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Expatriate News

This issue of Expatriate News has a European flavour. The UK government continues to introduce changes that affect expatriates, while at the same time the European Commission is taking action against the United Kingdom's discriminatory pension-fund legislation. The Supreme Court in the Netherlands has examined the practical operation of the double tax treaty provision that provides a tax exemption for earnings. We also cover the social security contribution changes in the Czech Republic and the Swedish tax legislation that applies to employment-related share options from 1 January 2009.





CZECH REPUBLIC

Social security contributions

The last issue of *BDO Expatriate News* covered the introduction in the Czech Republic of a flat-rate income tax of 15% for 2008 and 2009 and the fact that the tax on employment income is calculated on the employee's 'super-gross wage' (the employee's gross income, including the statutory social and health insurance contributions paid by the employer). As these contributions are paid by the employer at the rate of 34% for 2009 (35% for 2008) of the employee's gross salary, and the employee cannot claim a tax deduction for his or her own contributions (which are paid at a rate of 15%), in 2009 the individual employee's actual (effective) income tax rate is 22.5% (the super-gross wage @ 15% x 1.34/1.0-0.11).

The effect of the upper limit for calculating statutory insurance contributions in the Czech Republic should be noted. This is determined as 48 times the average national weekly salary and is in monetary terms CZK 1 130 640 for 2009. The employee's earnings in excess of the upper limit are therefore subject to the 15% flat-rate income tax only.

Assignments from non-agreement countries

In addition to the changes outlined above, health insurance and social security contributions may now arise in the case of employees who are seconded to work in the Czech Republic from a non-EC/non-EEA country that does not have a social security agreement with the Czech Republic. However, in certain circumstances it may be possible to avoid the social security contributions for a period of up to 270 days.

Health insurance

The Public Health Insurance Act, which came into force on 1 January 2008, included a new definition of 'employer', which potentially brought certain employees who are not covered by the EC Regulations or a reciprocal social security agreement within the Czech Republic's health insurance system. Contributions are paid by the employee at the rate of 4.5% and by the employer at the rate of 9% on the employee's earnings up to a maximum of the annual earnings ceiling of CZK 1 130 640 for 2009.

Although the wording of the new legislation is unclear in relation to seconded employees, it appears that the authorities may require the company to which the employee is seconded in the Czech Republic to pay the health insurance contributions. This liability may be back-dated by the authorities for the period from 1 January 2008 onwards, if the individual was in the Czech Republic in 2008.

Social security contributions

The social security contributions legislation in the Czech Republic has also been revised to include a new definition of 'employer', but this change only came into effect from 1 January 2009. This definition is even wider than the definition of 'employer' in the health insurance legislation, and it can cover certain service arrangements where the control of the foreign company over the individual cannot be demonstrated to the satisfaction of the authorities.

The result is that employees who are not covered by a social security agreement or the EC Regulations may be required to pay contributions at the rate of 6.5% on their earnings up to the annual earnings ceiling, and the Czech company to which they are seconded must pay contributions of 25% on the same amount.

Exemption for 270-day assignments

Where an individual who would otherwise be subject to social security contributions in the Czech Republic is subject to compulsory contributions in his or her home country, with effect from 1 January 2009 no Czech contributions will be due for the first 270 days of a secondment.

In order to benefit from this exemption, a declaration of the ongoing liability must be obtained from the authorities in the employee's home country and filed with the Czech authorities within eight days of the beginning of the assignment. If the declaration is not filed within the eight-day deadline, the employee must

register with the authorities in the Czech Republic and social security contributions must be paid up to the date of filing. In the case of late filing, the 270-day exempt period will still commence from the start of the individual's secondment (rather than from the date that the declaration is filed).

It is understood that the 270-day secondment period will commence with effect from 1 January 2009 where the employee was working in the Czech Republic before that date. In this situation, an extended filing deadline of 31 January 2009 applied to the submission of the necessary declaration to the authorities.

The very short eight-day deadline for the 270-day exemption means that an application for a declaration of ongoing contributions liability should be made to the home-country social security authorities well ahead of the date on which a seconded employee is expected to take up his or her duties in the Czech Republic.



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Income tax & social security contributions on earnings

	2008	2009
Employee tax rate	15.0%	15.0%
Employee social insurance rate	8.0%	6.5%
Employee health insurance rate	4.5%	4.5%
Employee total social contributions rate*	12.5%	11.0%
Employer social insurance rate	26.0%	25.0%
Employer health insurance rate	9.0%	9.0%
Employer total social contributions rate*	35.0%	34.0%
* Paid on earnings up to annual upper limit:	CZK 1 034 880	CZK 1 130 640

Tax deductions

	2008	2009
Taxpayer	CZK 24 840	CZK 24 840
Taxpayer's wife (wife's annual income up to CZK 68 000)	CZK 24 840	CZK 24 840
Child	CZK 10 680	CZK 10 680
Student under age 26	CZK 4020	CZK 4020



EUROPE

UK: cross-border pension-fund contributions

The European Commission has formally requested the United Kingdom to change the legislation which, in certain circumstances, denies a tax deduction for contributions paid to non-UK pension funds (*Case number 2005/2320*). The potential denial of a UK tax deduction particularly affects individuals who move to the United Kingdom to work and continue to participate in a pension fund established in their country of origin. The Commission's request takes the form of a Reasoned Opinion, which is the second step of the infringement procedure set out in Article 226 of the European Community Treaty.

The particular issue being examined by the Commission is the way that the UK income tax rules apply to employees who are working in the United Kingdom and contribute to pension funds established elsewhere in the European Union or the European Economic Area. The individual can only obtain an income-tax deduction from his or her UK-taxable income for foreign pension contributions (and also avoid being taxed on any contributions made by the employer) if the administrator or other agent of the pension fund provides certain information to the UK revenue authorities (HMRC). In particular, the UK legislation requires the pension fund administrator to notify HMRC regarding the capital value of the individual's pension fund, to provide details of the plan benefits, and to notify the fact that plan payments have been made (so that HMRC can determine whether a UK tax charge arises).

The Commission's Opinion indicates that the United Kingdom should allow a tax deduction for all contributions paid by UK-resident taxpayers to pension funds in other EU and EEA member states on the same basis as contributions to UK domestic pension funds qualifying for tax relief. In the situation where the foreign pension provider is either unwilling or unable to provide HMRC with the required information, the fact that the individual cannot obtain a UK tax deduction for his or her foreign pension contributions may force the individual to replace his or her foreign pension scheme by a UK tax-approved pension plan. The effect is that the UK pension rules may dissuade individuals resident in another EC/EEA member state from exercising their right of free movement within the European Community by taking up a UK employment.

The Commission also stated that the United Kingdom's pension-information requirements are a costly formality, particularly for foreign pension providers not wishing to enter the UK pensions market but merely to provide services to their existing scheme members who work in other EC/EEA member states.

Consequently, the Commission concluded that the United Kingdom's current tax legislation for foreign pension scheme contributions is not compatible with Articles 39, 43 and 49 of the EC Treaty, nor with Articles 28, 31 and 36 of the EEA Agreement.

If no satisfactory reaction to the Reasoned Opinion is received by the Commission within two months, it may decide to refer the matter to the European Court of Justice (ECJ) for a ruling. If the UK authorities do

decide to change the UK domestic tax legislation to meet the Commission's requirements, this will be reported in a future issue of *BDO Expatriate News*.



NETHERLANDS

Netherlands: double tax treaty claims

Double tax treaties normally include an Article that gives the sole taxing rights over earnings to the employee's state of residence, in the situation where the individual is present for a limited number of days in the other country in which he or she is working (the source country) in a stated period. Depending on the specific treaty, this '183-day rule' can apply to the days in the tax year, in the calendar year, or in any twelve-month period beginning or ending in the tax year. Additional conditions that must be met in order for the host-country earnings to be exempt from tax usually include the requirement that the earnings are not borne by the employer's fixed base or permanent establishment in the host country. The Supreme Court of the Netherlands has now examined the meaning of this requirement in relation to the employees of a UK company.

Background

A UK limited company was managed from the United Kingdom and acted as a temporary employment agency. The company posted employees to work in the Netherlands. These employees were present in the Netherlands for less than 183 days in the tax year and they remained residents of the United Kingdom during the period of the posting.

The employees worked for Netherlands clients that did not qualify as 'material employers', as mentioned in Article 15 of the Netherlands/UK tax treaty. In the Netherlands the UK company used the services of a Netherlands-resident closed limited partnership, which is a transparent entity for Netherlands tax purposes.



The issue

The question considered by the Netherlands Supreme Court was when earnings can be considered to be borne by a Netherlands permanent establishment where the activities are carried out in the Netherlands by UK-resident employees who have been posted by their UK-resident employer, and who stay in the Netherlands for less than 184 days in the tax year.

The tax treaty between the Netherlands and the United Kingdom provides that the United Kingdom may tax the income relating to the employment activities of a UK resident, unless those activities take place in the Netherlands. The Netherlands has the right to tax the income relating to any work period in the Netherlands (however short the stay) unless the tax treaty exception applies. Even if the employee's activities are carried out in the Netherlands, the United Kingdom has the exclusive right to tax the related earnings where the following three criteria are all fulfilled. Firstly, the employee's stay in the Netherlands must be less than 184 days; secondly the earnings must be paid by, or on behalf of, an employer that is not resident in the Netherlands; and thirdly the earnings must not be borne by a permanent establishment that the employer has in the Netherlands.

The case

In the case before the Netherlands Court, the question was how the third condition should be interpreted. The Netherlands tax inspector did not issue a corporation tax return to the UK limited company in respect of the Netherlands-resident closed limited partnership, although the inspector considered it to be a Netherlands permanent establishment of the UK company.

The Netherlands Court of Appeal had previously held that the earnings in question were not borne by the Netherlands permanent establishment, because the earnings did not result in a reduction in the taxable profits that arose in the Netherlands. As a consequence, the Court of Appeal held that the conditions of the tax treaty exemption had been met and therefore the Netherlands did not have the right to tax the employees' income.

However, the Supreme Court overturned the findings of the Court of Appeal. It found that the decisive issue was whether the earnings must be attributed to the permanent establishment under Article 7 of the UK/Netherlands tax treaty, because the employment activities were carried out for the benefit of the permanent establishment. The Court indicated that it was not necessary for the earnings to be actually borne by the permanent establishment, but only that the earnings should be attributed to the permanent establishment. This was said to be in accordance with the principle set out in the Commentary to the OECD Model double tax treaty that where earnings reduce the taxable profits in the source state, this should be balanced by the fact that the individual is taxed on them in that state.

Conclusion

As a result of the decision of the Netherlands Supreme Court, the Netherlands has the right under the UK/Netherlands double tax treaty to tax earnings for duties carried out in the Netherlands (and the United Kingdom must grant double tax relief accordingly), regardless of whether the earnings are actually borne by a Netherlands permanent establishment or not. The only relevant factor is whether the remuneration should be attributed to the permanent establishment in line with the Commentary to the OECD Model Treaty.

The stance taken by the Netherlands court contrasts with the United Kingdom's current interpretation of this issue, which is that the earnings must actually be borne by the permanent establishment. It should also be noted that, once the work of the Committee that is currently rewriting the OECD Model Treaty Commentary reaches a conclusion, the UK tax authorities (HMRC) will issue new guidance on the meaning of 'employer' for the purposes of the double tax treaty exemption. This should address, in particular, the situations in which the business in the host country is considered to be the seconded individual's economic employer. When taken in combination with the effect of the Netherlands Supreme Court ruling, the United Kingdom's stance on these issues may result in the double taxation of certain earnings.



SWEDEN

Employment-related share options

Changes to the Swedish tax legislation applicable to employment-related share options came into effect on 1 January 2009. The employer's taxation and social security obligations were also revised from the same date. These changes affect expatriate employees who exercise their options after 31 December 2008 and the entity that is their employer at the date of the option grant.

Taxation

The Swedish rules up to 31 December 2008 generally imposed tax on the share options of individuals who were Swedish-resident at the option vesting date. The tax charge then arose on the date that the options were exercised. In addition, an exit tax could be imposed on an individual who left Sweden owning options that had already vested, but which had not yet been exercised.

The option exit tax was abolished with effect from 1 January 2009. Where a Swedish-resident employee exercises share options after 31 December 2008, the whole gain on exercise is taxable in Sweden. This treatment will apply regardless of whether the employee is resident or non-resident in Sweden at the time that the options vest.

As a result of the changes, with effect from 1 January 2009 an employee who is assigned to Sweden may be taxable in his or her home country on the option gain (because the employee is resident there at the time of grant) and also be taxed in Sweden (because the individual is Swedish-resident at the date of exercise). However, this double taxation can potentially be eliminated by a foreign tax credit relief claim, or by a claim under an appropriate double tax treaty.

Employer obligations

The legislation in Sweden places the responsibility for tax withholding in respect of employee benefits such as share options on the entity that provides that benefit. The same entity is liable for the payment of any social security contributions that arise on the benefit and it must also report the benefit on an annual statement. However, where the benefit is provided by a non-Swedish entity by reason of the individual's employment with a Swedish entity, up to 31 December 2008 these employer obligations fell on the Swedish entity.

In the case of share options exercised from 1 January 2009 onwards, it is the legal employer at the date of grant that is responsible for meeting the tax withholding, social security contribution withholding and tax reporting requirements. The effect of this change is that a non-Swedish employer may need to register with the Swedish Tax Agency, in order to meet his tax and social security responsibilities in relation to employees who exercise their share options when they are resident in Sweden.

A foreign employer with no permanent establishment in Sweden is under no obligation to withhold tax or to submit annual statements of employee share options. Registration might nevertheless be needed for such employers in order to meet their social security filing and payment obligations. It is, however, possible for a foreign employer without a permanent establishment in Sweden to make an agreement with the employee that the latter be liable for the social security contributions, instead of the employer. Such an agreement should preferably be in writing, even though this is not a statutory requirement. If a non-

Swedish employer without a permanent establishment in Sweden has made an agreement with all of his Swedish-resident employees to transfer the social security contributions liability in this way, registration with the Swedish Tax Agency will not be necessary.

Employer reporting failures

The rules in Sweden make the employee responsible for advising the employer of any exercise of share options, so that the employer can then fulfil his own taxation and social security contribution obligations. However, in the situation where the employee does not advise his or her employer of the option exercise, up to 31 December 2008 no penalties were imposed on the employer for reporting failure.

The new rules that took effect from 1 January 2009 allow a non-reporting penalty to be imposed on the employer, even where the employee has failed to advise the employer of the exercise of share options. The view of the Swedish government is that it is the responsibility of the employer entity on which these obligations fall to ensure that it is informed of the exercise of the employee's options.

Conclusion

These changes to the Swedish tax rules for share options and to the associated employer obligations make it essential for companies to track carefully the grant and exercise of employment-related share options in the future. Employers should consider requiring their employees to notify them when they exercise their share options.

UNITED KINGDOM

2008 Pre-Budget Report

The UK Chancellor of the Exchequer announced on 24 November 2008 the changes that will take effect for the tax year 2009-10 (beginning on 6 April 2009) and for later tax years. The main objective is to stimulate the UK economy, in response to the financial slowdown in the United Kingdom.

Personal allowances

The personal tax allowances deductible in calculating taxable income will increase for 2009-10. The personal tax allowance will be reduced or withdrawn from 6 April 2010 for individuals with higher incomes. The allowance will be reduced by up to 50% by withdrawing GBP 1 of allowance for every GBP 2 of taxable income from GBP 101 000-140 000. A further GBP 1 reduction in the allowance will apply for each GBP 2 of taxable income above GBP 140 000 (until the allowance is completely eliminated).



Tax allowances 2009-10

Tax allowance	2008-09 (GBP)	2009-10 (GBP)
Personal allowance: age under 65	6035	6475
Personal allowance: age 65-74	9030	9490
Personal allowance: age 75 and over	9180	9640
Blind person's allowance	1800	1890

Tax rates

The bands of taxable income have been widened for 2009-10. A new 45% tax rate band will apply from 6 April 2011 to income in excess of GBP 150 000.

Tax rates 2009-10

Tax rate (%)	Tax band 2008-09 (GBP)	Tax band 2009-10 (GBP)
10% savings rate*	0-2320	0-2440
20% basic rate	0-34 800	0-37 400
40% higher rate	Over 34 800	Over 37 400

* The 10% savings rate only applies to savings income where the individual's non-savings income does not exceed the limit for this tax band.

UK social security contributions

The social security contribution rates (Class 1 National Insurance Contributions or NICs) that will apply to employment income for 2009-10 are unchanged. However, the NIC upper earnings limit will be aligned for 2009-10 with the tax band above which income is taxed at the higher (40%) rate.

The rates of Class 1 NICs payable by employees will be increased by 0.5% from 6 April 2011. This means that the basic employee NICs rate will be 11.5% and the additional rate paid on earnings above the upper earnings limit will be 1.5%. The rate of Class 1 NICs payable by the employer will also increase by 0.5% from 6 April 2011 to 13.3%. In 2011-12 the NIC threshold will be aligned with the basic personal tax allowance.

Class 1 NICs 2009-10

	2008-09 (GBP)	2009-10 (GBP)
Employee threshold	105 per week	110 per week
Employee upper earnings limit	770 per week	844 per week
Employee NIC rate between threshold and upper earnings limit	11.0%	11.0%
Employee NIC rate on earnings in excess of upper earnings limit	1.0%	1.0%
Employer's NIC rate on all earnings (no upper limit)	12.8%	12.8%

Pensions

As previously announced, the maximum tax-deductible contributions that can be paid to a UK-approved pension scheme for 2009-10 will be GBP 245 000 and the maximum value of a tax-approved UK pension fund (the 'lifetime allowance') will be GBP 1.75 million. In line with previous announcements, these limits will increase for 2010-11 to GBP 255 000 and GBP 1.8 million respectively.

However, the maximum annual tax-deductible contributions and the overall maximum tax-approved fund value will both be frozen from 6 April 2011 so that they will remain at the 2010-11 rates for the following five tax years, up to 2015-16.

Employment-related securities

The UK tax legislation that applies to employment-related securities acquired for less than market value will be changed to remove a number of anomalies, as follows:

- Where payment for employment-related shares is made in instalments and the shares are sold before the last instalment is paid, but there is no overall profit, there will be no income tax charge unless the employee has been released from the obligation to pay the remaining instalment(s).
- The income tax charge that can arise where the employee sells nil or partly-paid shares at no profit will be removed.
- The tax charge that can arise where the value of the employee's employment-related shares reduces because there is a bonus issue of shares will be corrected, in order to ensure that the correct amount of any profit is taxed.



Temporary residence

The High Court in England and Wales has overturned the previous decision in the temporary residence case of *Revenue and Customs Commissioners v Grace*. The taxpayer (Mr Grace) was a Commonwealth citizen and an airline pilot, who had claimed that he had ceased to be resident and ordinarily resident in the United Kingdom because he had made a distinct break from the United Kingdom after moving to South Africa (although he retained a car in the United Kingdom, as well as a UK bank account into which his salary was paid). He also claimed that when he visited the United Kingdom he was only a temporary resident, which meant that his UK residence status should be determined on the basis of the days that he spent in the United Kingdom in the tax year and without taking account of any UK living accommodation. The Special Commissioner (first-instance Tribunal) had agreed with Mr Grace, on the basis that his family and social connections (together with the location of his personal possessions) indicated that he had become resident in South Africa after leaving the United Kingdom.

However, the High Court held that Mr Grace was resident and ordinarily resident in the United Kingdom (which was not precluded by the fact that he was also resident in South Africa). The Court indicated that the Special Commissioner had not understood the meaning of “in the UK for a temporary purpose” in the relevant legislation. In particular, not enough weight had been given by the Commissioner to Mr Grace’s employment (which required him to be present in the United Kingdom on a recurring basis in order to undertake his employment duties). The pattern of his life indicated that Mr Grace had a UK ordinary residence status, because he had a settled purpose in visiting the United Kingdom which would continue in the future (until such time as he either changed his job or retired). The recurrent nature of Mr Grace’s UK visits was said to lead inevitably to the conclusion that the purpose of his presence in the United Kingdom was neither casual nor transitory, so that it could not be described as a temporary purpose. The Court also refused to accept the argument that the furnished property that Mr Grace owned in the United Kingdom (which he used for UK rest periods between long-haul flights) should not be regarded as a home.



Transfers of UK-approved pension plans to Australia

HMRC has recently issued new guidance on the transfer of funds that have benefited from UK tax relief from a UK pension plan to an Australian qualifying recognised overseas pension scheme (QROPS). In order to be a QROPS, the non-UK scheme must be established in a location approved by HMRC, it must be regulated as a pension scheme in that location, and it must be open to residents of that location. Other conditions that the non-UK scheme must meet relate to the benefits that it provides, including the minimum age at which benefits can be provided, and a requirement that at least 70% of the transferred funds will be designated to provide the transferring individual with a pension for life.

UK taxation: unauthorised transfers

The UK tax legislation can impose tax charges on certain pension-scheme payments that are not authorised by the rules for UK-approved pension plans ('unauthorised payments').

HMRC has indicated that a transfer from a UK-registered pension scheme to an Australian QROPS can be an authorised payment for UK tax purposes, so that no unauthorised-payments charge (paid at 40%) or unauthorised-payments surcharge (paid at 15%) will arise. However, if the Australian scheme makes a payment out of the funds that were transferred to it from the UK pension scheme (the 'relevant transfer fund') that would have been subject to an unauthorised-payments charge or surcharge if it had been made by a UK-registered pension scheme, in certain circumstances the individual pension scheme member can be liable to these charges. In particular,

the UK charges can be imposed where the individual is either resident in the United Kingdom in the tax year in which the payment is made, or has been UK-resident in any of the previous five tax years.

Australian taxation

A transfer from a UK-registered pension scheme is treated by the Australian tax legislation as a contribution to the Australian pension plan and an Australian tax charge may arise. The Australian rules treat contributions up to a maximum annual amount (the 'contributions cap') as allowable, and this can apply to amounts that are transferred to an Australian pension plan. The annual contributions cap is currently AUD 150 000. Where the individual scheme member is under the age of 65, in any particular year the unused contributions cap for the previous two years can also be brought forward and used against the contributions for that year. The result is that a UK pension fund with a value of up to AUD 450 000 can be transferred to an Australian scheme without an Australian tax charge, provided the transfer takes place within the six-month period following the date that the pension scheme member becomes Australian-resident.

Where a transfer is made within the six-month deadline, but the contributions cap is exceeded, the individual scheme member is charged to tax in Australia on the excess. Tax is charged at the rate of 46.5% and a withdrawal must be made from the scheme equal to the amount of tax payable by the individual. The amount withdrawn can either be paid directly by the scheme to the Australian tax authorities (ATO) to cover the tax charge, or alternatively it can be paid to the individual who must then pay the tax to the ATO.

Where the pension fund transfer takes place more than six months after the individual becomes Australian-resident, the individual can elect to have all or part of the transfer treated as the assessable income of the Australian scheme. In this situation, the transfer amount that is included in the election is taxed on the Australian pension fund at the rate of 15%.

UK liability on transfers taxed in Australia

HMRC has now clarified the interaction between the tax legislation in the UK and Australia. In particular, HMRC has indicated the situations in which the payment of Australian tax charges on the transfer of a UK-registered pension fund to an Australian scheme can result in a UK unauthorised-payments charge on the transferring individual. It should be noted that the guidance applies equally to pension funds that have received UK tax relief and are transferred to an Australian scheme that has not been accepted by HMRC as a qualifying recognised overseas pension scheme.

HMRC has confirmed that the following general principles apply in relation to the Australian tax charges:

- Any tax charges that are imposed on the Australian scheme itself (such as the 15% charge on a transfer made after the six-month deadline) are regarded by HMRC as authorised payments, because they are scheme administration member payments (FA 2004 s 171).
- Where a tax liability is imposed on the individual member of an Australian scheme, this is an unauthorised payment, not a scheme administration member payment. This treatment applies regardless of whether the individual's tax liability is paid directly by the scheme to HMRC, or a payment is made by the scheme to the individual who then pays the liability.

To the extent that any transfer of UK funds to an Australian pension scheme is covered by the contributions cap (so that there is no tax charge in Australia) or is charged to tax on the Australian fund, there will be no unauthorised payment for UK tax purposes. Where the contributions cap is exceeded, so that the excess is charged to tax on the individual at 46.5% and this amount must be withdrawn from the Australian scheme, the amount withdrawn will be a UK-taxable unauthorised payment if the individual is resident in the United Kingdom at that time or has been UK-resident at any time in the five previous tax years.

Individual compliance

Where an unauthorised pensions payment arises and the individual is either resident in the United Kingdom in the tax year in which the payment is made, or was UK-resident in the previous five tax years, that individual is required to disclose the payment by completing a UK self-assessment tax return in respect of the UK tax year in which the payment is made (the UK tax year ends on 5 April).

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HMRC has confirmed that the individual cannot offset his or her Australian tax liability against the UK unauthorised payments tax charge arising on the funds withdrawn from the scheme to meet the Australian liability. Double tax relief only applies where the United Kingdom and another country have taxed the same payment. In this particular situation, the Australian legislation taxes the amount transferred to the Australian pension scheme in excess of the available contribution cap, whereas the UK legislation taxes the payment that is made out of the Australian scheme to meet the Australian tax liability.

Pension scheme compliance

The UK legislation places an obligation on the manager of the Australian qualifying recognised overseas pension scheme to report to HMRC any payments made out of the relevant transfer fund in respect of members who are either resident in the United Kingdom or have been UK-resident in the previous five tax years. However, where the individual elects for the Australian fund to be taxed at 15% on funds transferred from the UK scheme more than six months later than the date on which the individual becomes Australian-resident, this does not need to be reported to HMRC.

More information

For more information, please contact your local expatriate contact or one of the Expatriate Services Centre of Excellence contacts below.

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