

Tax equalisation

About this Help Sheet

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.

This Help Sheet **does**:

- briefly describe tax equalisation
- provide amended instructions for certain boxes on the *Employment* and *Additional information* pages
- set out agreements reached between tax practitioners and us 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 12 (Foreign earnings not taxable in the UK) of the 'Share schemes and employment lump sums etc' section on page Ai 2 of the *Additional information* pages.

Definition

Tax equalisation takes various forms and is therefore difficult to define precisely. The term is generally used in this Help Sheet to describe the arrangement between an employer and a foreign national employee who comes to the UK to work. However, we recognise that the amended instructions in this Help Sheet may be applied to other equalised scenarios.

A tax equalisation arrangement involves an agreement under which the employee is entitled to specified net cash earnings and/or non-cash benefits. The employer undertakes to meet UK Income Tax arising from the earnings and/or benefits and to provide a professional adviser or in-house specialist to deal with the individual's UK tax affairs.

The Employment page - amended instructions for tax equalised individuals

4 For individuals assigned to perform duties for a UK employer while remaining employed by an overseas employer:

and

- 5**
- enter details of the UK company which is benefiting from their services in boxes 4 and 5, and
 - enter details of the off-shore principal employer in the 'Any other information' box on their Tax Return.

For employees of UK employers, complete these boxes as advised in the *Employment notes*.

1 Ignore the descriptor for this box on page E 1. Enter:

- the aggregate of cash earnings, plus
- the cash equivalent of non-cash benefits to which PAYE has been applied on a grossed-up basis plus

- grossed-up tax on cash and non-cash benefits.

The figure reported may not be the same as the P60 pay figure.

A full analysis of the figure entered in box 1 must be provided as a schedule to the Return.

- 2 Enter all tax paid under PAYE.
- 3 Ignore the descriptor for this box on page E 1. Enter in box 3 any earnings paid in an earlier year which are only liable to Income Tax if they are remitted to the UK and in 2007-08 there were remittances to the UK.

9 For benefits or expenses where the employer has paid tax on a grossed-up basis under PAYE (including under a Modified PAYE arrangement):

- 16
- enter a nil figure (0) or leave blank if, exceptionally, your software does not allow nil entries in these boxes. In these circumstances, it is accepted that the corresponding entries on form P11D will also be nil (0) - see note on P11D below
 - provide a full analysis of the figure in box 1 as a schedule to the Return. This schedule should include details of the cash equivalent of all non-cash benefits and expenses payments that are not subject to a dispensation or a PAYE Settlement Agreement and for which a nil (0) entry has been made or the box left blank. The schedule will also report amounts made good by the employee and the grossed-up tax attributable to non-cash benefits and expenses payments.

For expenses or benefits where the employer has not paid tax on a grossed-up basis under PAYE, complete these boxes as advised on pages EN 3 to EN 6 of the *Employment notes*. The reported figures should reflect the corresponding entries on form P11D.

Employer's return of expenses and benefits on form P11D

For expenses or benefits where the employer has paid tax on a grossed-up basis under PAYE (including under a Modified PAYE arrangement):

- deduct an amount equal to the cost or value of the item concerned where there is a box for entering the amount from which tax has been deducted to give a net taxable amount of nil
- enter the cash equivalent or taxable amount of any other expense or benefit under 'Other Items' in section M and make the equivalent deduction to give a net taxable amount of nil.

For expenses or benefits where the employer has not paid tax on a grossed-up basis under PAYE, complete the relevant boxes on the P11D in accordance with the *P11D Guide* and the *P11D Working Sheets*.

Following these amended instructions does not alter or otherwise affect an employer's obligation to make an accurate return of Class 1A National Insurance contributions due on form P11D(b) and to pay those contributions on or before the statutory due date.

Foreign earnings not taxable in the UK in the year to 5 April 2008 (box 12, Share schemes and employment lump sums section on page Ai 2 of the Additional information pages).

Enter in box 12 the aggregate of:

- earnings outside the scope of UK tax, and
- earnings potentially chargeable on remittance which were not remitted to the UK in 2007-08.

- 20 This may be used to claim relief for 'corresponding payments'. Do not include contributions that an employee pays to an overseas pension scheme that is not

UK registered. Claim relief for an employee's contributions to an overseas pension scheme that is not UK registered by entering the amount of contributions eligible for relief in box 4 in the 'Tax reliefs' section of the Tax Return (page TR 4).

Any other information

Note the 'Any other information' box on the Tax Return to the effect that:

- the Return has been completed in accordance with Help Sheet 212, and
- (where applicable) PAYE has been operated under a modified arrangement in accordance with Appendix 6 of the Employment Procedures manual.

Where there is an entry at box 4 of the Tax Reliefs section on page TR 4 of the Tax Return or at box 14 (Exempt employers' contributions to an overseas pension scheme) of the 'Shares schemes and employment lump sums etc' section on page Ai2 of the *Additional information* pages use this box to provide the following information:

- the name of the Qualifying Overseas Pension Scheme and its QOPS reference, or
- the name and SF74 reference of the scheme recognised as 'corresponding', or
- the Double Taxation Agreement (DTA) under which you are claiming relief. You should also provide confirmation that the scheme has been accepted by Pension Schemes Services as corresponding, or, in the case of the UK/USA DTA, confirmation that the US scheme is of a type specified in the Exchange of Notes of 24 July 2001 as being a pension scheme under Article 3.1(o). In the case of the UK/Ireland DTA you should instead provide confirmation that the Irish scheme is tax-approved or registered for tax-approval in Ireland.

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/or 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 us in accordance with Appendix 6 of the Employment Procedures Manual to operate a 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 us 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. We will not accept a copy of boxes 9 to 16 of the *Employment* page as a substitute P11D.

4 Performance bonuses

We have accepted that an Officer of HM Revenue & Customs 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

We no longer operate arrangements which allow an employer to offset employees' under and overpayments and remit a single balancing payment. However, where a number of employees are all underpaid, the employer may submit a single schedule showing the Unique Taxpayer References of the employees who are to be credited in advance of the payment of a single sum by CHAPS.

6 Payments on Account

We have agreed that employees covered by a Modified PAYE Arrangement, under which the employer deducts and accounts for PAYE on a gross-up of both cash and non-cash benefits in accordance with Appendix 6 of the Employment Procedures Manual, 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 13 or box 15 of the *Employment* page and grossed-up tax on the Payments on Account should not be entered at box 1, but
- the Payments on Account made for the year should be set-off at box A227 of the Working Sheet in the *Tax Calculation Summary notes*.

7 Double Taxation Treaty exemption

Claims for double taxation exemption should be made using the forms attached to Help Sheets 302 or 304, as appropriate. The exempt amount should not be entered on the Tax Return or supplementary pages. Help Sheets 302 and 304 require a declaration of the amount of income which is claimed to be treaty exempt. We have 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 and, where relevant, *Additional information* pages should be completed for all of them although the amount of detail required may vary. If this applies to you, you should contact us 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* page
- 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* page.

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/her assignment and permanently leaves the UK during the reporting year, form P85(S) should be sent to us. You may request a Tax Return so that an in-year settlement can be computed; it will not be computed automatically. If you do not request an in-year Return, we will send a Return on 6 April following the date of departure and deal with any repayment due when the Return is sent back to us. 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 us

Agreement should be reached with the HM Revenue & Customs expatriate team that deals with the tax affairs of the relevant tax equalised employees before Tax Returns prepared on the basis 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 'Any other information' box on page TR 6 of your Tax Return.

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