

TAX EQUALISATION

This Help Sheet is intended to assist professional advisers and employers who are preparing Tax Returns for tax equalised individuals. The following assumptions have been made:

- **the Tax Returns of tax equalised individuals will be prepared by the employer or advisers engaged by the employer**
- **advisers or employers have experience of preparing tax computations for foreign national employees working in the UK.**

The Help Sheet does:

- briefly describe tax equalisation
- provide amended instructions for certain boxes on the Employment Pages
- set out agreements reached by tax practitioners and the Inland Revenue regarding the treatment of tax equalised foreign national employees working in the United Kingdom.

The Help Sheet does not:

- explain how to 'gross-up' from a net earnings position, or
- apportion earnings between UK and overseas duties, or
- allocate earnings to different charging provisions, or
- calculate the figure for box 1.31 of the Employment Pages.

Definition

Tax equalisation takes various forms and is therefore difficult to define precisely. The term is used in this Help Sheet to describe the arrangement between an employer and a foreign national employee who comes to the UK to work. Under the terms of an agreement the employee is entitled to specified net cash earnings and non-cash benefits. The employer undertakes to meet UK Income Tax arising from the earnings and provide a professional adviser to deal with the individual's UK tax affairs.

The Employment Pages - amended instructions for tax equalised individuals

boxes 1.1 to 1.5 Individuals assigned to perform duties for a UK employer while remaining employed by an overseas employer should:

- enter details of the UK company which is benefiting from their services in boxes 1.1 to 1.5 **and**
- enter details of the off-shore principal employer in the 'Additional information' box on Page E2.

box 1.8 Ignore the descriptor for this box on Page E1.

Enter:

- the aggregate of cash earnings **plus**
- grossed up tax on cash and non-cash benefits.

For tax equalised employees the figure reported is unlikely to be the same as the P60 pay figure.

box 1.9 Ignore the descriptor for this box on Page E1. Enter chargeable amounts of earnings received in 2004-05 though earned in an earlier or later year. See Agreement (4) on page 2. If you come to an agreement with your Inland Revenue office you may include this income in box 1.8.

box 1.10 Ignore the descriptor for this box on Page E1. Enter in box 1.10 any earnings paid in an earlier year which are only liable to Income Tax if they are remitted to the UK and in 2004-05 there were remittances to the UK.

boxes 1.12 to 1.23 These boxes should be completed as advised on pages EN3 to EN6 of the Notes on Employment.

box 1.31 Enter in box 1.31 the aggregate of:

- earnings outside the scope of UK tax
- earnings potentially chargeable on remittance which were not remitted to the UK in 2004-05.

box 1.35 This may be used by individuals who are not domiciled in the UK and who receive earnings from a foreign employer to claim relief for 'corresponding payments'. Payments which are relieved in terms of tax may be claimed at Question 15 on the Tax Return. An accompanying note should be made in the 'Additional information' box on Page E2 setting out details of the payments.

box 1.40 Note the additional information box on Page E2 to the effect that:

- the return has been completed in accordance with Help Sheet IR212, **and**
- (where applicable) PAYE has been operated under a modified arrangement.

AGREEMENTS

1. Continuation of full in-year gross-up

Full in-year gross-up computations may be prepared and used on the Tax Return for individuals who are contractually entitled to net cash and non-cash earnings and to have UK tax liability met by the employer.

2. P11D filing date

Where an employer has entered into an agreement with the Inland Revenue under Regulation 141 SI 2003 No.2682, the 'Modified PAYE Arrangement', forms P11D need not be filed until 31 January of the year following the Tax Return year, subject to the agreement of the employees.

3. Schedules of P11D information

An employer may agree with their Inland Revenue office to submit P11D information in schedule form. The schedules should follow the layout of the form P11D and use the same box numbers. A certificate should be provided stating that the particulars are fully and truly stated according to the best of their knowledge and belief. The Inland Revenue will not accept a copy of the Employment Pages boxes 1.12 to 1.23 as a substitute P11D.

4. Performance bonuses

The Inland Revenue has accepted that an Inspector may enter into an operational agreement with a taxpayer or adviser to:

- accept cash or receipts basis for the treatment of bonuses, as opposed to apportioning bonuses over the performance period, **or**
- accept accounting period bonuses or calendar year bonuses as being coterminous with a fiscal year, **or**
- apportion only years of arrival and departure, with mid-assignment years being taxed on receipts basis.

Agreement is conditional upon whatever basis is agreed being applied consistently.

5. Global settlements

The Inland Revenue no longer operates arrangements which allow an employer to offset employees' under and over payments and remit a single balancing payment. However, where a number of employees are all underpaid, the employer may remit one sum together with a schedule showing the Unique Taxpayer References of the taxpayers who are to be credited.

6. Payments on Account

The Inland Revenue has agreed that employees covered by an arrangement under Regulation 141 SI 2003 No.2682, the 'Modified PAYE Arrangement', under which the employer deducts and accounts for PAYE on a gross-up of both cash and non-cash benefits, need not make Payments on Account.

But in other circumstances there may be Payments on Account due for a year. Where, in a tax equalisation case, an employer pays the Payments on Account due for any year on behalf of the employee, and full in-year gross-up is used (see paragraph 1) then:

- there are no PAYE implications where the employer pays the Payments on Account, **and**
- the Payments on Account made for the year should not be entered at box 1.12 of the Employment Pages and grossed-up tax on the Payments on Account should not be entered at box 1.8, **but**
- the Payments on Account made for the year should be set-off at box c8.7 of the Working Sheet in the Comprehensive Tax Calculation Guide (or box w88 of the standard Tax Calculation Guide).

7. Double Taxation Treaty exemption

Claims for double taxation exemption should be made using the forms attached to *Help Sheets IR302* or *IR304*, as appropriate. The exempt amount should not be entered on the Tax Return or supplementary Pages. *Help Sheets IR302* and *IR304* require a declaration of the amount of income which is claimed to be treaty exempt. The Inland Revenue has agreed to accept a best estimate of exempt income. However, where a claim is made in respect of a Students/Business Apprentices Article, precise figures are required so that a comparison can be made with the accepted levels published in Statement of Practice SP4/86.

8. Associated employments

An individual who holds a number of employments which are not 'associated' for the purposes of section 24(5) ITEPA 2003 and S416 ICTA 1988, need only complete Employment Pages for employments from which:

- he/she receives earnings in the year and remits them to the UK, **or**
- he/she remits earnings to the UK which were received in an earlier year.

However, where employments are 'associated', Employment Pages should be completed for all of them although the amount of detail required may vary. You should contact the Inland Revenue office for advice.

9. Tax Return for years of arrival and departure

In the year of arrival an assignee is likely to be Not Resident (NR) before coming to the UK and Resident and Ordinarily Resident (R/OR) or Not Ordinarily Resident (NOR) thereafter. In the year of departure this order will be reversed; R/OR or R/NOR to the date of departure and NR thereafter. Only report earnings arising:

- after the date of arrival, **or**
- before the date of departure

on the Employment Pages. The following exceptions apply:

- if in the year of arrival, but prior to assignment, the foreign national has worked in the UK, earnings arising from those UK duties should be included on the Employment Pages
- if in the year of departure following permanent emigration the individual works in the UK, earnings arising from those UK duties should be included on the Employment Pages.

ASSOCIATED POINTS

Foreign Tax Credit

Where a claim for foreign tax credit is made in respect of a state whose fiscal year is different from that of the UK, you should apportion the overseas income and the foreign tax to arrive at the amounts falling into the UK reporting year.

Cessation of employment or permanent emigration

Where an employee completes his assignment and permanently leaves the UK during the reporting year, form P85 should be sent to the Inland Revenue office. You may request a Tax Return so that an in-year settlement can be computed. If Returns for the year are not available, a copy of the previous year's form, annotated with the correct dates, may be filed. Updated computer generated forms may be used. There is no statutory obligation for the Tax Return to be sent back before the normal filing date for the year.

Contact with the Inspector

Agreement should be reached with the local Inspector before Tax Returns prepared on the basis of an Agreement or practice described above are filed. Any technical view taken or basis used in the Tax Return which diverges from that set out in the appropriate Notes should be described in the 'Additional information' box.

These notes are for guidance only, and reflect the position at the time of writing. They do not affect any rights of appeal.