

FB2025 - Impact on businesses due to changes for non-domiciled individuals

(Lecture B1474 – 12.24 minutes)

Foreign employment

These provisions replace the overseas workday relief provisions. The legislation is introduced by Clause 38 of the Finance Bill.

An election can be made, called a foreign employment election, where an individual is a qualifying new resident for the tax year as defined by legislation described above (and has made a foreign income claim). The claim must be made in the return with the time limit being 12 months from the 31 January following the tax year. A consequential claim cannot be made under s43C(5) TMA 1970 if the circumstances giving rise to the ability to make the consequential claim result from a loss of tax brought about carelessly or deliberately by the individual or someone acting on their behalf.

New s41N ITEPA 2003 includes a number of key definitions:

- Qualifying employment income includes:
 - Qualifying general earnings;
 - Qualifying third party income; and
 - Qualifying securities income.
- Qualifying foreign employment income means:
 - Qualifying foreign general earnings;
 - Qualifying foreign third-party income; and
 - qualifying foreign securities income.

These terms are then subsequently defined.

An individual who has made a foreign income election can then make a claim ('the foreign employment relief claim') for relevant years. This gives entitlement to relief for the net taxable employment income that reflects qualifying foreign employment income, to the extent it does not exceed the limit on the relief. As with the other provisions, such income has to be identified in the return for the claim to be valid.

The use of the terminology about the extent to which employment income reflects foreign employment income allows for the calculation to reflect qualifying deductions, which are those which would be deducted from employment income under s327 ITEPA 2003.

New s41R ITEPA 2003 outlines the limit on relief which will be available. The limit is the lesser of 30% of the relevant qualifying employment income (and this is worldwide earnings) and £300,000. This relief is due for each year, although care needs to be taken over the timing of income and which year it relates to.

As with the foreign income election, any amounts which are excluded from UK taxation under these provisions do not reduce adjusted net income.

New s41T specifies that qualifying general earnings that are:

- 'for' the qualifying year within the provisions of s16 and s17 ITEPA 2003;
- If it is a split year, relate to the UK part of the year; and
- For an employment the duties of which are performed wholly or partly outside the UK during the qualifying year.

The proportion of those qualifying general earnings which are qualifying foreign earnings are amounts which are neither:

- In respect of duties performed within the UK; nor
- From overseas Crown employment subject to UK tax (as defined in new s41W ITEPA 2003).

Any necessary apportionment is done on a just and reasonable basis.

Equivalent provisions are included for defining qualifying foreign third-party income (new s41U ITEPA 2003) and qualifying foreign securities income (new s41V ITEPA 2003).

New s41X ITEPA 2003 provides guidance on the location of employment duties but there is no change in the general rules which have applied historically.

New s41Y ITEPA 2003 disregards arrangements where the main purpose or one of the main purposes of the arrangements is to enable relief is achieved, or enhanced, under these provisions.

New 41Z ITEPA 2003 limits the amount of relief which can apply where an individual has associated employments where the duties are not performed wholly outside the UK. An associated employment means an employment with the same employer or with associated employers (within the definitions at s24 ITEPA 2003 for the purposes of remittance basis).

If these provisions apply, you have to pro-rata the qualifying employment for all associated employments between duties performed within or outside the UK.

Example

Jacqueline becomes UK resident in 2025/26. She does not make a foreign employment income election for that year.

She is also resident in 2026/27 and makes the foreign income and foreign employment income elections as required. She spends 40% of her time working outside of the UK. Her earnings are £500,000 per annum but she also receives a bonus of £150,000 relating to 2025/26 tax year.

Her taxable earnings for 2026/27 are £650,000.

The maximum relief which can be claimed is the lower of £300,000 and 30% of the qualifying employment income. £150,000 of the income relates to the previous year when no foreign employment income election was in place.

The limit is therefore $£500,000 \times 30\% = £150,000$.

The income which relates to the overseas duties is $£500,000 \times 40\% = £200,000$.

This means that only £150,000 of relief can be claimed and so the taxable earnings for 2026/27 are £500,000.

Schedule 8 of the Finance Bill brings in the consequential amendments and transitional provisions relating to the introduction of foreign employment income elections. Most of the consequential amendments relate to the replacement of the word 'non-domiciled' with 'qualifying new resident' in various pieces of legislation including:

- S290E ITEPA 2003 (calculation of earnings rate for a tax year);
- S333 ITEPA 2003 (expenses paid by the employee);
- S341 ITEPA 2003 (travel at the start or finish of overseas employment);
- S342 ITEPA 2003 (travel between employment where duties performed abroad);
- S355 ITEPA 2003 (deductions for corresponding payments by non-domiciled individuals);
- S360 ITEPA 2003 (disallowance of certain accommodation expenses of MPs).

More substantial amendments are made to s373 ITEPA 2003 (employee's travel costs and expenses where duties performed in UK), s374 ITEPA 2003 (spouse's, civil partner's or child's travel costs and expenses where duties performed in the UK), s376 ITEPA 2003 (foreign accommodation and subsistence costs and expenses (overseas employments)), and s395C ITEPA 2003 (meaning of foreign service). S375 ITEPA 2003 is omitted and s413 ITEPA 2003 is substituted.

There are consequential amendments relating to PAYE.

New s690D ITEPA 2003 is inserted into the legislation which will apply where an employee is likely to be a qualifying new resident who will work outside the UK during the tax year. A notice may be given to HMRC that the employer is proposing to treat the foreign proportion of the income as being outside the scope of PAYE and indicating what that proportion is going to be. This cannot have effect if HMRC have already given a notice (see below) but will otherwise take effect when it is acknowledged by HMRC.

This ceases to have effect if HMRC make a counter-notice (see below), a further notice is given by the employer to vary the proportion or a notice is given by the employer that the employee will be non-resident (and this is acknowledged by HMRC).

HMRC will specify the format of this notice using secondary legislation. These provisions do not prejudice HMRC's ability to issue determinations or collect tax.

New s690E ITEPA 2003 allows HMRC to amend a notice given under s690D where it appears that the proportion offered is insufficient.

As noted above, the provisions replace overseas workday relief which was available for three years, rather than the four years available to a qualifying new resident. OWR applied if the conditions in s26A applied which was that the employee was:

- Non-resident for the previous 3 tax years; or
- UK resident in the previous tax year but non-UK resident for the 3 tax years before that; or
- UK resident for the previous two tax years but non-UK resident for the 3 tax years before that; or
- Non-UK resident for the previous tax year, UK resident for the tax year before that and non-UK resident for the 3 years before that.

There are two amendments to the general provisions for making a foreign employment income claim:

- (1) If an individual met the conditions for overseas workday relief to apply for 2022/23 and remittance basis applied for that year or for 2023/24 or 2024/25, they cannot be treated a qualifying new residents for 2025/26.
- (2) Conversely if they would have met the conditions to qualify for overseas workday relief in 2025/26 or 2026/27 but are not a qualifying new resident for a year under the general provisions then they will be treated as a qualifying new resident. This would only apply if they fell within the overseas workday relief provisions for 2023/24 or 2024/25 and remittance basis applied to them in the relevant year.

The limit on relief will not apply in certain cases linked to the provisions outlined in (2) above:

- if the year is 2025/26 or 2026/27 and the employee falls within (2) above on the basis they would have qualified for overseas workday relief in one or both of those years but is not a newly resident individual; or
- if the year is 2025/26, 2026/27 or 2027/28 and (2) does not apply generally (presumably because the individual is a newly resident individual) but the individual meets the second set of conditions (i.e. they fell within the OWR provisions for 2023/24 or 2024/25 and remittance basis applied), as long as the OWR condition would have been met in 2025/26.

Business investment relief

Business investment relief (BIR) is available where income or gains are remitted to the UK but are used to make a qualifying investment in a trading or property company (either as equity or debt).

This will continue to be available for pre-6 April 2025 income or gains but the investment must be made before 6 April 2028 and will not be available where the income or gains is TRF capital (although a partial claim can be made where the amount invested is more than the amount designated as TRF capital). There are amendments to the provisions relating to mixed funds for these purposes.

BIR will continue to apply to amounts invested which have qualified, or will qualify, for the relief. It will also be possible to designate amounts which are currently covered by BIR under the TRF without withdrawing those amounts and no further charge would then arise if there is a potentially chargeable event.

Where such an event occurs, and no designation has been made under the TRF, the amounts will be treated as remitted and the only mitigation event which will remove that charge on or after 6 April 2025 will be to take the income or gains offshore within 45 days. The ability to mitigate through reinvestment into another qualifying company will not be available.