CHAPTER 43

FOREIGN ASPECTS OF EMPLOYMENT INCOME

43.1 General rules

The way we tax employment income with some foreign element is largely consistent with the way we taxed foreign investment and property income in the previous chapter.

The taxation of employment income is largely dependent on where the employment duties are performed. As a general rule, if an employee **performs his or her employment duties within the UK**, earnings in respect of those duties will be **taxed in the UK at the time they are received**. This general rule will apply regardless of the residence and domicile status of the employee.

If an employee performs employment duties outside the UK, the position is more complicated. Earnings in respect of those duties will generally be taxed on a "receipts" basis but a claim for the "remittance" basis may be possible depending on the employee's residence and domicile position. Some earnings may escape UK tax altogether.

We will look at each of the various scenarios in turn.

43.2 Employees R, OR and UK domiciled

Employees resident, ordinarily resident and domiciled in the UK are chargeable to tax on the **full amount of any earnings received** in the tax year. This applies irrespective of where the employment duties are performed or where the earnings are paid.

ITEPA 2003, Part 2 Chapter 4

The date of "receipt" for these purposes is the earlier of:

ITEPA 2003, s. 18

(i) The time when payment is physically made; or
(ii) The time when the employee became entitled to the payment.

There are special rules for directors (as was discussed in Chapter 15).

Therefore, if a UK resident and domiciled employee works abroad for a short period (say 3 months), the earnings paid in respect of those overseas duties will be **fully taxable in the UK** even if those earnings are paid abroad and kept in a foreign bank account.

Double tax relief will apply if those same earnings are taxed in the overseas country as well as in the UK. The detailed DTR rules are not within the scope of this syllabus.

43.3 Employees R, OR but not UK domiciled

You will recall from the previous chapter that an individual who is not domiciled in the UK can make a claim for the remittance basis to apply in respect of foreign income. If such a claim is not made the full amount of the individual's employment income will be taxed on an arising basis. However, even where a remittance basis claim is made some employment income relating to foreign duties will still be taxed on an arising basis.

*(i) Earnings which are **NOT** "chargeable overseas earnings".*

Earnings received by an employee resident and ordinarily resident but not domiciled in the UK, which are not "chargeable overseas earnings" are fully taxable in the UK on a **receipts basis**. This includes earnings in relation to duties performed outside the UK if the duties of the employment are performed partly in the UK.

*(ii) Earnings which **ARE** "chargeable overseas earnings".* ITEPA 2003, s. 22

"Chargeable overseas earnings" of an employee resident and ordinarily resident but not domiciled in the UK, are taxed to the extent that such earnings are **remitted** to the UK, if the employee has made a claim to be assessed on the remittance basis under s.809B ITA 2007. If no such claim is made, the earnings will be taxed on the receipts basis as normal.

As we saw in the previous chapter, if the claim to use the remittance basis is made, the employee will not be entitled to a UK personal allowance (and the employee will be subject to the £30,000 charge if he is a "long term resident").

If the unremitted foreign income and gains are less than £2,000, the remittance basis applies automatically and there is no loss of the personal allowance.

(iii) Definition of "chargeable overseas earnings". ITEPA 2003, s. 23

"Chargeable overseas earnings" are defined within s.23 ITEPA 2003 as general earnings where:

a) the remittance basis applies and the employee is ordinarily resident;
b) the employment is with a **foreign employer**; and
c) the duties of the employment are performed **wholly outside the UK**.

Illustration 1

George has been resident and ordinarily resident in the UK for the past 4 years, but is domiciled in Australia. He works for British Airways (a UK company). George spends 8 months a year in the UK Head Office and 4 months a year in Sydney Australia. His earnings for his Australia duties are paid in Australian dollars into his Sydney bank account and no remittances are made back to the UK. George has claimed the remittance basis in respect of his foreign income.

Ruling:

As George works for a **UK employer**, his earnings in respect of his foreign duties are **not "chargeable overseas earnings"**.

Therefore, his earnings are **taxed in full in the UK on a receipts basis** even though George has claimed the remittance basis. The fact that no overseas earnings were remitted to the UK is irrelevant.

In practice it is fairly unusual to come across a situation where an individual has chargeable overseas earnings, due to the requirement that the duties of the employment must be performed wholly outside the UK. Chargeable overseas earnings are likely only to exist where the employee has genuine dual contracts. Contract 1 will cover the performance of duties in the UK and Contract 2 will be with an associated employer resident overseas covering duties performed in the rest of the world excluding the UK. HMRC will look closely at such contracts to see if they are valid, for example whether the employee has in fact performed substantive duties under the overseas contract in the UK. This would include responding to an email!

43.4 Employees R but NOR

These rules will typically apply to employees living and working in the UK on a **short term basis** who are resident for a tax year, but who do not intend to remain in the UK long enough to become ordinarily resident.

The taxation treatment of earnings depends entirely on **where** the employment duties are performed:

(i) Duties performed in the UK.

Earnings are fully taxable at the point they are **received.**

(ii) Duties performed outside the UK. ITEPA 2003, s. 26

If the employee has made a claim to be assessed on the remittance basis under s.809B ITA 2007, earnings are taxed to the extent they are **remitted** to the UK. In this situation we are not concerned whether the earnings are chargeable overseas earnings or not. If no such claim is made, the earnings will be taxed on the receipts basis as normal.
Again, if the claim for the remittance basis is made the employee will not be entitled to a UK personal allowance.

If the unremitted foreign income and gains are less than £2,000, the remittance basis applies automatically and there is no loss of the personal allowance.

43.5 Employees NR and NOR

ITEPA 2003 s.27

The UK taxation position of an employee neither resident nor ordinarily resident in the UK depends on **where** the employment duties are performed.

*(i) Duties performed **in** the UK.*

Earnings are fully taxable at the point they are **received**. This could typically apply to a foreign employee who is temporarily seconded to the UK for a very short period, but is not in the UK long enough to become UK resident.

*(ii) Duties performed **outside** the UK*

Such earnings will **not be subject to UK** tax in any event.

43.6 Summary

The above rules can be summarised in the table below:

Status	*UK duties*	*Overseas duties*
R & OR	Receipt	Receipt
R, OR & ND	Receipt	Receipt *
R & NOR	Receipt	Receipt**
NR & NOR	Receipt	Not taxable

* Except if working for a foreign employer wholly outside the UK (in which case the remittance basis may apply if claimed by the taxpayer or if unremitted income and gains are less than £2,000).

**The remittance basis may apply if claimed by the taxpayer or if unremitted income and gains are less than £2,000.

43.7 Extra Statutory Concession A11

ESC A11

In the chapter on determining residence status, we had a brief look at Extra Statutory Concession A11. The Concession allows the tax year to be split into resident and non-resident periods where an employee leaves the UK on a full-time contract of employment, and his absence from the UK spans a complete tax year.

This **"split year concession" will only apply if there is a whole tax year in between the date of departure and the date of return.**

Where an individual leaves the UK on a full-time contract of employment, he will be treated as not resident and not ordinarily resident from the day after the date of departure. However, if the individual does not remain outside the UK for the whole of a tax year, he will be resident and ordinarily resident throughout the period. This means that any employment income received by the employee whilst he is abroad, will be taxed in the UK on an arising basis.

It is therefore important that when employees are leaving the UK on a full-time contract, they make sure they do not return to the UK until a complete tax year has elapsed.

Illustration 2

Ian leaves the UK in December 2009 to take up a six month secondment in Germany. His overseas salary is paid into a Jersey Bank account, and Ian keeps the money outside the UK. The secondment finishes in June 2010, and he then returns to the UK to resume his UK employment. We are interested in how the foreign salary is taxed in 2009/10.

Here we have an employee leaving the UK on a full-time contract in December 2009, and returning in June 2010. ESC A11 will not apply because the employee is not absent from the UK for a full tax year.

Ian will therefore remain resident and ordinarily resident in the UK throughout the period while he was working abroad.

Any UK salary received in 2009/10 – i.e. up to December 2009 – will be taxable in the normal way because it is UK income. As Ian is resident for the whole period, his German salary is also taxed in the UK on a receipts basis. The fact that Ian did not remit any of his overseas salary to the UK is irrelevant, because the remittance basis does not apply.

If Ian's overseas salary was taxed by the German Authorities, Ian will receive double tax relief on the basis that the same income should not be charged by two countries at the same time.

Illustration 3

Assume in the above illustration that Ian stays in Germany, not for six months but for eighteen months. He returns to the UK in June 2011. Because Ian's absence from the UK spans a complete tax year, he will be able to take advantage of the ESC A11. Ian will therefore be treated as not resident and not ordinarily resident throughout the period from December 2009 to June 2011.

Ian's UK income in the period from April to December 2009 will be taxable on a receipts basis. However, Ian's German income will not be taxable in the UK. Remember that the concession splits the tax year into resident and non-resident periods, such that any foreign income arising after the date of departure will not be taxed in the UK.

Because Ian is not resident in the UK, the remittance basis does not apply so any amounts that he brings back to the UK will not be taxable. However, Ian's German salary will probably be taxed in Germany. Therefore, when you are advising clients about their tax liabilities on leaving the UK, it is always worth taking some advice about the tax system which will apply in the overseas country.

Illustration 4

Troy is domiciled in the USA. He works for the New York Times based largely in New York. Troy was seconded to work for the newspaper's London office as their UK correspondent in January 2009. The secondment will last for 5 years. Troy will spend 2 months each year in New York for which he will be paid in US dollars into his local New York bank account. His foreign investment will not be remitted to the UK and will exceed £2,000.

We need to consider how Troy's employment income will be taxed in the UK.

Troy will be treated as a permanent visitor to the UK as his intention is to stay in the UK for more than three years. Troy will therefore be treated as being resident and ordinarily resident in the UK from the date of arrival.

As Troy intends to return to the United States at the end of his contract, he will still be domiciled in the USA.

Any earnings for duties carried out in the UK are taxed in the UK on a receipts basis.

Any earnings in respect of his overseas duties – i.e. in respect of the 2 months each year he will spend in New York – will also be taxed in the UK on a receipts basis, even if Troy elects under S.809B for the remittance basis to apply in respect of his foreign income.

As part of the duties of Troy's employment are carried out in the UK, his earnings in respect of his New York duties are not chargeable overseas earnings and therefore the remittance basis does not apply.

Illustration 5

Maria is domiciled in Spain. Her Spanish employer is sending her to the UK for a 2 year assignment. It is estimated that she will spend 75% of her time working in the UK and 25% working elsewhere in Europe. Maria's salary will continue to be paid into her Spanish bank account. Her unremitted foreign income and gains will exceed £2,000 each year.

As Maria intends to be in the UK for 2 years, she will be resident from her date of arrival. As she does not intend to be in the UK for 3 years, she will be not ordinarily resident in the UK.

Her earnings in respect of her UK duties will be taxable in full on the receipts basis. The fact that payment for these duties is made to her Spanish bank account is irrelevant. If Maria does not claim the remittance basis, the earnings in respect of her foreign duties will also be taxed in full on the receipts basis.

If Maria claims the remittance basis, the earnings in respect of her foreign duties will only be taxed in the UK to the extent that they are remitted here. The fact that part of the duties of the employment are carried out in the UK is irrelevant as Maria is not ordinarily resident in the UK.

43.8 Travelling expenses

The main rules under which an employee may obtain a deduction for overseas travelling expenses are the rules in respect of travelling expenses which we looked at in Chapter 20. Only if a deduction is not due under the provision of s337 and s338 ITEPA 2003 do we need to consider whether a deduction is available under special rules.

For example, an individual may have a 9 month employment contract with an employer in Paris. As the whole of the employment contract is to be spent in Paris, Paris is not a temporary workplace.

Alternatively, an individual may spend 50% of his time working in the Rome office on a long term basis such that the Rome office cannot be considered a temporary workplace and therefore relief would not be available under s338. However there are special rules which would allow relief.

Where an employee who is resident and ordinarily resident in the UK travels **to and from the UK** on taking up and ceasing an overseas employment for which the duties will be carried out **wholly overseas**, the **costs of travel and subsistence are allowable** for tax purposes. ITEPA 2003, s.341

A deduction is also available where the employer pays or reimburses the **cost of accommodation and subsistence whilst overseas.** The employee will not be able to claim a deduction if he bears the cost of this expenditure himself. ITEPA 2003, s.376

In addition, if the employer pays or reimburses the costs of the employee's **interim return visits** to the UK, then these costs are also allowable. ITEPA 2003, s.370

Relief is also available under s.370 for the payment or reimbursement by the employer of the cost of journeys to and from the UK where the duties of the employment are performed partly outside the UK. However, in this case a deduction is not available in respect of the payment or reimbursement of accommodation or subsistence costs.

Where the employee is absent from the UK for a continuous period of **60 days** or more then **further relief** is available if the **spouse and children** visit the overseas location. ITEPA 2003, s.371

A deduction is available for **up to 2 return journeys** in any tax year, where the costs of travelling are paid or reimbursed by the employer.

A child for this purpose is someone who is **under 18** at the start of the trip.

No relief is available for the spouse or children's accommodation costs whilst on the visit.

Similar provisions are available in respect of non-domiciled employees. In this instance, expenses of travelling to take up a UK employment paid for or reimbursed by the employer are allowed as a deduction from earnings. Similarly return travel expenses on the completion of the UK duties are also deductible. ITEPA 2003, s. 373

A deduction for the travel expenses paid for or reimbursed by the employer in respect of a spouse and children on visiting the employee in the UK is allowed, but again these are restricted to two visits per person per tax year. ITEPA 2003, s. 374

There are a couple of other conditions to be satisfied before the non-domiciled employee can get tax relief for these travel expenses. First of all, the employee must not have been resident in the UK for at least two tax years before he arrives to take up his UK duties. Secondly, relief for travel expenses is restricted to expenses incurred in the five years from the date of arrival. This means that if a non-domiciled employee comes to the UK, and stays in the UK for more than five years, his return travel expenses will not be deductible. ITEPA 2003, s. 375

43.9 Share options

If a share option is granted to an employee who is **not resident** in the UK, there will not be any income subject to tax as employment income when the option is exercised, even if the employer is resident in the UK at the date the option is exercised. ITEPA 2003, s. 474

If a share option is **granted to an employee who is resident** in the UK, any employment income arising on the exercise of the option will always be charged to tax, even if the employee has become non-resident.

If the employee is **resident but not ordinarily resident** for a period between the grant and exercise of the option and **the remittance basis applies** for a tax year, there will be a reduction in the amount of employment income on exercise which will be charged to tax. To the extent that the income relates to a year in which the remittance basis applies, **the income relating to foreign duties will not be taxable in the UK.** A similar deduction can be taken where the individual is **not resident** for a tax year. ITEPA 2003, s. 41A

At the end of this chapter is a summary with key points from the overseas chapters 40-43.

Example 1

Pierre is domiciled in France. In March 2009 he came to the UK on an 18-month secondment. He works for a UK bank. He will spend 3 weeks each month in London and 1 week in Paris. His UK salary will be paid to his UK bank. His salary for French duties will be kept overseas. He will return permanently to Paris in September 2010.

How will Pierre's earnings be taxed in the UK?

a) **All on a receipts basis.**
b) **All on a remittance basis, if a claim for the remittance basis is made.**
c) **UK earnings on a receipts basis, French earnings when remitted (if a claim for the remittance basis is made).**
d) **UK earnings on a receipts basis, French earnings not taxed.**

Example 2

Sanjay is domiciled in India and employed by an Indian company.

He is presently on a 5-year posting working in Leeds and will return to India in 2012.

He spends one month each year working in the Calcutta office. He has a valid dual contract in respect of this arrangement. He is paid £4,000 into his Calcutta bank account. He spends £3,000 in India and brings the remainder back to the UK.

Calculate his taxable earnings for 2010/11, assuming any beneficial claims for relief are made.

Answer 1

The answer is ***C***

Pierre will be resident but not ordinarily resident.

UK earnings are taxed when received.

Foreign earnings will be taxed if remitted to the UK, if a claim for the remittance basis is made. Otherwise, they will be taxed on a receipts basis.

Answer 2

Sanjay is resident and ordinarily resident in the UK but he is non-domiciled.

He works for a non-resident employer and the duties in respect of this employment are performed wholly outside the UK.

He will be assessed on the receipts basis in respect of his UK earnings.

He will be assessed on a remittance basis in respect of his chargeable overseas earnings if he makes a claim under S.809B. As the amount of foreign income not remitted to the UK is £3,000 (ie more than £2,000), the remittance basis does not apply automatically.

If he claims the remittance basis, Sanjay will lose his UK personal allowance. As the amount not remitted to the UK (£3,000) is less than the PA (£6,475) it is not beneficial for Sanjay to claim the remittance basis.

Therefore he will be assessed on the receipts basis in respect of all his earnings.

	£
UK duties: Receipts basis	44,000
Non UK duties: Receipts basis	4,000
Taxable earnings	**£48,000**