SQUIRE SANDERS

DUAL CONTRACTS
HMRC TIGHTEN THE NOOSE

31 March 2014

From 5 April 2014 HMRC intends to target **contrived** arrangements which create "**artificial** divisions between the duties of a UK employment and an employment overseas in order to obtain a tax advantage". The new legislation is expected to bring in £245m over the next 4 years. It remains unclear why such new legislation is even needed (particularly in an era of purported tax simplification) as there are already provisions in ITEPA to prevent any artificiality. There is a real danger that these rules will hit genuine division of contracts.

Non doms will no longer be able to utilize the remittance basis for "dual contracts" to keep any non UK earnings outside the net of UK tax (once they have been here for more than 3 years- see comments below on Overseas Workday Relief).

The new rules apply where:

a) the taxpayer has both a UK and a foreign employment; and

b) the UK employer and foreign employer are 'associated'; and

c) the UK employment and foreign employment are 'related'; (broadly an individual would not hold one role without the other/the two roles will cease together/ are dependent on each other/ they reference each other in the terms of employment/ involve the same type of duties/ the same clients etc) and

d) the foreign rate of tax on the foreign income is less than **65%** (was 75%)of the UK's 45% tax rate i.e. taxed at less than 29.25%

Whether employers are associated and whether employments are related is widely defined.

Where **all four** conditions are met the foreign income (including employment related securities) will be subject to tax in the UK as it arises, with relief for any foreign tax deducted at source.

The new rules will not apply where:

- There is a nominal directorship and the individual (including associates) owns less than 5% of the co ordinary share capital
- Dual roles are held for regulatory/legal purposes
- Employment income was "earned" before 2014/15
- Overseas Workday Relief is available
- There is no tax avoidance motive

Going forward perhaps employers will simply tax equalize more commonly or only second employees to the UK while they qualify for Overseas Workday Relief.

It seems that the rules will not impose a PAYE burden for the overseas element on the employer, instead the employee will have to complete a self-assessment return.

I wonder how this all fits in with EU free movement of workers. Mr Chancellor is obviously happy that it respects such principles.

Contact

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12912/04/14