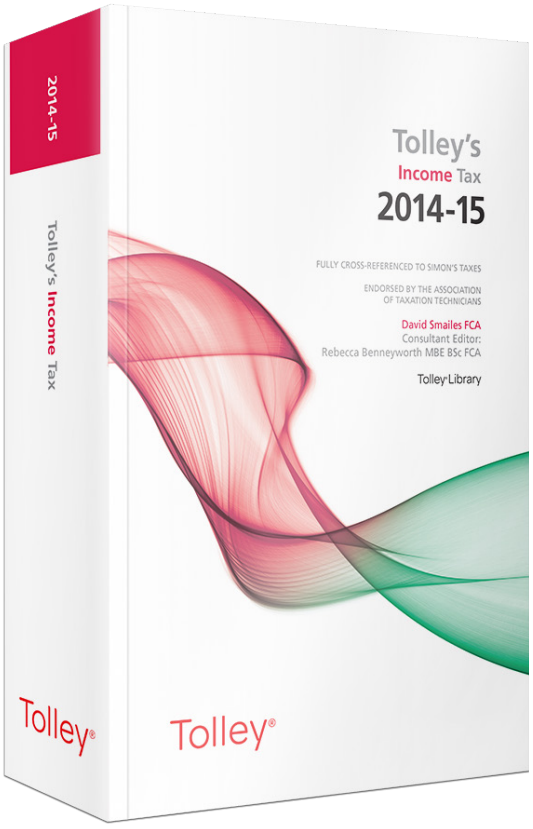
TOLLEY'S INCOME TAX 2014-15

Excerpt from chapter 70: Share-Related Employment Income and Exemptions



To order your copy of
Tolley's Income Tax 2014-15
visit **www.lexisnexis.co.uk**
or call **0845 370 1234**.

Tolley® Tax intelligence from LexisNexis®

Responsible persons

[69.17A]

Each of the following is a `*responsible person*' in relation to a `reportable event' (see **69.17** above):

(a) the employer;

(b) the `host employer' if any;

(c) (on and after 17 July 2014) if the employee in question is a continental shelf worker and the employer is outside the scope of PAYE, any person who is a `relevant person' in relation to the employee (see **51.6C** pay as you earn);

(d) the person from whom the shares, interest or option was acquired; and

(e) unless the shares are excluded from these requirements (see below), the person by whom they were issued.

For the purposes of (b) above, a `*host employer*' is a person for whom the employee works at the time of the event and who would be treated as making payments of PAYE income if such payments were actually made by a non-UK employer (see **51.6B** pay as you earn under `Non-UK employer'). For the purposes of (e) above, shares excluded from these requirements are, broadly, government and local authority stocks/bonds and quoted shares issued by a person who, at the time of the event, is not connected (within 19 connected persons) with the employer.

[*ITEPA 2003, ss 421L, 718; FA 2014, s 21(3), Sch 8 paras 230, 232*].

See **69.3** above for the extended meaning of `shares' in these respects.

Annual returns

[69.17B]

For **2014/15** onwards, a person (P) who is (or has been) a `responsible person' (see **69.17A** above) in relation to reportable events (as in **69.17** above) must make a return for each tax year falling (wholly or partly) in P's `reportable event period'. P's `*reportable event period*' is the period beginning when the first reportable event occurs in relation to which P is a responsible person and ending when P will no longer be a responsible person in relation to reportable events. The return for a tax year must contain such information as HMRC may require, and must be filed on or before 6 July in the following tax year. If P becomes aware of any error, omission or inaccuracy in a return, he must make an amended return without delay.

A return must be made, and any accompanying information must be given, electronically. However, if they consider it appropriate to do so, HMRC may allow a person to make a return or give any accompanying information in another way.

P's return for a tax year need not contain, or be accompanied by, `duplicate information', and P is not required to make a return for a tax year if it would contain only, or be accompanied only by, such information. `*Duplicate information*' means information which is contained in or accompanies a return made by another person for the tax year under these provisions or a return made by any person for the tax year under any of the annual return provisions relating to tax-advantaged employee share schemes.

[*ITEPA 2003, ss 421JA, 421JB; FA 2014, Sch 8 paras 228, 232, 234*].

Penalties

If P fails to make a return by the due date, he is liable for a penalty of £100. If the failure continues for more than three months beginning with the due date, P is liable for a further penalty of £300. If the failure continues for another three months, another £300 penalty is incurred. If it continues for nine months in all, HMRC may, upon giving notice, charge a daily penalty of £10. The notice must specify the period in respect of which the penalty is payable; this period may begin earlier than the date on which the notice is given but

cannot begin until after the end of the said nine-month period or, if relevant, after the end of any period specified in any previous notice given by HMRC in relation to the same failure. Liability for a penalty does not arise if P satisfies HMRC (or, on appeal, the Tribunal) that there is a reasonable excuse. Reasonable excuse does not include insufficiency of funds (unless attributable to events outside P's control) or reliance on another person (unless P took reasonable care to avoid the failure); a failure must be remedied without unreasonable delay after a reasonable excuse ceases.

If a return contains a material inaccuracy which is either careless or deliberate or is not corrected by an amended return upon P's becoming aware of it, P is liable for a penalty of up to £5,000. The same applies if a return is not made electronically where required.

[*ITEPA 2003, ss 421JC, 421JD; FA 2014, Sch 8 paras 228, 232, 234*].

For assessment of penalties, see *ITEPA 2003, s 421JE*. An appeal may be made against the imposition and/or the amount of penalties. Notice of appeal must be given to HMRC no later than 30 days after the date of the notice of assessment of the penalty. For these and other matters related to appeals, see *ITEPA 2003, s 421JF*.

2013/14 and earlier years

There was no requirement for annual returns but, in relation to reportable events occurring before 6 April 2014, each person who was a responsible person in relation to the event had to provide HMRC with written particulars of the event on or before 6 July in the tax year following that in which the event occurred. Penalties could be imposed under *TMA 1970, s 98* for non-compliance. Once such particulars were provided in relation to an event, other persons were released from their own obligation to report the event. [*ITEPA 2003, s 421J(3)(7)(10); FA 2014, Sch 8 paras 227, 232, 233*]. The standard form for reporting events was Form 42. Detailed guidance is available on the reporting requirements generally and on the completion of Form 42 (see www.hmrc.gov.uk/shareschemes/form42-guidance-2007.pdf).

Further HMRC information powers

[69.17C]

HMRC may give notice to any person, requiring him to provide written particulars of reportable events (as in **69.17** above) which take place during a period specified in the notice and in relation to which that person is a `responsible person' (see **69.17A** above) or to state that there are no such events. Such notice must specify a deadline for compliance, which must be at least 30 days after the notice is given. Penalties can be imposed under *TMA 1970, s 98* for non-compliance. In relation to reportable events occurring before 6 April 2014, once such particulars were provided in relation to a particular event, other persons were released from their obligation to report the event under **69.17B** above. [*ITEPA 2003, s 421J(4)–(6)(8)(10); FA 2014, Sch 8 paras 227, 232, 233*].

Internationally mobile employees

[69.18]

Legislation was introduced by *FA 2008* to bring employees who are resident but not ordinarily resident, and who receive employment-related shares, within those charging provisions of this chapter which previously had effect only for employees both resident and ordinarily resident, i.e. the provisions at **69.4** (restricted shares), **69.7** (convertible shares), **69.13** (post-acquisition benefits) and **69.14** (share options) above. The legislation applies to shares or, as the case may be, share options acquired on or after 6 April 2008 (but not to shares acquired on or after that date under an option acquired before that date). The effect of this can be seen under the sub-headings Exclusions in **69.4** and Exceptions from charge in **69.15**, where it will be noted that different criteria apply in relation to the earnings exclusion depending on when the shares or the share option were acquired. Consequently, the remittance basis rules at **69.19** below were introduced simultaneously to cover the situation where the remittance basis (59) applies to an individual within the charge to tax under those provisions. These rules also have effect where the remittance basis applies to an

individual within the charge to tax under **69.11** or **69.12** above (shares acquired for less than, or disposed of for more than, market value), again where the shares in question are acquired on or after 6 April 2008.

The above rules are themselves replaced by new rules of wider scope which have effect on and after **6 April 2015** in relation to employment-related shares and share options irrespective of whether they were acquired before or on or after that date. For these rules, see **69.19A–69.19C** below.

The remittance basis rules (obsolescent)

[69.19]

As stated in **69.18** above, the remittance basis rules are themselves replaced by new rules of wider scope which have effect on and after 6 April 2015 in relation to employment-related shares and share options irrespective of whether they were acquired before or on or after that date (see **69.19A–69.19C** below). Subject to that, the remittance basis rules apply where any amount (the `*securities income*') counts as employment income of an individual for a tax year under any of the charging provisions referred to above (with one exception) and any part of `the relevant period' is within a tax year for which the remittance basis applies to the individual by virtue of any one of **59.2**(1)–(3) remittance basis. (The exception is the specific anti-avoidance charge in **69.11** above under which an amount equal to what would have been the initial amount of the notional loan is instead taxed as employment income of the employee for the tax year in which he acquires the shares.) If an amount counts as employment income under any of those charging provisions but does so by virtue of **69.9** or **69.10** above (shares with artificially depressed or artificially enhanced market value) it is disregarded for these purposes.

The extended meaning of `shares' at **69.3** above applies throughout, and `share option' should be construed accordingly.

The relevant period

The definition of the `*relevant period*' depends on the charging provision under which an amount counts as employment income, as follows.

- If the charge is under **69.4** above (restricted shares) or **69.7** above (convertible shares), the relevant period is the period beginning with the day the shares are acquired and ending with the day on which the chargeable event occurs.
- If the charge arises from the discharge of the notional loan in **69.11** above (shares acquired for less than market value), the relevant period is normally the tax year in which the notional loan is treated as made or, if the chargeable event occurs in that year, the period beginning at the start of that tax year and ending with the day on which the chargeable event occurs. If, however, the shares are acquired by means of an option, the relevant period is the period beginning with the day the option is acquired and ending with the day on which the option is first capable of being exercised.
- If the charge is under **69.12** above (shares disposed of for more than market value) or **69.13** above (post-acquisition benefits), the relevant period is the tax year in which the chargeable event occurs.
- If the charge is under **69.15** above (non-tax-advantaged share options), the relevant period begins with the day the option is acquired and ends with the day on which the chargeable event occurs or, if earlier, the day on which the option is first capable of being exercised.

[*ITEPA 2003, ss 41A(1)(2)(3)(10), 41B*].

Ascertaining taxable income

There are two rules to ascertain the employee's taxable specific income from the employment for a tax year in respect of securities income (as defined above). (See **26.1** employment income for the charge to tax on taxable specific income.). Rule 1 determines what is chargeable on the arising basis and Rule 2 determines what is chargeable on the remittance basis where applicable. Rule 1 is that the excess of `securities income' (see above) over so much of that income as is 'foreign securities income' is taxable specific income

for the tax year for which the securities income counts as employment income of the individual. This has nothing to do with what, if anything, is remitted to the UK.

Rule 2 is that the full amount of any of the foreign securities income that is remitted to the UK in any tax year is taxable specific income from the employment for that year. This applies whether or not the employment is held when the amount is remitted. See 59 remittance basis for the meaning of 'remitted to the UK' etc. For the purpose of applying the provisions described in that chapter, generally treat the shares or the option as deriving from the foreign securities income; but where the chargeable event is the disposal of the shares, or the assignment or release of the share option, in question for consideration equal to or exceeding market value, treat the consideration (and not the shares or the option) as deriving from the foreign securities income.

Foreign securities income

The extent to which the securities income is '*foreign securities income*' is determined as set out below. For these purposes, treat the securities income as accruing evenly over 'the relevant period' (as defined above).

If any part of the relevant period is within a tax year for which all of the following apply, then, subject to what is said below regarding associated employments and dual contract arrangements, the securities income treated as accruing in that part of the relevant period is foreign securities income:

(a) the remittance basis applies to the individual by virtue of any one of **59.2**(1)–(3) remittance basis;

(b) (for 2012/13 and earlier years) the individual is ordinarily resident in the UK;

(c) (for 2013/14 and 2014/15) the individual does not meet the section 26A test in **26.8** employment income;

(d) the employment is with a 'foreign employer'; and

(e) the duties of the employment are performed wholly outside the UK.

Where an individual was resident in the UK for 2012/13 but was not ordinarily resident there at the end of that year, the transitional rules at **59.3** remittance basis apply, with the result that, for a transitional period, (b) above continues to have effect instead of (c) (notwithstanding the abolition of the concept of ordinary residence — see **61.34** residence and domicile).

'*Foreign employer*' means an individual, partnership or body of persons (including a company) resident outside, and not resident in, the UK.

If the individual also holds 'associated employments' the duties of which are not performed wholly outside the UK, the foreign securities income is then limited to such amount as is just and reasonable, having regard to the employment income from all the employments, the proportion of that employment income that is 'chargeable overseas earnings' (see **26.6** or **26.7** employment income), the nature of and the time devoted to duties performed outside and in the UK, and all other relevant circumstances. Employments are '*associated*' if they are with the same employer, or the employers are under common control or one controls the other, control being as in *CTA 2010, ss 450, 451* (for companies) and *ITA 2007, s 995* (for individuals and partnerships).

If any part of the relevant period is within a tax year for which all of the following apply:

(i) the remittance basis applies to the individual by virtue of any one of **59.2**(1)–(3) remittance basis;

(ii) (for 2012/13 and earlier years) the individual is not ordinarily resident in the UK;

(iii) (for 2013/14 and 2014/15) the individual meets the section 26A test in **26.8** employment income;

(iv) some or all of the duties of the employment are performed outside the UK,

the securities income treated as accruing in that part of the relevant period is foreign securities income to the following extent. If the duties of the employment are performed wholly outside the UK, all of the securities income treated as accruing in that part of the relevant period is foreign securities income. If only some of the duties of the employment are performed outside the UK, then (having regard to the extent to

which the duties are performed outside the UK) a just and reasonable proportion of the securities income treated as accruing in that part of the relevant period is foreign securities income.

Where an individual was resident in the UK for 2012/13 but was not ordinarily resident there at the end of that year, the transitional rules at **59.3** remittance basis apply, with the result that, for a transitional period, (ii) above continues to have effect instead of (iii) (notwithstanding the abolition of the concept of ordinary residence — see **61.34** residence and domicile).

For the purposes only of determining the extent to which securities income is foreign securities income, an individual who is non-resident in the UK in a tax year is treated as if the remittance basis applied to him for that year.

If, after taking into account all of the above (apart from the associated employments rule), the proportion of the securities income that would otherwise be regarded as foreign securities income is not, having regard to all the circumstances, just and reasonable, the foreign securities income is amended to such amount as is just and reasonable. See HMRC Employment-Related Securities Manual ERSM161900 for guidance.

For official guidance, see HMRC Employment-Related Securities Manual ERSM160000 *et seq*.

Dual contract arrangements

FA 2014 includes legislation aimed at preventing non-UK domiciled individuals from avoiding tax by dividing the duties of a single employment into a UK and an overseas contract. See **26.6** employment income for details. This legislation applies equally for 2014/15 to take certain securities income out of the above definition of `foreign securities income' in cases were the individual does not meet the section 26A test. The result is that the remittance basis cannot apply to the securities income.

[*ITEPA 2003, ss 24A, 24B, 41A(4)–(10), 41C–41E, 721(1); FA 2013, Sch 46 paras 11, 25–27; FA 2014, Sch 3 paras 3, 4, 7(2)*].

Simon's Taxes. See **E4.508D**.

Internationally mobile employees after 5 April 2015

[69.19A]

As stated in **69.18** above, these rules replace the remittance basis rules at **69.19** above with effect on and after **6 April 2015** in relation to employment-related shares and share options irrespective of whether they were acquired before or on or after that date.

The extended meaning of `shares' at **69.3** above applies throughout, and `share option' should be construed accordingly.

The rules apply if an amount counts under any of **69.4–69.15** above (non-tax-advantaged employment-related shares and share options) as employment income of an individual for a tax year (the `*securities income*') in respect of an employment and *at least one* of the `international mobility conditions' is met. The `*international mobility conditions*' are:

- that any part of the `relevant period' (see **69.19B** below) is within a tax year for which the remittance basis applies to the individual by virtue of any one of **59.2**(1)–(3) remittance basis;
- that any part of the relevant period is within a tax year for which the individual is not UK resident;
- that any part of the relevant period is within the overseas part of a tax year that is a split year (see **61.19** residence and domicile) as regards the individual.

There are two rules to ascertain the employee's taxable specific income from the employment in respect of the securities income. (See **26.1** employment income for the charge to tax on taxable specific income.) Rule 1 determines what is chargeable on the arising basis and Rule 2 determines what is chargeable on the remittance basis where applicable. Rule 1 is that an amount equal to the excess of the securities income over so much of that income as is `foreign securities income' is taxable specific income for the tax year for which the securities income counts as employment income of the individual. `*Foreign securities income*'

means the sum of any `chargeable foreign securities income' and any `non-chargeable foreign securities income' (for both of which see **69.19C** below).

Rule 2 is that the full amount of any `chargeable foreign securities income' (see **69.19C** below) which is remitted to the UK in a tax year is an amount of taxable specific income from the employment for that tax year. (This applies whether or not the employment in question is still held when the remittance is made.) See 59 remittance basis for the meaning of `remitted to the UK'. For the purpose of applying the provisions described in that chapter, generally treat the shares or the share option as deriving from the chargeable foreign securities income; but where the chargeable event is the disposal of the shares, or the assignment or release of the share option, in question for consideration of not less than market value, treat the consideration (and not the shares or the option) as deriving from the chargeable foreign securities income.

[*ITEPA 2003, s 41F; FA 2014, Sch 9 paras 5, 47, 48*].

The relevant period

[69.19B]

The definition of the `*relevant period*' in **69.19A** above depends on the charging provision under which an amount counts as employment income, as follows.

- If the charge is under **69.4** above (restricted shares) or **69.7** above (convertible shares), the relevant period is the period beginning with the day the shares are acquired and ending with the day on which the chargeable event occurs.
- If the charge is the charge on acquisition in **69.9** above (shares with artificially depressed market value), the relevant period is the tax year in which the acquisition occurs.
- If the charge arises by virtue of **69.9**(b) or (c) above (market value of restricted shares artificially low), the relevant period is the period beginning at the start of the tax year in which the chargeable event is deemed to occur and ending with the day on which that chargeable event is deemed to occur.
- If the charge is under **69.10** above (shares with artificially enhanced market value), the relevant period is the period beginning at the start of the tax year in which the valuation date falls and ending with the valuation date.
- If the charge arises from the discharge of the notional loan in **69.11** above (shares acquired for less than market value), or from the anti-avoidance rule in **69.11**, the relevant period is normally the tax year in which the notional loan is treated as made or, if the chargeable event occurs in that tax year, the period beginning at the start of that tax year and ending with the day on which the chargeable event occurs. If, however, the shares are acquired by means of an option, the relevant period is the period beginning with the day the option is acquired and ending with the day on which the option `vests'.
- If the charge is under **69.12** above (shares disposed of for more than market value) or **69.13** above (post-acquisition benefits), the relevant period is the tax year in which the chargeable event occurs.
- If the charge is under **69.15** above (unapproved share options), the relevant period begins with the day the option is acquired and ends with the day on which the chargeable event occurs or, if earlier, the day on which the option `vests'.

For the above purposes, an option `*vests*' when it becomes exercisable or, if earlier, when it becomes exercisable subject only to a period of time expiring. If the relevant period determined as above would not, in all the circumstances, be just and reasonable, the relevant period is adjusted to such period as is just and reasonable.

[*ITEPA 2003, s 41G; FA 2014, Sch 9 paras 5, 47, 48*].

Chargeable and non-chargeable foreign securities income

[69.19C]

The extent to which the securities income in **69.19A** above is `*chargeable foreign securities income*' or `*non-chargeable foreign securities income*' is determined according to whichever of the rules below is applicable. If, however, these rules do not produce a split that is just and reasonable (having regard to all the circumstances), the amounts of the securities income that are chargeable foreign securities income and non-chargeable foreign securities income are to be adjusted to such amounts as are just and reasonable. For the purposes of these rules, an equal amount of the securities income is treated as accruing on each day of the relevant period. See below as regards the location of employment duties for these purposes.

Rule 1 is that if any part of the `relevant period' (see **69.19B** above) is within a tax year for which all the conditions at (a)–(d) below are met, the securities income accruing in that part of the relevant period is chargeable foreign securities income. Those conditions are that:

(a) the remittance basis applies to the individual for that year by virtue of any one of **59.2**(1)–(3) remittance basis;

(b) the individual does not for that year meet the section 26A test at **26.8** employment income (which requires broadly a three-year period of non-UK residence);

(c) the employment in question is with a `foreign employer' (see **26.6** employment income); and

(d) the duties of the employment are performed wholly outside the UK in that year.

See below for a limit on chargeable foreign securities income where the duties of an associated employment are performed in the UK. Also see below as regards dual contract arrangements.

Rule 2 is that if any part of the relevant period is within a tax year for which all the conditions at (i)–(iii) below are met, and the duties of the employment in question are performed wholly outside the UK, the securities income accruing in that part of the relevant period is chargeable foreign securities income. If any part of the relevant period is within a tax year for which all the conditions at (i)–(iii) below are met, and some but not all of the duties of the employment are performed outside the UK, the securities income accruing in that part of the relevant period must be apportioned on a just and reasonable basis between duties performed in and outside the UK; the income apportioned to duties performed outside the UK is chargeable foreign securities income. The conditions are that:

(i) the remittance basis applies to the individual for that year by virtue of any one of **59.2**(1)–(3) remittance basis;

(ii) the individual meets for that year the section 26A test at **26.8** employment income; and

(iii) at least some of the duties of the employment are performed outside the UK in that year.

Rule 3 is that if any part of the relevant period is within a tax year for which the individual is not UK resident, and the duties of the employment in question are performed wholly outside the UK in that year, the securities income accruing in that part of the relevant period is non-chargeable foreign securities income. If any part of the relevant period is within a tax year for which the individual is not UK resident, and some but not all of the duties of the employment are performed outside the UK in that year, the securities income accruing in that part of the relevant period must be apportioned on a just and reasonable basis between duties performed in and outside the UK; the income apportioned to duties performed outside the UK is non-chargeable foreign securities income.

Rule 4 is that if any part of the relevant period is within the overseas part of a tax year that is a split year (see **61.19** residence and domicile) as regards the individual, and the duties of the employment in question are performed wholly outside the UK in that overseas part, the securities income accruing in that part of the relevant period is non-chargeable foreign securities income. If some but not all of those duties are performed outside the UK in that overseas part, an apportionment similar to that in Rule 3 above is carried out, and the income apportioned to duties performed outside the UK is non-chargeable foreign securities income.

Duties of associated employment performed in UK

There is a limit on the extent to which Rule 1 above applies in relation to a period when the individual holds `associated employments' (see **26.6** employment income) in addition to the employment in question and the

duties of the associated employments are not performed wholly outside the UK. The amount of the securities income for the period that would otherwise be chargeable foreign securities income is limited to such amount as is just and reasonable, having regard to:

- the employment income for the period from the employment in question and all the associated employments;
- the proportion of that income that consists of general earnings that are `chargeable overseas earnings' (see **26.6** employment income);
- the nature of, and time devoted to, the duties performed outside the UK, and those performed in the UK, in the period; and
- all other relevant circumstances.

Dual contract arrangements

Rule 1 above does not apply to a tax year if the `dual contract legislation' applies for that year in relation to the employment in question. The `*dual contract legislation*' means the provisions in **26.6** employment income that restrict the application of the remittance basis in cases involving dual contract arrangements. In such a case, it is to be assumed that it is just and reasonable for none of the securities income accruing in that tax year to be chargeable foreign securities income.

Location of employment duties

The rule at **26.3**(ii) employment income (incidental duties in the UK) applies for the purposes of these provisions, as do the rules for seafarers and aircraft crew at **26.3**(iii) employment income. In addition, the duties of an employment performed in the UK sector of the continental shelf (under *Continental Shelf Act 1964, s 1(7)*) in connection with exploration or exploitation activities are treated as being performed in the UK.

Securities income from overseas Crown employment

If securities income is `from overseas Crown employment subject to UK tax' (see **26.8** employment income), then notwithstanding anything else in these rules it is *not* foreign securities income. If securities income is partly from overseas Crown employment subject to UK tax, a just and reasonable proportion of the income is taken to be from such employment.

[*ITEPA 2003, ss 41H–41L; FA 2014, Sch 9 paras 5, 47, 48*].