

United Kingdom: HMRC withdraws guidance on use of foreign income or gains as collateral for loans

August 8, 2014

In brief

The UK's tax authority, HM Revenue and Customs (HMRC), has revoked key guidance in respect of the interaction of loans and the remittance basis of taxation effective August 4, 2014. Under the revoked guidance, an individual loan secured with foreign income or gains was not regarded as a remittance when the proceeds of the loan were brought to the UK. With the guidance withdrawn, HMRC will likely take the position that money brought to or used in the UK under a loan facility secured by foreign income or gains is a taxable remittance.

In detail

Background

HMRC has in the past argued that where a remittance basis taxpayer:

- obtains a loan in the UK or overseas
- secures that loan using foreign income or gains which remain overseas **and**
- brings part or all of the proceeds from the loan to the UK

the foreign income or gains on which the loan is secured is deemed to be remitted to the UK to the extent of the loan proceeds brought to the UK.

However, HMRC acknowledged that where such loans were repaid using a different source of foreign income or gains, a second remittance could be deemed to occur.

To alleviate this, HMRC issued guidance in 2010 applicable to loans made on commercial terms that were regularly serviced from foreign income or gains. In those circumstances, only the servicing payments were taxed.

The guidance was set out in HMRC manuals (RDRM33170).

The effect of that guidance on a loan secured with foreign

income or gains is illustrated below.

Diagram A – Prior to guidance being issued

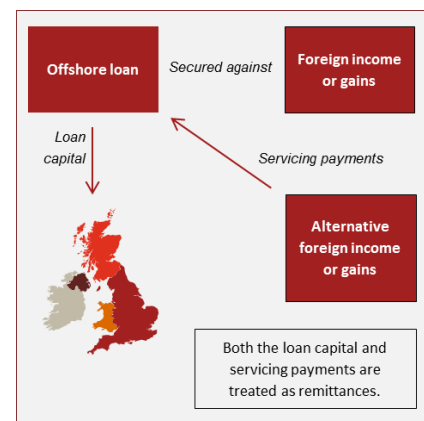
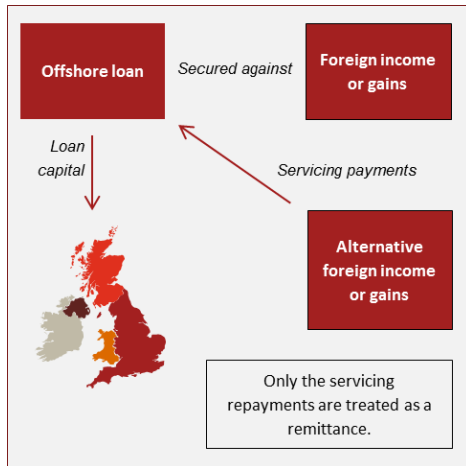


Diagram B - With guidance in place



What has changed?

HMRC has withdrawn the 2010 guidance effective August 4, 2014. With this change of approach, HMRC will likely take the position that where proceeds of a loan secured by foreign

income or gains are brought into the UK, the foreign income or gains on which the loan is secured is deemed to be remitted to the UK to the extent of the loan proceeds brought to the UK.

If the loan is serviced or repaid from a different source of foreign income or gains, the repayments of capital and interest will also constitute remittances.

Actions required

Individuals who currently maintain a loan arrangement covered by the previous guidance have been advised by HMRC to take a number of corrective actions which, in short, require the arrangement to be unwound no later than April 5, 2016.

This has a significant impact for individuals affected. PwC is reviewing the effect of HMRC's announcement

and the underlying legislation and will follow with detailed commentary in due course.

The takeaway

The withdrawal of this guidance has significant implications for those who currently maintain an affected loan arrangement. International assignees who are resident in the UK with such arrangements should review the implications of HMRC's announcement.

A number of areas remain unclear and affected individuals should seek professional advice as soon as possible before taking any action.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your IAS engagement team or one of the following professionals from PwC UK:

International Assignment Services

Ben Wilkins
+44 (0)20 7212 4096
ben.wilkins@uk.pwc.com

Iain McCluskey
+44 (0)20 7804 8614
iain.a.mccluskey@uk.pwc.com

Mike Haynes
+44 (0)20 7212 5974
mike.j.haynes@uk.pwc.com

SOLICITATION

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PwC does not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

© 2014 PwC. All rights reserved. PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.