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# flash International Executive Alert

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## United Kingdom – Several Measures in Finance Bill Affecting Globally-Mobile Workforce

by Steve Wade and Colin Ben-Nathan, KPMG LLP, London (KPMG LLP in the United Kingdom is a KPMG International member firm)

### In This Issue:

- \* *Employee Share Plans*
- \* *Payments by Employer on Account of Tax Where Deduction Not Possible*
- \* *Capital Gains Tax*
- \* *Anti-Avoidance*
- \* *Income Tax Rates and Thresholds*

On 27 March 2014, the U.K.'s 2014 Finance (No. 2) Bill ("FB 2014") was published embodying measures announced in the Budget which come into force between Budget day and 5 April 2014 (or during the 2014/15 tax year).<sup>1</sup> Publication of a number of relevant consultations is also anticipated in the coming days.

### Why This Matters

Many of the measures contained in FB 2014 will have an impact on international assignees and their multinational employers, including the modifications to rates and thresholds for income tax, allowances, deductions, and National Insurance contributions.

In many cases, the measures announced have an effective date of 6 April 2014, which doesn't give much time for affected taxpayers to prepare and make the necessary adjustments/changes required by the bill's measures.

In addition, employers have new responsibilities concerning employee share plans under the terms of FB 2014, but the provisions give them additional time – which should be welcome – to comply with the new withholding and reporting rules.

FB 2014 consists of 601 pages, 295 clauses, and 34 schedules. There are various changes to legislation that impact globally mobile employee populations. These are summarized below.

### Employee Share Plans

As reported in [Flash International Executive Alert 2014-032](#) (20 March 2014), FB 2014 introduces changes to the U.K. income tax treatment of share-based forms of awards granted to internationally mobile employees (IMEs). These proposals are not substantively changed in the new draft Finance Bill published on 27 March; but as announced on Budget Day, FB 2014 confirms that the proposed rules will not come into force until 6 April 2015.

### KPMG LLP (U.K.) Note

HM Revenue & Customs (HMRC) has clarified to the KPMG International member firm in the United Kingdom that all chargeable events (even if they relate to awards granted before 6 April 2015) will be subject to the new rules from that date.<sup>2</sup>

FB 2014 includes significant changes to the regime for statutory corporation tax (CT) relief for share incentives, so that the availability of a statutory CT deduction now appears to mirror the proposals for sourcing U.K. income tax for IMEs. This is in line with the previous recommendation from the Office of Tax Simplification. These CT changes will also come into force on 6 April 2015.

As previously announced, new requirements to register both new and existing employee share plans online, self-certification, and the filing of annual returns online are introduced with effect from 6 April 2014.

## **Payments by Employer on Account of Tax Where Deduction Not Possible**

Where an employer is unable to deduct income tax, for example, in respect of share awards, a penal provision commonly referred to as a “section 222” charge applies if the employee does not “make good” the tax paid by the employer within 90 days. FB 2014 increases the timeframe for events occurring after 6 April 2014, such that the 90 days commences after the end of the tax year in which the event occurs.

### ***KPMG LLP (U.K.) Note***

This amendment creates additional time for employees to be compliant with the U.K. income tax withholding rules before an additional tax charge arises. In particular, for employers with globally mobile employees participating in share plans, this provides more time to gather global data. However, this is not a complete answer and we anticipate continuing issues with section 222, particularly as regards the meaning of “making good.”

## **Capital Gains Tax**

### ***U.K. Residents***

Under the current tax rules, the last 36 months of ownership of a property that has at some point been an individual’s only or main private residence is regarded as a period in which the property was occupied as if it was his or her main home. As such, any gain accruing on the sale of the property in those last 36 months is exempt from capital gains tax, even if the individual was not, in fact, occupying the property. From 6 April 2014, the relief described above will be reduced from a 36-month period to an 18-month period.

This relief is one of several reliefs that can benefit individuals who are assigned abroad and sell their property while remaining resident or temporarily resident in the United Kingdom.

### ***Non-U.K. Residents***

As reported in [\*Flash International Executive Alert 2013-165\*](#) (12 December 2013), the U.K. government has now issued a consultation on proposals to charge capital gains tax on gains made by non-U.K. residents disposing of U.K. residential property. Any final legislation would take effect from April 2015.

A separate *Flash International Executive Alert* will be issued on this consultation.

## **Anti-Avoidance**

### ***Accelerated Tax Payments***

As reported in [\*Flash International Executive Alert 2013-161\*](#) (6 December 2013), FB 2014 introduces a new rule with effect from April 2014 which requires taxpayers using avoidance schemes that HMRC determines to have been defeated under a judicial ruling to make an upfront payment of the tax they are continuing to dispute. This also applies to users of schemes disclosed under the Disclosure of Tax Avoidance Schemes (DOTAS) rules, and to taxpayers involved in schemes subject to counteraction under the General Anti-Abuse Rule (GAAR), so that the amount in dispute is held by HMRC while the dispute is being resolved, regardless of whether the issue has been to tribunal/court.

### ***Onshore Employment Intermediaries – False Employment***

FB 2014 tightens existing legislation to prevent employment intermediaries being used to avoid employment taxes and reporting obligations by disguising employment as self-employment (as reported in [Flash International Executive Alert 2013-161](#), 6 December 2013). If treated as an employee, all remuneration receivable by the worker (from any person) as a consequence of the provision of services is to be treated as earnings from the deemed employment and subject to U.K. payroll tax withholding (Pay-As-You-Earn ("PAYE")) accordingly. Where PAYE is due but not withheld in respect of agency workers, new powers introduced in FB 2014 will allow HMRC, in certain circumstances, to serve "*personal liability notices*" for recovery of PAYE due to directors of the companies (or LLPs) who either provided fraudulent documents or entered into arrangements that fall within the rules.

### ***Offshore Intermediaries – Those Affected Including Oil and Gas Workers***

As reported in [Flash International Executive Alert 2014-032](#) (20 March 2014), provisions will be introduced from April 2014 to address PAYE/NIC (National Insurance contributions) compliance by offshore employment intermediaries, and a modified version of the scheme will apply to "oil & gas" workers on the U.K. continental shelf. FB 2014 defines who will be a continental shelf worker for tax purposes and which relevant person will be responsible for PAYE. The relevant person will be an associated company of the offshore employer or, where there is no associate, the oil field licensee. The legislation defines that where there is more than one associated company, each is treated as making a payment of PAYE income. However, where one associated company makes the payment of PAYE due, the others do not have to pay. This differs from the U.K. NIC treatment where the associated company with the largest taxable profits in the prior year is liable for the contributions due.

### ***Dual Employment Contracts***

The government previously announced that it will be introducing legislation to counteract the tax advantage of dual contract arrangements. A separate [Flash International Executive Alert 2014-035](#) (27 March 2014) has been produced on these measures.

### ***Income Tax Rates and Thresholds***

For details of rates and thresholds applicable to 2014/15 please refer to [Flash International Executive Alert 2013-161](#) (6 December 2013) and [Flash International Executive Alert 2014-032](#) (20 March 2014).

#### *Footnotes:*

1 See: <http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0190/14190.pdf> .

2 Source: A 26 March 2014 e-mail from HMRC to KPMG LLP (U.K.).

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The information contained in this newsletter was submitted by the KPMG International member firm in the United Kingdom. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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