

“Dual” Employment Contracts for US Executives Working in the UK

Background

Individuals, whether of British or foreign nationality, who reside in the UK are, in principle, taxable on their worldwide employment income. Many US executives who are “seconded” by their US employer to work in the UK may therefore become UK tax resident.

Such US executives who have not been UK resident in the three previous tax years and are not UK domiciled need not pay UK tax on their overseas earnings if they do not bring the income to the UK. Other US executives resident in the UK over the longer term may incur liability for UK tax on their overseas income unless their employer structures their employment duties under separate employment contracts, one with the UK subsidiary for their UK duties and another with the US parent for their overseas duties. These have become known as “dual contracts”. If the non-UK domiciled executive keeps the income earned under the overseas contract outside the UK, no UK income tax should arise on that income. He or she will pay UK income tax on the income earned in the UK under his or her UK contract.

“All Change”

In December 2013 HM Government announced that it would be clamping down on the artificial use of dual contracts for longer-term UK residents and has now published draft legislation that makes offshore employment income in a dual-contract arrangement taxable in the UK in certain cases.

The New Rules

Under the new anti-avoidance rules, which come into force on 6 April 2014, the dual-contract overseas income of US executives resident in the UK will be taxed in the UK if:

- the executive has a UK employment and one or more foreign employments,
- the UK employer and the offshore employer either are the same entity or are in the same group,
- the UK employment and the offshore employment are “related”, and
- the foreign tax rate that applies to the remuneration from the offshore employment is less than 75 percent of the applicable rate of UK tax. The current top rate of UK income tax is 45 percent, and 75 percent of this rate is 33.75 percent.

The UK employment and the offshore employment will be “related” where, by way of non-exhaustive example:

- one employment operates by reference to the other employment,
- the duties performed in both employments are essentially the same (regardless of where those duties are performed),
- the performance of duties under one contract is dependent on the performance of duties under the other,
- the executive is a director of either employer, or is otherwise a senior employee or one of the highest earning employees of either employer, or
- the duties under the dual contracts involve, wholly or partly, the provision of goods or services to the same customers or clients.

Action

US corporations should urgently review the use of dual contracts for their non-UK domiciled executives seconded to their UK subsidiaries before the 6 April 2014 start date. The proposed legislation is widely drafted and has the potential to catch even genuine dual-contract arrangements. If one of the dual contracts is with a group employer in a low-tax jurisdiction, that contract may be especially vulnerable. Dual contracts will not necessarily become extinct, but in the future, careful cross-border tax advice should be sought in their structuring.

Vedder Price London offers an experienced, high-quality and versatile team of UK-qualified lawyers who provide business-oriented advice and practical solutions—from mergers and acquisitions to corporate structures, strategies and governance. In the matters described in this bulletin, we will assist US corporations with UK-resident executives in their review of the employment and tax aspects of their dual contracts and advise on any restructuring necessary as a result of these new rules. Please feel free to contact any member of our team below or the Vedder Price attorney with whom you work.

For More Information

Richard L. Thomas, Partner

Tel: +44 (0)20 3667 2930
Mobile: +44 (0)77 1517 3334
rlthomas@vedderprice.com

Sam Tyfield, Partner

Tel: +44 (0)20 3667 2940
Mobile: +44 (0)78 8789 3137
styfield@vedderprice.com

Jonathan Edgelow, Associate

Tel: +44 (0)20 3667 2925
jedgelow@vedderprice.com

Lydia Sadler, Associate

Tel: +44 (0)20 3667 2926
lsadler@vedderprice.com

Chicago

222 North LaSalle Street
Chicago, IL 60601
T: +1 (312) 609 7500
F: +1 (312) 609 5005

New York

1633 Broadway, 47th Floor
New York, NY 10019
T: +1 (212) 407 7700
F: +1 (212) 407 7799

Washington, DC

1401 I Street NW, Suite 1100
Washington, DC 20005
T: +1 (202) 312 3320
F: +1 (202) 312 3322

London

4 Coleman Street
London EC2R 5AR
T: +44 (0)20 3667 2900
F: +44 (0)20 3667 2901

San Francisco

275 Battery Street, Suite 2464
San Francisco, CA 94111
T: +1 (415) 749 9500
F: +1 (415) 749 9502

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