignment, which then results in difficulty persuading the individuals to return to their home location at the end of the assignment, without increasing the employers cost. Again, advance planning and forethought can minimise any impact.

Expatriate Tax Regimes Overseas

A number of jurisdictions have special expat tax regimes in place for inpatriates that are designed to be beneficial and attract individuals to work in that location. A few of these have been summarised below: -

The Netherlands – The 30% Ruling

Highly skilled migrants who fulfil the necessary criteria can apply for a 30% ruling from the Dutch tax authorities. The facility allows the employer to give the assignee a 30% tax free allowance, meaning that a maximum of 30% of the salary attributable to time spent working in the Netherlands could be free of taxation.

The 30% ruling is applicable for a maximum of 5 years (this was previously 8 years before the rules were recently changed).

It is also possible for additional amounts to be received free of tax in relation to the international school fees of the assignee's children.

Belgium – Special Expatriate Tax Regime

Foreign executives employed on a temporary basis in Belgium can benefit for a favourable tax regime whereby they are subjected to the individual income tax applying to non-Belgian tax residents even if they are tax resident in Belgium under their domestic tax rules. By virtue of this regime, the assignees foreign sourced income is exempt from taxation in Belgium.

In addition to the above, certain expatriate expenses paid for by the employer (moving costs, annual home leave trip to home location, cost of living allowances, housing allowance, tax equalisation, etc.) are treated as bona fide employee expenses and are exempt from taxation within certain limits.

Sweden – Special Expatriate Tax Regime

Foreign key staff members moving into Sweden, by the approval of Taxation of Research Workers Board, may qualify for a special tax relief whereby 25% of the assignee's income is exempt from tax.

In a similar fashion to the reliefs detailed above, there are also exemptions from tax available for the cost of schooling of the assignee's children, moving costs and annual home leave trips.

The relief is available for a period of 3 years but care needs to be taken in order to ensure that the tight deadline for applications to be filed (at the latest 3 months after commencement of work in Sweden) is met.

Switzerland – Special Expatriate Tax Regime

Special relief for expatriates working in Switzerland allows them to deduct all reimbursed costs caused by their stay in Switzerland, including moving costs, housing costs, housing costs in the home location, travel costs and schooling costs if there is not an adequate public school offering available. A lump sum deduction of CHF 1,500 per month can be taken in lieu of the actual costs (except for the schooling costs).

While we have not covered the specific qualifying criteria in detail for any of the above, generally there will be a requirement that the assignee is considered a key worker that may have skills that are not locally available, there may be a salary based qualification, and criteria regarding not having spent time in the country in a preceding period or having an intention to stay for an extended period. It is important to understand the relief on offer, but also to understand the eligibility criteria and the application deadlines so that opportunities for relief are not missed.

Non-Expat Specific (i.e. Domestic) Tax Reliefs Available

In our previous article, we mentioned the availability of Temporary Workplace Relief in the UK, a relief whereby an assignee can gain a deduction from earnings for reasonable travel expenses incurred.

In certain countries where there is no beneficial tax regime in place for expatriates there may be similar domestic tax reliefs that are not necessarily specific to assignees, but for which the criteria for qualification can be met. An example of this is the business travel expense legislation in the United States of America.

Tax relief is available in the US for the ordinary and necessary expenses of travelling away from home for business purposes, which is stated as being if your duties require you to be away from the general area of your tax home for a substantial period. This can be a significant relief considering that it can include:-

- Travel costs between the home and business destination
- Shipping of baggage
- Meals and lodging
- Dry cleaning and laundry
- Business calls.

The relief is limited in terms of the qualifying period. Travel expenses are not deductible if they are incurred in connection with an indefinite assignment. While it is appreciated that very few assignments are considered indefinite, for the purposes of this relief the term given to indefinite is more than one year. If the assignment begins with the expectation that it will be for a duration of more than one year the relief is not available. If the original intention is for the assignment to be for less than one year and that intention then changes, the relief is lost from the date of the change of expectation.

A Note Of Caution

While much of the commentary thus far, relates to reliefs that may be available and the taxation in the UK of a non-resident individual post-departure, a note of caution must be sounded in relation to understanding the tax jurisdiction to which an assignee is heading.

There are potentially other impacts lurking that may not always make destinations as desirable as they may otherwise seem. The United States of America can be one such destination. If an assignee becomes tax resident in the United States they are taxable on their worldwide income and foreign tax credits are utilised to ensure that items are not doubly-taxed. This is fine in principle, but an assignee from the UK may have funds invested in tax-efficient vehicles such as ISAs which are treated differently in the US, such that the tax-efficiency envisaged is eroded.

Also, if an assignee moves to the United States and becomes resident, they may wish to consider carefully the sale of their private residence back in the UK. Whilst this would likely qualify for Principal Private Residence relief and result in no taxable gain in the UK, the gain would only be tax-free in the US if not in excess of the exclusion amount for the sale of your home ($250,000 for single taxpayers, $500,000 if filing a joint return).

It is therefore important that assignees are aware of unintended consequences that may arise from decisions made while they are tax resident in an overseas location.

The Impact Of Social Security

The reliefs discussed above are all in relation to the tax position of the assignee. The other aspect of the personal situation that should always be considered for individuals leaving the UK is the social security (NIC) position.

At the time of writing the UK is still operating under the EU rules for assignments into the EU, which typically enable the assignee to stay in the UK social security for assignments of up to 2 years. In addition to this, we have a number of totalisation agreements with other countries enabling the same result in terms of social security, in some cases for longer periods (such as 5 years under the United States agreement). For the rest of the world we have a 52 week continuing liability to UK social security in circumstances where they remain employed by the UK entity.

Assignments where individuals are able to stay in the home country social security system offer the certainty of no change for the individual. However, in assignment circumstances where contributions become due in the overseas location, there could be savings made as the contributions could be capped or payable at a lower percentage rate. Indeed, there are certain locations where it may simply not be possible to make contributions to the overseas scheme even though no NIC contributions are required to be made in the UK. A point to be aware of is that voluntary contributions to the UK social security system may be an option to be explored in such cases so that a full UK social security record is maintained. Additionally, the cost of contributions is but one aspect to consider, the other being the benefits potentially available as a result of any contributions.

Summary

With careful planning, there can be significant tax reliefs or advantages to be obtained when assigning individuals from the UK to an overseas jurisdiction. Not only can refunds be generated in the UK of overpaid Pay As You Earn, but special expatriate tax regimes exist that can substantially reduce the exposure to tax in some overseas locations. Eligibility criteria need to be scrutinised to ensure arrangements fit the requirements, as well as attention paid to tight deadlines for applications to access certain regimes.

Assignees need to be mindful of the potential pitfalls and mismatches of tax treatments that can render some planning inefficient to ensure that the best result is delivered from the opportunities that undoubtedly exist.

Whether you are coming to the UK to work or leaving the UK to work overseas, do seek guidance in order to optimise the tax reliefs and exemptions that are made specifically available by tax authorities to encourage greater cross-border activity.

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