

# FINANCE ACT 2014

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## EXPLANATORY NOTES

### INTRODUCTION

#### *Section 52 Schedule 9: Employment-Related Securities Etc*

#### Details of the Schedule

##### **Part 1: Internationally mobile employees**

2. Paragraphs 1 to 5 amend Part 2 of ITEPA by substituting a new Chapter 5B (taxable specific income from employment-related securities etc: internationally mobile employees) for the current Chapter 5A (taxable specific income: effect of the remittance basis) and making consequential amendments to sections 6 and 10 of ITEPA. The new Chapter 5B comprises sections 41F to 41L, which set out new rules for the taxation of ERS and ERS options received by internationally mobile employees, and also contain provisions on the effect of the remittance basis on ERS income that are currently in Chapter 5A.
3. New sections 41F to 41L of ITEPA set out what income from ERS and ERS options (securities income) is to be subject to UK income tax, either on the normal ‘arising’ basis or the remittance basis where this applies. The effect of the remittance basis for those to whom this applies is that, broadly, income or gains in respect of foreign duties are only taxable in the UK to the extent that they are remitted to the UK. Income or gains are remitted to the UK when they are brought into, used in, or enjoyed in the UK.
4. New section 41F of ITEPA includes subsection (1) and (2), which set out the scope of the new rules. They apply when an amount counts as employment income under Chapters 2 to 5 of Part 7 of ITEPA (which provides rules for the taxation of ERS and ERS options) and at least one of the ‘international mobility conditions’ specified in subsection (2) are met. The rules at subsections (3) and (4) identify the amount of income from relevant employment for the tax year (securities income) that will be subject to income tax on the arising basis. These subsections provide that this amount should be established by deducting securities income that is ‘foreign’ from total securities income. Subsection (5) specifies that the amount of securities income that is foreign is the total of any ‘chargeable foreign securities income’ and any ‘unchargeable foreign securities income’, with reference to new sections 41H to 41L of ITEPA. Subsections (6) and (7) identify chargeable foreign securities income that is remitted to the UK as ‘taxable specific income’. Subsections (8) and (9) make provision in relation to amounts remitted to the UK in a tax year and broadly reproduce certain provisions currently found in section 41A of ITEPA, concerning the effect of the remittance basis on taxable specific income from ERS.
5. New section 41G of ITEPA (at subsections (2) – (8)) defines the ‘relevant period’ for each type of ERS for the purposes of the international mobility conditions at new section 41F. This is the period over which securities income is to be apportioned between that which is subject to income tax in the UK, and that which is not. Where appropriate, the relevant periods broadly replicate those already in operation for the remittance basis of taxation at the current section 41B of ITEPA. The rules at

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subsection (2) to (8) are subject to an override (at subsection (9)) where the relevant period they provide is not just and reasonable.

6. New sections 41H to 41L of ITEPA determine how ‘unchargeable’ and ‘chargeable’ foreign securities income are to be calculated, for the purposes of establishing how much securities income is not to be subject to UK income tax, or subject to UK income tax only on the remittance basis. Where appropriate, these sections broadly replicate rules currently in sections 41C to 41E of ITEPA, which establish the amount of foreign securities income for the purposes of the remittance basis of taxation.
7. New section 41H of ITEPA sets out rules to determine whether ERS income is ‘chargeable or ‘unchargeable’ foreign securities income. Chargeable foreign securities income will be subject to UK income tax on the remittance basis. Subsection (2) provides that securities income is regarded as accruing equally on each day within the relevant period, as set out in new section 41G of ITEPA. Subsections (3) to (12) provide rules that apply for the calculation of chargeable and unchargeable foreign securities income in various cases. These include (at subsections (3), (4), (6) and (7)) the rules that apply for tax years within the relevant period during which: the remittance basis applies, an individual satisfies or does not satisfy the requirement for a 3-year period of non-residence in the UK at section 26A of ITEPA, or the duties of the relevant employment are performed wholly or partly outside the UK. Subsection (8) provides the rules that apply for tax years for which the individual is not UK resident. Subsection (9) sets out the rules that apply where any part of the relevant period is within the overseas part of a tax year that is a split year (where an individual either leaves the UK to live or work abroad or comes from abroad to live or work in the UK). Subsection (11) links the rules in this new section to new section 41J of ITEPA relating to the location of duties. Subsection 12 provides that the rules in this new section are subject to the rules on overseas Crown employment in new section 41K of ITEPA and to provisions on just and reasonable apportionment at new section 41L of ITEPA. Subsections (5) and (10) specify how new section 41H will interact with new section 24A ITEPA.
8. New section 41I of ITEPA limits the amount of securities income that is chargeable foreign securities income in various cases where an individual has associated employment (in addition to their relevant employment), which involves UK duties. Subsection (2) provides that the amount of chargeable foreign securities income for the period is limited to the amount that is just and reasonable with reference to the factors specified in this subsection.
9. New section 41J of ITEPA concerns the location of employment duties: UK duties which are incidental to overseas employment, duties on board a vessel or aircraft and employment on the continental shelf.
10. New section 41K of ITEPA provides for the treatment of securities income from overseas Crown employment.
11. New section 41L of ITEPA provides an override where the proportion of securities income that is chargeable or unchargeable foreign securities income, as determined under new section 41H, is not just and reasonable in all the circumstances.
12. Paragraph 7 of the Schedule inserts a new subsection (A1) into section 418 of ITEPA. This requires Part 7 of ITEPA (concerning income from ERS and ERS options) to be read alongside the new Chapter 5B of Part 2 of ITEPA.
13. Paragraph 8 repeals section 421E of ITEPA which sets out the current residence provisions for the taxation of certain ERS.
14. Paragraphs 9, 11 and 12 amend sections 425, 430 and 431 of ITEPA to limit the availability of the elections available under these sections (which allow for the disapplication of certain provisions within Chapter 2 of Part 7 of ITEPA concerning restricted securities). They provide that these elections can only be made where at the time of the acquisition of the securities (or in the case of section 430 at the time of a

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chargeable event in relation to the securities), the charging provisions of Chapters 4 and 5 of Part 2 of ITEPA apply in relation to earnings from the relevant employment (or in cases where there are no earnings from that employment, would apply if there were any earnings). These charging provisions apply where an employee is UK resident, or performs duties in the UK.

15. Paragraph 10 amends section 428 of ITEPA. Sub-paragraph (2) updates section 428 of ITEPA, concerning the amount subject to income tax on the occurrence of a chargeable event in relation to restricted ERS. The amendment ensures that amounts previously charged to 'non-UK income tax' when the ERS were acquired by an internationally mobile employee can be a 'deductible amount' when calculating what value is subject to UK tax on the occurrence of a subsequent chargeable event in relation to these ERS. It also sets out various definitions for the purpose of these rules. This puts amounts that have been charged to UK income tax and amounts charged to income tax outside the UK on a broadly equal footing, for the purposes of this tax calculation.
16. Sub-paragraph (3) of paragraph 10 clarifies the treatment of income that would have been 'exempt income' in the UK had the internationally mobile employee been UK resident, or subject to the remittance basis of taxation, at the appropriate time. It provides that such amounts are to be treated for the purposes of the relevant calculation in the same way as income that was exempt in the UK – and are therefore not deductible amounts. This puts this income on a broadly equal footing for UK tax purposes, regardless of where the employee was based at the time that the relevant ERS were acquired.
17. Paragraphs 13, 15 and 27 provide the same clarification of the treatment of this 'exempt' income in other cases where it is necessary to establish an amount subject to tax in relation to ERS. These are the calculation of notional loan amounts outstanding in relation to ERS acquired for less than market at section 446T ITEPA; the amount subject to tax on the occurrence of a chargeable event in relation to ERS options; and amount that is taken to be consideration for the acquisition of restricted or convertible shares for the purposes of capital gains tax.
18. Paragraph 14 repeals section 474 of ITEPA which provides the current residence provisions for the taxation of ERS options.
19. Paragraph 16 amends section 540 of ITEPA which ensures that no charge arises under Chapter 3C from the exercise of options under the Enterprise Management Incentives scheme.
20. Paragraphs 17 to 20 amend various sections of ITEPA in consequence of the omission of sections 421E and 474 of ITEPA and the insertion of new Chapter 5B of Part 2 of ITEPA.
21. Paragraphs 21 to 26 and 28 to 33 amend section 700A of ITEPA and various provisions in the Taxation of Chargeable Gains Act 1992, the Corporation Tax Act 2009 (CTA 2009) and the Income Tax Act 2007 in consequence of changes made in this Schedule.