

Global mobility - Getting employment taxes right

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2020innovation.com



The background is a vibrant blue-toned digital landscape. On the left, a portion of a globe is visible, showing cloud patterns. The foreground and middle ground are filled with a perspective view of a grid of binary digits (0s and 1s) that recede into the distance. A bright light source on the right side creates a strong lens flare and illuminates the scene, casting long, glowing rays of light across the binary grid and the globe. The overall aesthetic is high-tech and futuristic.

Global Mobility

JP Mindell CTA

Contents

- Domicile changes
- Permanent Establishment
- Attribution of Income
- Equalisation
- Withholding obligations



Domicile

Proposed changes

Country	Name of regime	Eligibility	Tax benefits	Time limit	Fees
UK	Non-dom pre-2025	father domiciled outside UK at time of birth (or mother if unmarried)	exemption for unremitted foreign income and gains and IHT exemption for foreign assets	15 years	Y0-7: £nil Y7-12: £30k Y12-15: £60k
UK	Conservative residency proposal	not resident for 10 years	exemption for foreign income and gains and IHT exemption for foreign assets special transition rules for existing non-doms, including IHT exemption for settling foreign assets into trust before April 2025	4 years (10 yr for IHT)	none
UK	Labour residency proposal	not resident for 10 years	exemption for on foreign income and gains and IHT exemption for foreign assets	4 years (10 yr for IHT)	none
France	Article 155B	not resident for 5 years	exemption for supplementary employment income or exemption for 30% of employment income	8 years	none
Italy	Resident Non-Domiciled or "svuota-Londra"	not resident for 9 of the last 10 years investor visa for non-EU citizens	exemption for foreign income and gains and IHT/gift tax exemption for foreign assets	15 years	€100k pa
Portugal	Non-Habitual Resident (NHR) (arrivals before 1 January 2024)	not resident for 5 years	exemption for foreign income and gains (except pension income subject to beneficial 10% rate) special 20% rate for Portuguese income from "high value activity"	10 years	none

Country	Name of regime	Eligibility	Tax benefits	Time limit	Fees
Spain	"Beckham Law"	not resident for 5 years EU national with employment contract Digital Nomad Visa for non-EU citizens	exemption for foreign income and gains special 24% rate for first €600k of Spanish income	5 years	none
Switzerland	Forfait fiscal Lump-sum tax	not a Swiss citizen or Swiss citizen not resident for 10 years no employment within Switzerland	lump sum tax payment assessed based on worldwide living expenses instead of worldwide income and gains details vary by canton	unlimited	none
UAE	No income tax, capital gains tax, or IHT (these taxes do not exist)	no special criteria other than right to reside/work	no income tax, capital gains tax, or IHT (but recently introduced VAT and corporation tax)	unlimited	none

But first.....
comparative top rates of Income Tax

Japan 56%

Denmark 55.9%

Sweden 52.9%

Belgium Israel 50%

Netherlands 49.5%

Ireland 48%

Spain 47%

Scotland 47%

All at 45%

Australia

France

Germany

South Africa

England

Wales

Northern Ireland

Lower rates

Italy 43%

Switzerland
40%

Norway
38.2%

USA 37%

Canada
33%

Poland 32%

Hungary
15%

Russia 13%

Romania
10%

But need to consider

State rates

Threshold

Social Security Contributions

Incentives

Significant number of days?

- 1
- 30
- 60
- 90
- 182
- 365

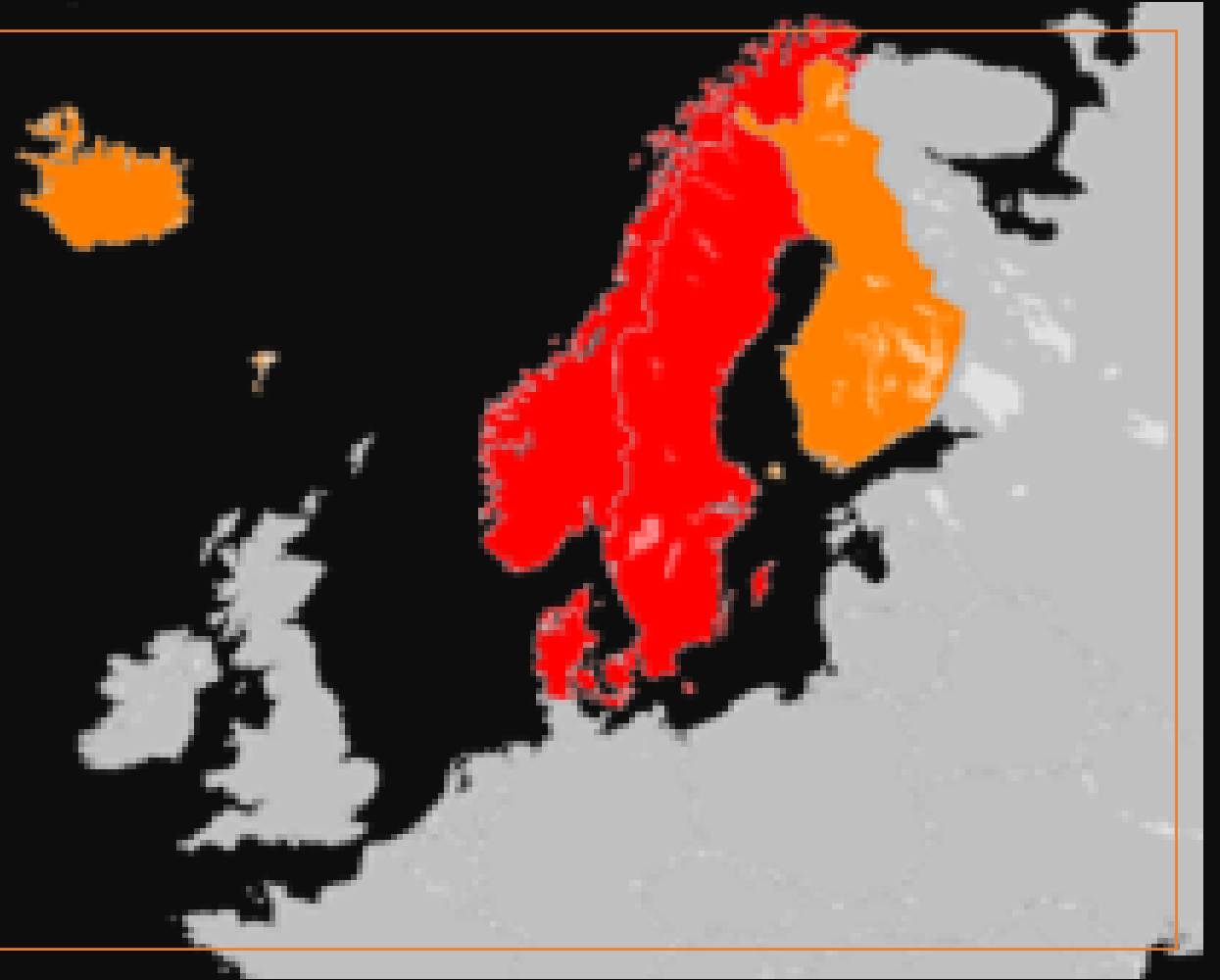




Permanent Establishment

And Mobility

Why Denmark?



Denmark: CEO working from home creates a PE

On 21 November 2022, the Danish Tax Board (DTB) issued binding tax ruling [SKM2022.557.SR](#) analysing partly whether two Norwegian companies had a place of effective management in Denmark and partly whether such companies also have a PE in Denmark.

In this case, the Chief Executive Officer (CEO) of the companies works from home in Denmark three days a week and two days a week from the office in Norway.

The CEO works long hours in Norway and therefore spend 65% of the working hours in Norway and 35% in Denmark. Further, the CEO holds 20% of the shares in the Norwegian companies.

DTB conclusion

The DTB noted that the place of effective management is not in Denmark since the day-to-day management is in Norway where most of the employees are also located. As for the existence of a PE, the DTB concluded that both Norwegian companies have a PE in Denmark.

This is because the Norwegian companies have an interest in being present in Denmark due to the relocation of the CEO to Denmark. Further, the CEO plays an important role in both companies and cannot be easily replaced.

HMRC Example

Example 1: Juan, who works for a foreign entity in State D, comes to Brighton on holiday and stays on to work here for a total of 40 calendar days including his holiday, using the office of a UK affiliate company as a base.

He enjoys the experience so much he decides to do the same thing six months later.



Francine

Example 2: Francine, a French national with an English partner, joins a French company on a permanent contract which permits her to spend a fixed three-month period each year working in the UK.



Example 3

Example 3: Alexei, Luca and Sara all work for a foreign entity in State C. They come to the UK on holiday for the same part of the year with their families, staying at different addresses.

They are all permitted to stay on an additional 30 days to work in the UK by their employer, using the office of a UK affiliate company as a base.



Zurich

Example 4: Company T has a team of staff in its Zurich office. Over the course of nine months, six staff are permitted to spend six weeks each, in turn, at an affiliate company's office in London working on a project.



Mat Leave

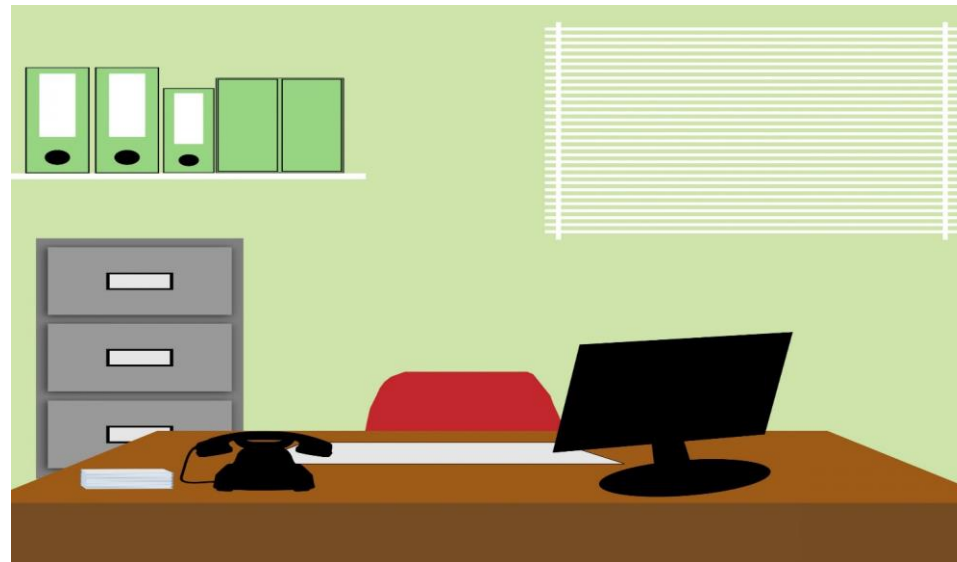
Example 5: Jasmine, who works for a company based in the UK, is seconded to cover six months of maternity leave for a related foreign company in State E.

She does this remotely from her UK office and her home in London.



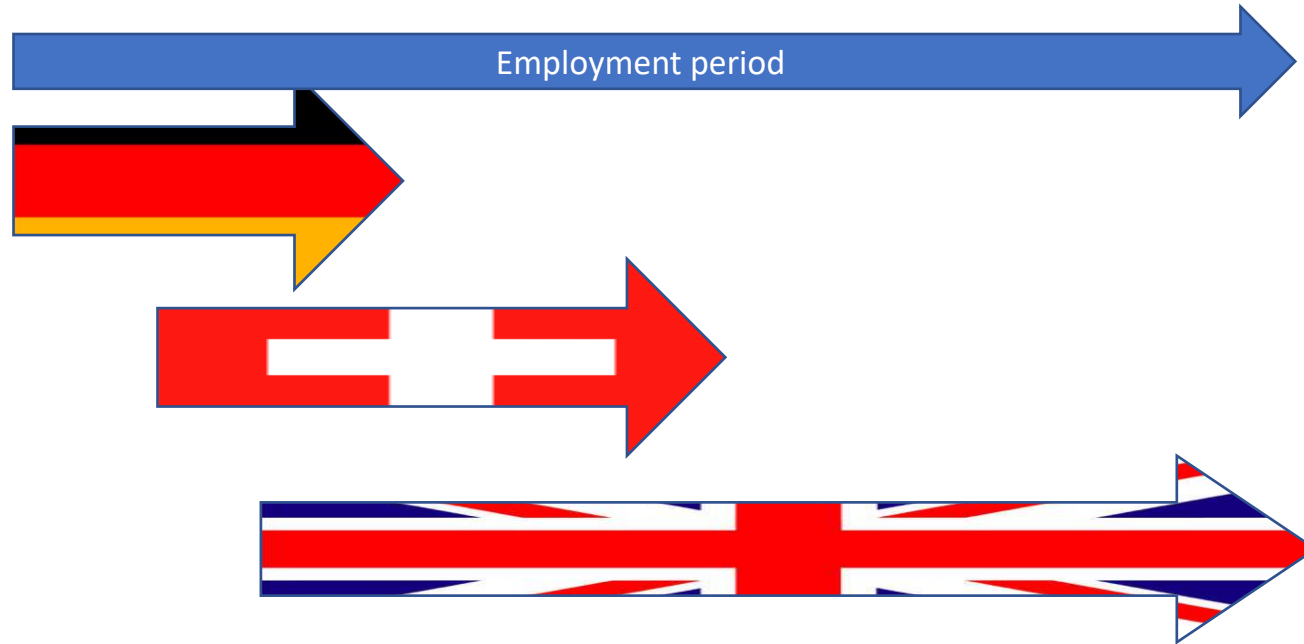
The straightforward scenario

- Your employment starts on 5 May
- Your place of employment is Gloucester

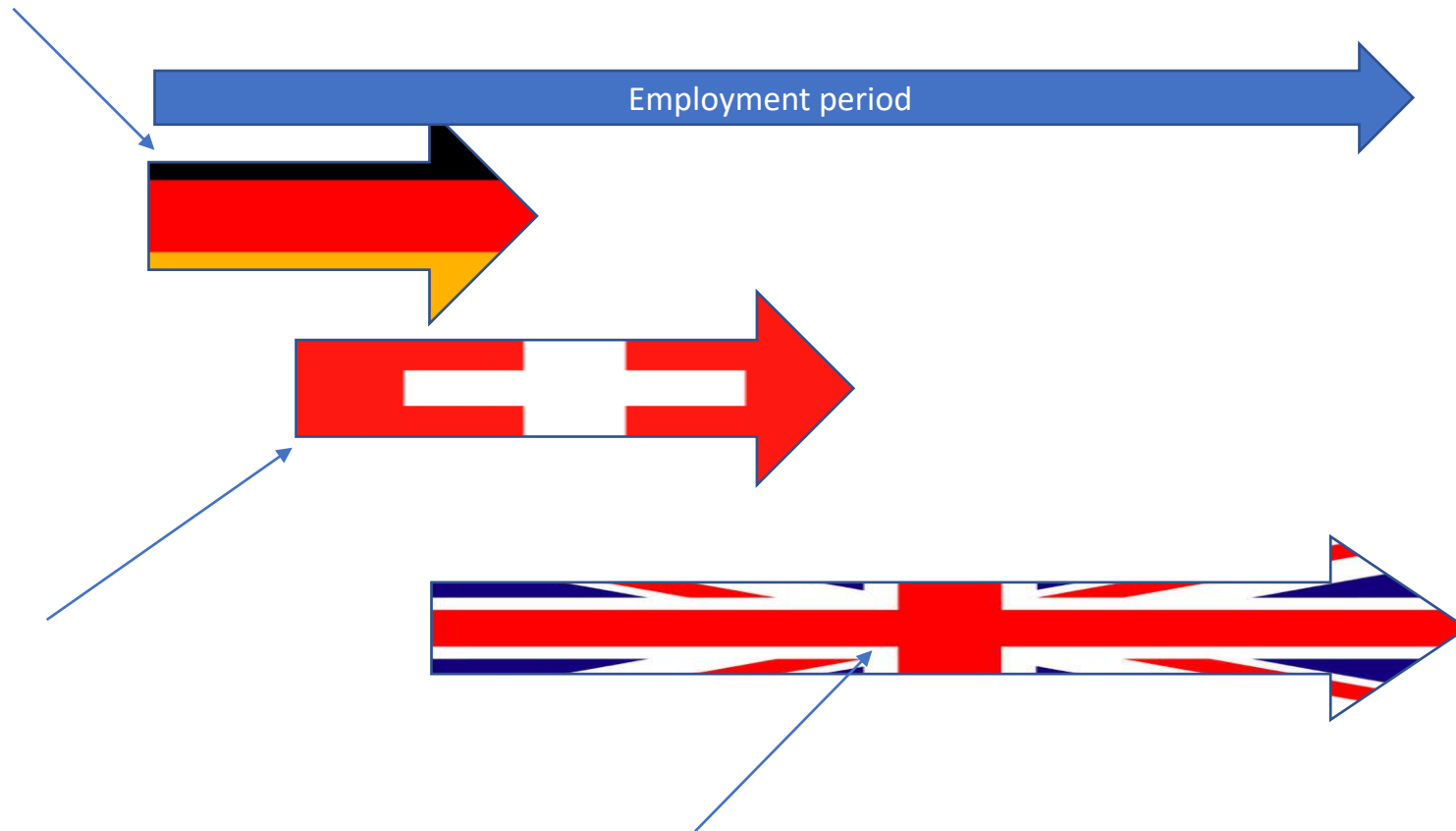




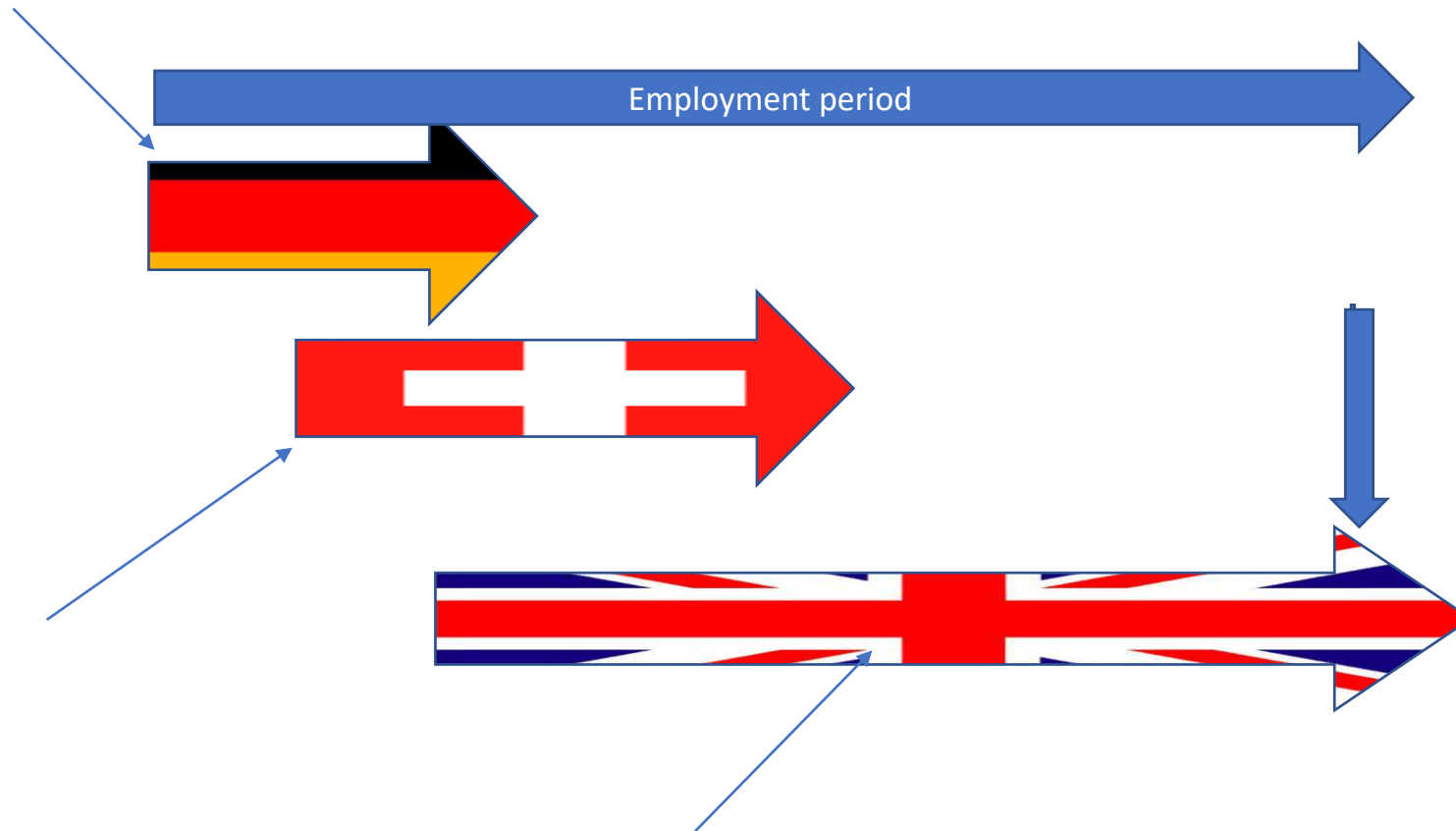
The more complicated scenario



Share options granted



Bonuses awarded



Inducement payments

- Normally taxable
- In exchange for starting employment
- Receipt taxed on first day of employment

Relocation

Qualifying

- Travel to new location
- Moving goods
- Temporary housing expenses
- Stamp Duty

Non-qualifying

- Lump sum payments

Relocation

- Limited to £8,000 tax free per move
- But non doms can obtain travel and home leave on top

Secondment or new employment

New employment

- Existing employment terminated
- Host Country terms
- Host country control on all terms of employment
- Share schemes in Host Country

Secondment

- Existing employment remains
- Home Country terms
- Home Country retains hiring and firing
- Share schemes in home country

Employment v Secondment Tax & NI

Employment

- No treaty relief for tax
- Ni in host country
- All remuneration related and charged on host country

No detached duty relief

Secondment

- Treaty relief in host country available
- Potential coverage and liability in home country
- Some carve out to home country
- Detached duty relief may be available

Equalisation or Protection

Equalisation

- Hypo tax based on home tax
- Cheaper if employee goes to lower tax jurisdiction
- Allowances not in Hypotax
- NIC equalisation

Protection

- Difference made up by employer if employee pays more tax

No disadvantage to employee

N/A

NIC Protection

Tax withholding



WHO IS RESPONSIBLE?



WHERE?



2 OR MORE PAYROLLS?

Business Visitors

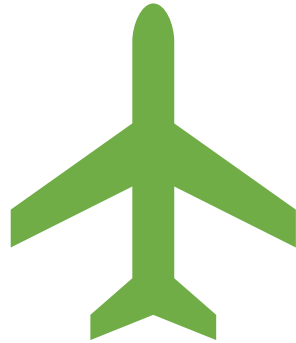
How long in a country?

Article 15 applicable?

When does “visit “ become an issue?

R Ward and Da Silva cases

Tracking



Days in Country



Workdays

Double tax Agreements – overview of key points

- DTR is obtained by
 - exempting the income from the charge to UK tax; or alternatively
 - under the unilateral credit system, credit for the overseas tax being taken against the UK tax liability.
- Treaties serve an important function in combating loss of tax revenue through evasion, etc.
- Article 26 of OECD Model Treaty deals with exchange of information.
 - It provides that the competent authorities shall exchange such information as necessary for carrying out the provisions of the convention or domestic law and is not restricted to those covered by the treaty.

Cont.

- Article 27 deals with the assistance in the collection of taxes.
 - It provides that the contracting states will lend assistance to each other in collecting taxes.
- Most of the UK treaties are based on the model, although some significant ones are different.
 - Notably the USA

OECD Model Treaty

- Articles 1-5
 - the scope of the agreement, the taxes covered, definition of terms, questions of residence and the definition of a permanent establishment.
- Articles 6-21
 - the treatment of income of various descriptions
 - business profits, dividends, interest, royalties, employment income, etc.
- Article 22 deals with the taxation of capital.

Cont.

- The remaining articles include the provisions for the elimination of double taxation, exchange of information, non-discrimination, entry into force, etc.
 - Article 23 A – Exemption method
 - Article 23 B – Credit method
 - Article 24 – non-discrimination
 - Article 25 – Mutual agreement procedure
 - Article 26 – Exchange of information
 - Article 27 – Assistance in the collection of taxes
 - Article 28 – Members of diplomatic missions and consular posts
 - Article 29 – Entitlement to benefits
 - Article 30 – Territorial extension

Interaction with domestic law

- A treaty can only make the position better for a taxpayer.
 - It will never impose a tax charge.
- E.g. say a treaty provides for a WHT rate of 10% to apply to dividends.
 - This doesn't mean that the WHT will apply.
 - First, look to see the domestic position
 - i.e. is tax applied and what rate it should be?
 - Then, look to the Treaty to see if this provides a better situation.
 - E.g. if we are looking at a UK company paying a dividend to an Australian resident individual, step one is to look at UK domestic law.
 - Under UK domestic law there is no requirement to withhold tax on dividend payments.
 - As a result, there is no need to look to the UK / Australia DTT – it will not give a better position than domestic law.
- The provisions of a DTA entered into by the UK take precedence over domestic legislation, insofar as they provide relief from double taxation.

Article 4 – Residence (individuals)

- The definition aims to cover various forms of personal attachment to a State which, in the domestic taxation laws, lead to full liability to tax.
- Tie breaker clause – consider firstly the **permanent home**.
 - If this not conclusive (i.e. there is a permanent home in both contracting States)
 - then consider the **centre of vital interests** (unless there is no permanent home in either place, in which case skip this).
 - This is broadly where your family, friends, jobs and social connections are.
 - If this in not conclusive, then consider the **habitual abode**
 - i.e. where you spend most of your time.
 - If this is not conclusive, then consider **of which country you are a national**.
 - If this does not give a definitive outcome, then it would be determined by mutual agreement between the countries involved.
 - These are not the same tests as we see in the UK SRT.
- NB Dual residency is a particular problem for US citizens or green card holders because of the US tax system.

Specific sources of income

Income from immovable property

- This is taxed in the place where the property is situated as well as the state in which the beneficial owner is resident.
 - Income from land gives rise to double taxation, but DTR can give relief.

Dividend income

- Where WHTs are applied the DTT will restrict the amount of WHT that can be deducted.
- The actual model treaty states:
 - ‘Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.’
 - Because it states ‘may be’, whether or not it is taxed in the other state will depend on domestic law.

Dividend income (cont.)

- The Treaty goes on to say that there will be a limit on the WHT in the company's state of residence to
 - 5% if the owner of the shares has at least 25% of the shares; and
 - 15% in all other cases.
 - These figures do vary in individual tax treaties.
- i.e. Dividends are taxed in the country of residence of the shareholder
 - but they may also be taxed in the country in which the company is resident, with the tax rate limited.

Cont.

Interest

- The same basic principle applies as it does for dividends
 - Interest may be taxed where the recipient is resident and/or where the interest arises, but WHT is limited to 10% (in the model treaty).
- Note that interest which may be exempt under domestic rules (e.g. UK ISA interest) may still be taxable in the other country.

Cont.

Income from employment (Article 15)

- The basic principle - award the taxing rights to the country where the employment is exercised.
 - However, a second part (next slide) reverts the allocation of the taxing rights back to the State of residence, regardless of the fact that the employment has been carried out in another State.
 - The purpose of the provision is to facilitate international short-term secondments of employees.

Income from employment (cont.)

- Three conditions have to be met for this to apply:
 1. The individual is present in the state where the employment is exercised in aggregate for less than 183 days in any twelve-month period;
 2. The remuneration is paid by, or on behalf of, an employer who is not a resident of the other state (i.e. the one where the employment is exercised);
 3. The remuneration is not borne by a permanent establishment that the employer has in that other state.

Income from employment (cont.)

- It is also a clause where there are deviations from the model treaty in some of the more important UK treaties, for example:
 - UK/India - (c) the remuneration is not deductible in computing the profits of an enterprise chargeable to tax in that other State;
 - UK/Hong Kong – (d) the remuneration is taxable in the first-mentioned state according to the laws in force in that State;
 - UK/Singapore – (c) the remuneration is subject to tax in the first-mentioned Contracting State; and (d) the remuneration is not directly deductible from the profits for tax purposes of a permanent establishment or a fixed base in the other Contracting State.

Cont.

Pensions

- Very few treaties with the UK give any kind of relief for pension contributions paid in the UK but some significant ones do
 - including the US, France, Ireland, Canada and South Africa.
 - Relief may be available in the UK for foreign pension contributions provided the schemes would be qualifying pension schemes for UK tax purposes.
- Pension receipts are typically only taxable in the country of residence
 - although you need to be careful, as some treaties cover the pension only and not the lump sum and sometimes there is a dispute over whether something is a pension or not
 - e.g. if a UK individual takes their whole pension pot in one lump, is this a pension?

Other income

- Other income not covered by one of the other articles is typically taxable only in the state of residence.

Cont.

Remittance clause

- There is often a remittance clause
 - even though it is not part of the model treaty.
- Where
 - income arising in a Contracting State is relieved in whole or in part from tax in that State; and
 - under the law in force in the other Contracting State, a person, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other State (and not by reference to the full amount thereof)
 - then any relief provided by the provisions of this Convention shall apply only to so much of the income as is taxed in the other Contracting State.

Example

- Gains taxed in the UK on a remittance basis are relieved from tax in the US
 - but any gain not remitted can be taxed in US.
- This can cause problems
 - E.g. what if the gain is remitted at a later date and taxed in UK?
 - The US tax cannot be repaid automatically, so you would get a tax credit in the UK
 - unless it is in time to amend the overseas return, in which case the expectation is that the overseas return will be amended.

Double taxation

- There are two means by which a Treaty may eliminate double taxation.
 - The exemption method or the credit method.
 - The latter is used more extensively.
- Articles 23A and 23B deal with double taxation.
- International double taxation may arise in three cases...

Double taxation (cont.)

1. Where each Contracting State subjects the same person to tax on his worldwide income or capital.
 - E.g. where a company is resident in two Contracting States and thus subject to tax in both states, Article 4 provides a tie break clause giving preference to one country, which will have full taxing rights (or mutual agreement under the new model)
2. Where a person is a resident of a Contracting State and derives income from, or owns capital in, the other Contracting State and both States impose tax on that income or capital.
 - This can be resolved by allocating the exclusive right to tax between the Contracting States
 - Generally, the state of residence, however there are exceptions.
3. For other items of income or capital, the attribution of the right to tax is not exclusive, and the relevant Article then states that the income or capital “may be taxed”.
 - In such cases the State of residence must give relief. so as to avoid double taxation.

Practical issues

Focus on Tax Treaties



Practical issues



P/E



Residence



Scope of Company and
personal activities

Practical issues

The use of Article 15

Non discrimination and its application to residence PA etc.

US treaty applications

Making claims

The interaction between corporate and personal taxes

Practical issues

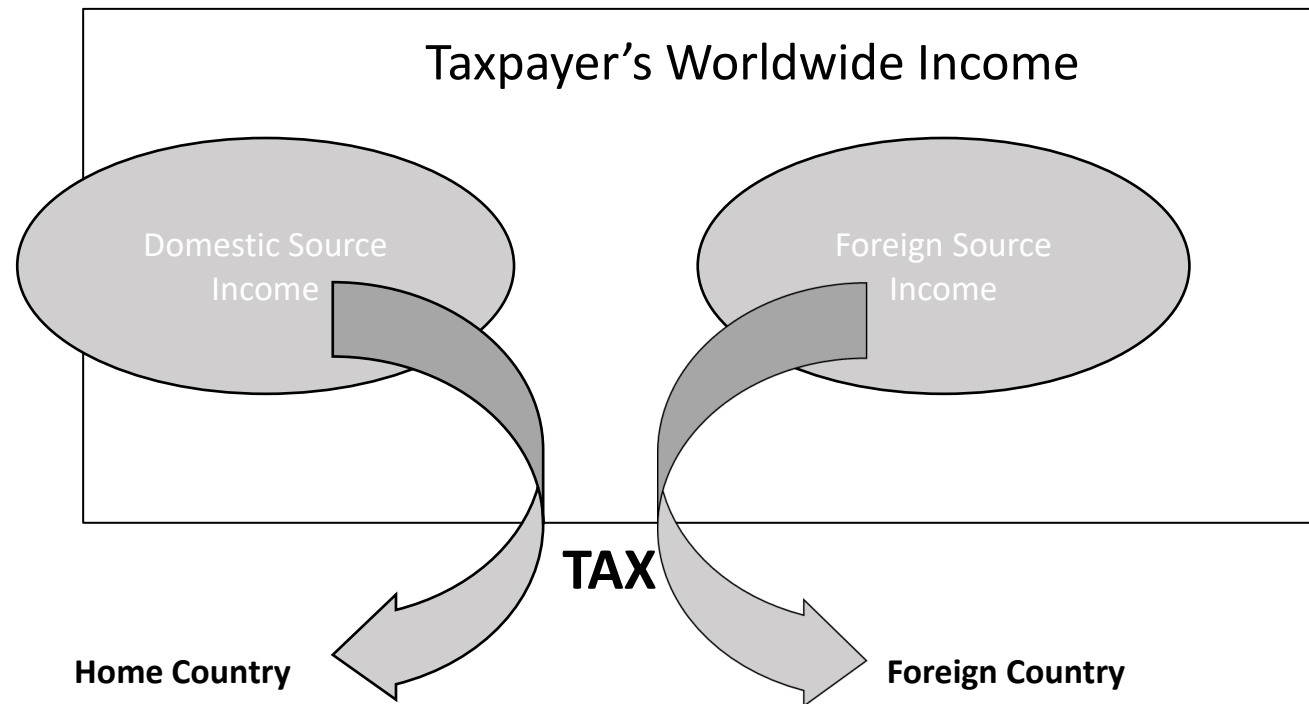
Scope of taxes within treaty

Treaty clauses—residence tie breaker

Exemptions

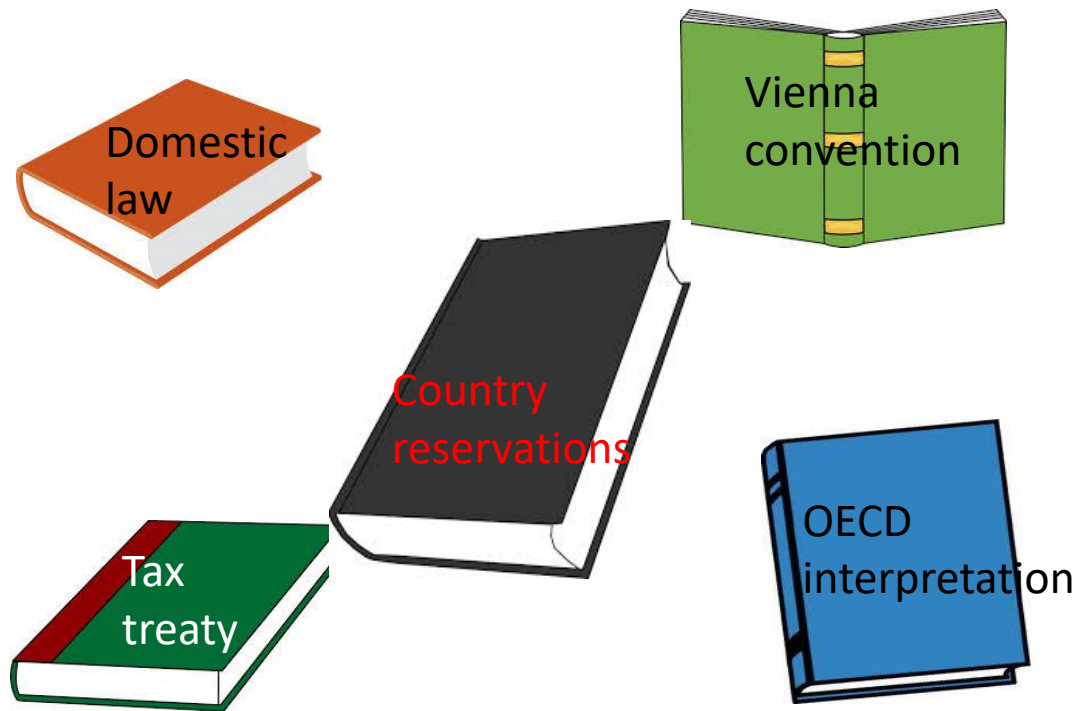
Remittance basis

Concentrating on the overall global tax burden



Cashflow V Tax Loss

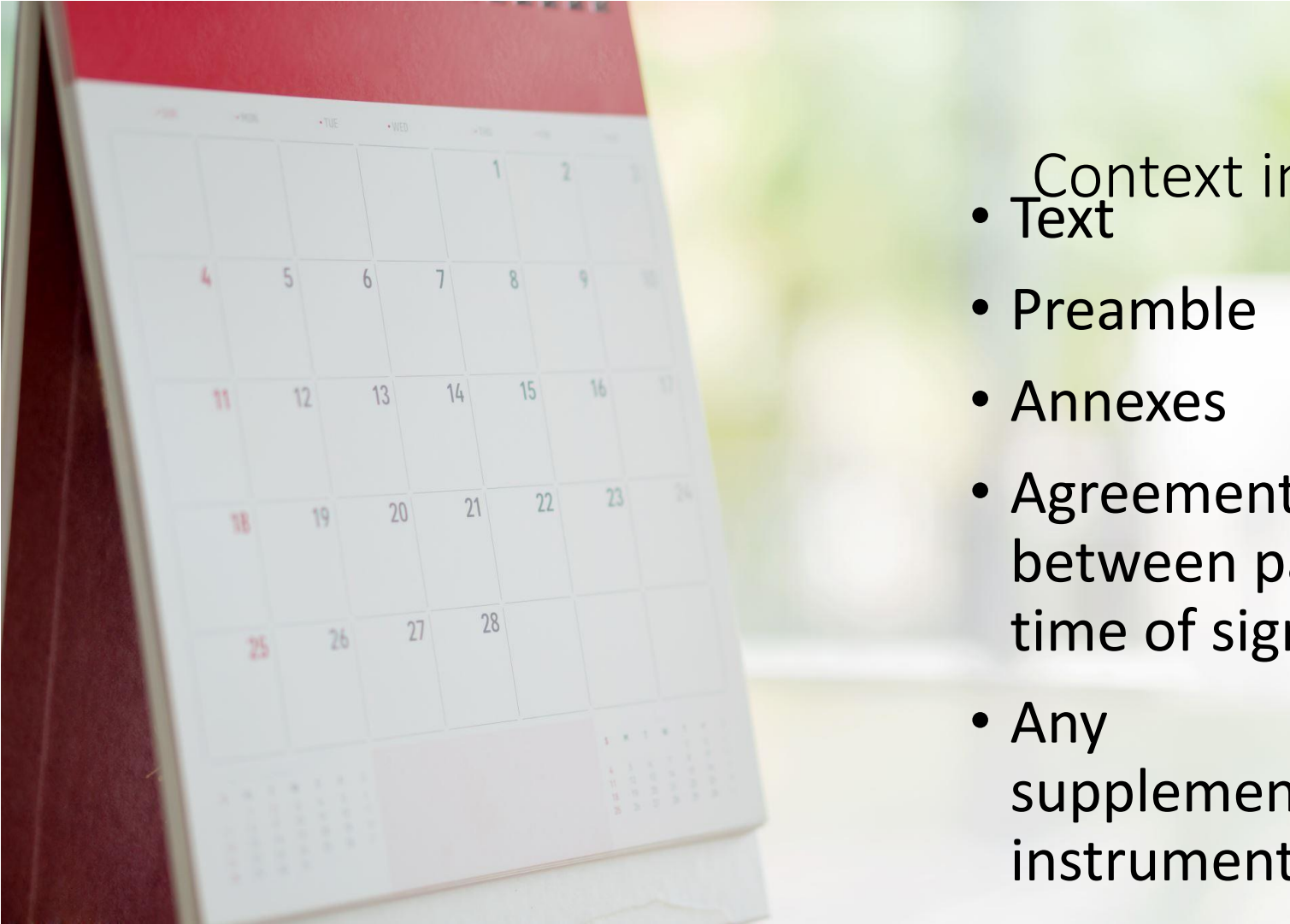
- Issue
- Double withholding on tax
- State or other sub Federal deduction
- Non equivalent taxes
- Taxes outside DTT
- Challenge
- Cashflow
- Double tax
- Double Tax
- Double Tax





Vienna Convention
principles

A treaty shall be interpreted in good faith in accordance with the ordinary meaning given to the terms of treaty in the light of its objective and purpose



- Context includes
- Text
- Preamble
- Annexes
- Agreement between parties at time of signing
- Any supplementary instrument



Supplementary means of interpretation

- Preparatory work and work at conclusion may be used where otherwise:

Meanings are :

Ambiguous Obscure

Or

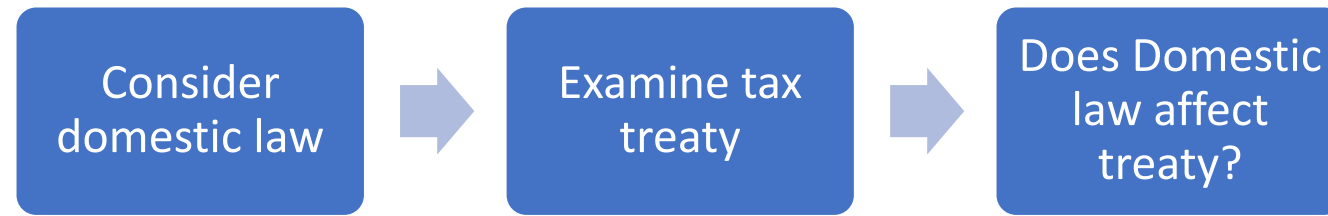
Manifestly absurd or unreasonable



“Shield not
sword”

Benefit –not detriment to
Taxpayers

Process



Fowler

Mr F was a South African resident diver who undertook diving work on the UK continental shelf.

The dispute arose around how his diving income should be treated under the double tax treaty (DTT) between the UK and South Africa ([SI 2002/3138](#)). HMRC argued that the diving activity fell within *Article 14* of the treaty as income from employment, which would result in it being chargeable to UK income tax.

Fowler

- Mr **Fowler** argued that [ITTOIA 2005, s 15](#), which deems divers employed on the UK continental shelf to be treated as if they were self-employed, should result in his diving income being treated as business profits under *Article 7* of the treaty (and therefore not taxable in the UK).
- The Supreme Court considered that there is nothing in the treaty itself that required *Articles 7* and *14* to be applied to the deemed rather than real world, unless the effect of *Article 3(2)* was that a deeming provision altered the meaning which relevant terms of the treaty would otherwise have.

Decision

- Lord Briggs concluded that this is not how a deeming provision works: *s 15* uses the terms 'employment', 'employment income' and 'trade' in the same sense as elsewhere in the income tax provisions; it does not alter their meaning, but rather requires the income to be taxed, contrary to the fact that it is in fact employment income, as if it were profits of a trade. The Court identified that the purpose of the deeming provision is not to render a qualifying diver immune from UK tax, nor to allocate taxing rights between states, but rather to adjust the basis of a continuing UK income tax liability which arises from the receipt of employment income.
- Therefore, to allow the deeming provision to alter the definitions of terms under the DTT would be contrary to the purpose of the provision and would produce an anomalous result. The appeal was dismissed



Dual Residency

- Why are Treaties necessary?
 - dual residency is to be avoided if possible
 - treaty 'tie-break' clause operates where the national rules of two States are in conflict
 - leads to one State having overriding authority to tax
- May not always prevent a source being taxed in both States



Lorry Driver

With Wife and Children

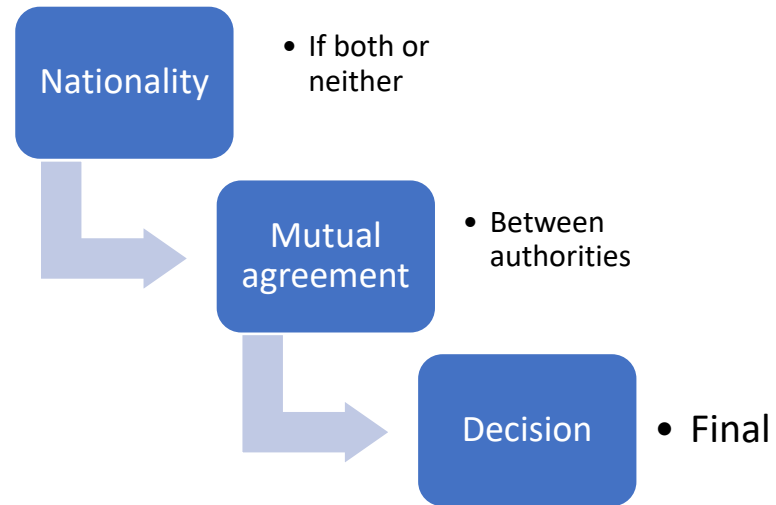
Treaty Residence

Permanent Home

Centre of Vital Interests

Habitual abode

Treaty Residence



Mitigation

Domestic relief

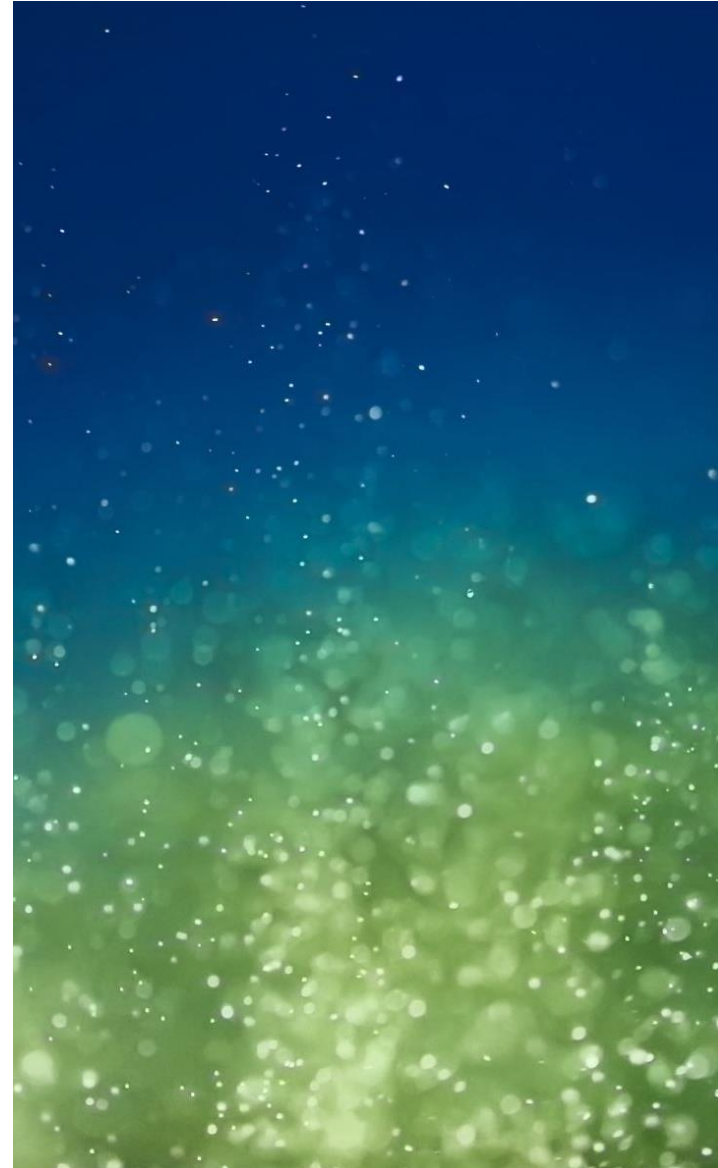
Double Tax Credit

Unilateral Credit

Tax as a deduction

Anti –Discrimination

Beg!



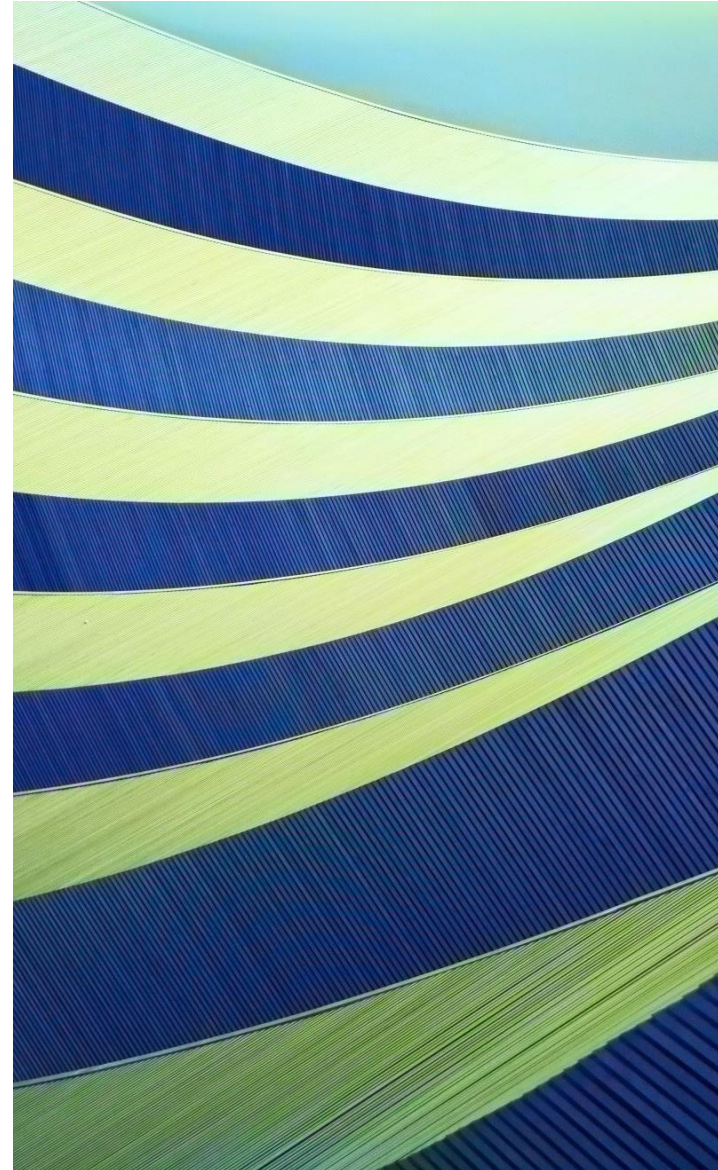
Dividends

Also include in specie

Sleeping Partners income

Participation or “Affiliation
Privilege”

EU Parent Sub directive-exemption
from source state if owns >25%





Interest

- 10% ceiling

Principles of Treaty

- Resident Country
 - Normally has right to tax worldwide income
 - Gives Credit for source income in other state or exemption
- Other Country
 - Limited taxing rights
 - Has rights to tax source income

How is Income categorised?

- Resident Country
- Will resident country accept identification category of Source Country?
- Other Country
- Mismatch could lead to Double Taxation

Principles of Treaty

- Resident Country
- Tax income giving credit for withholding
- Other Country
- Reduced withholding on interest Divs etc.

Functions of Treaty

Minimum thresholds of presence or activity for source-country net-basis taxation of business profits;



Functions of Treaty

Non-discrimination clauses that prevent taxes that would be more burdensome than the treaty country's normal domestic taxing regime from being imposed under the treaty



Power of DTT

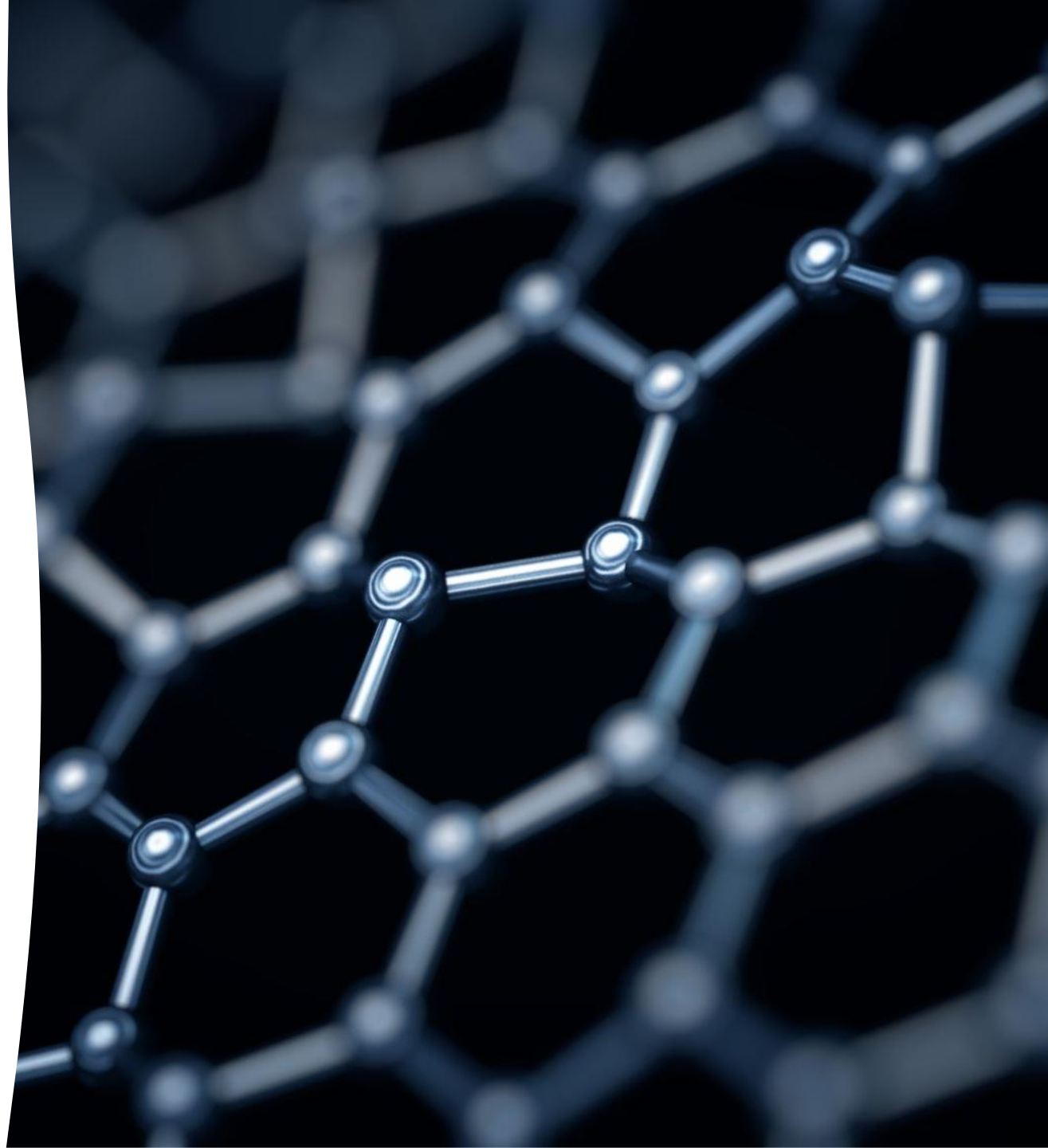
International Treaties

- Override Domestic Law

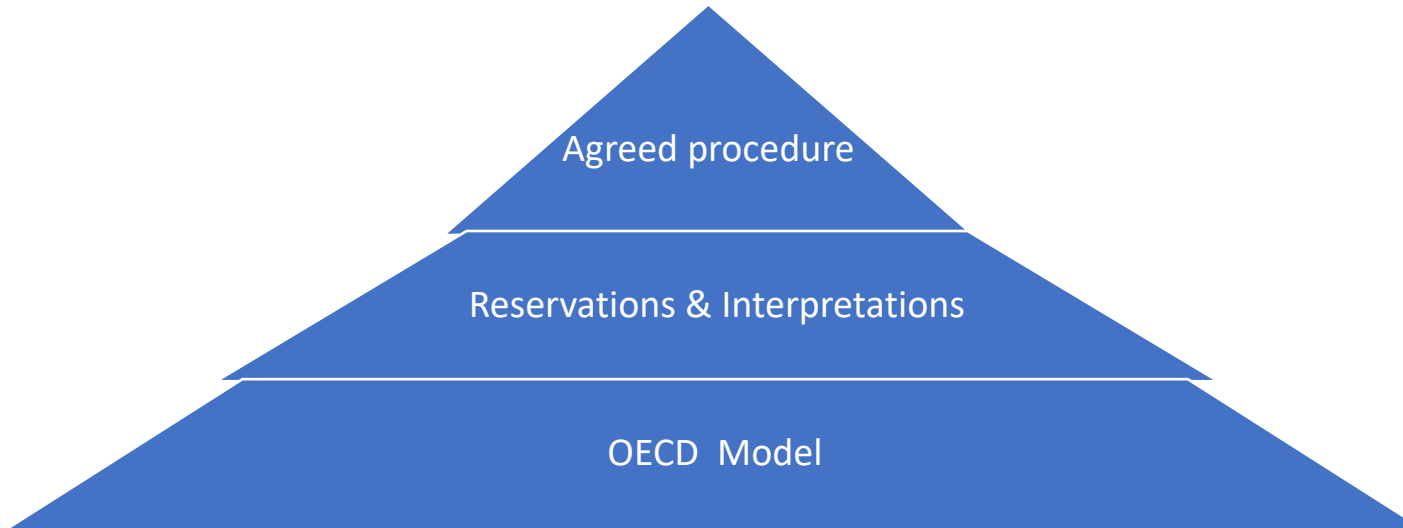
Consider

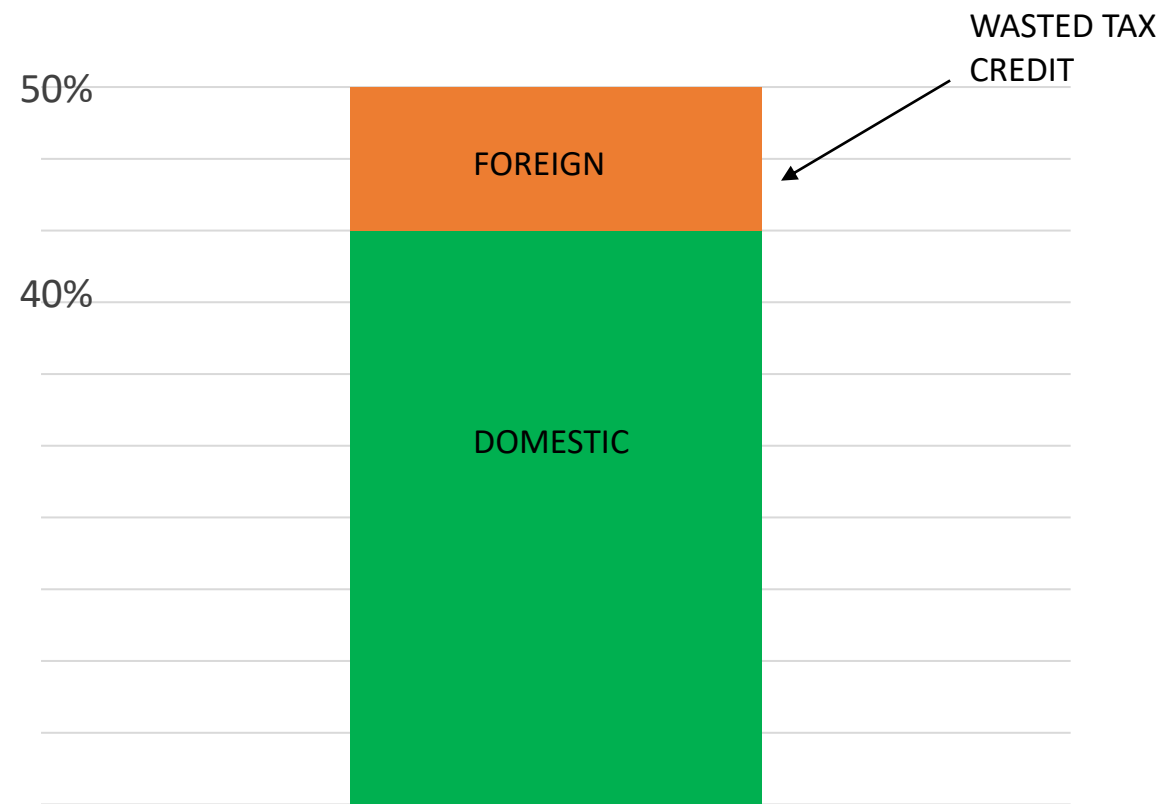
Bilateral e.g. UK/US

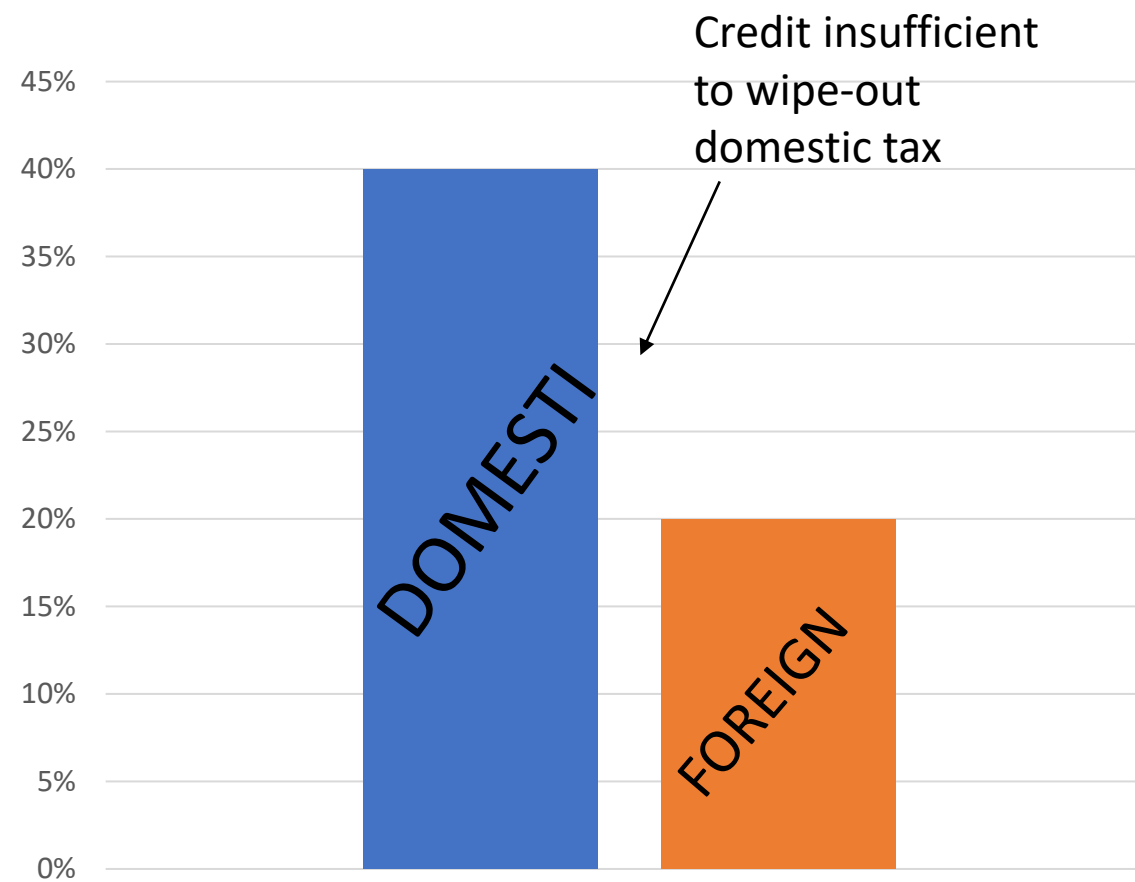
Multilateral e.g. EU

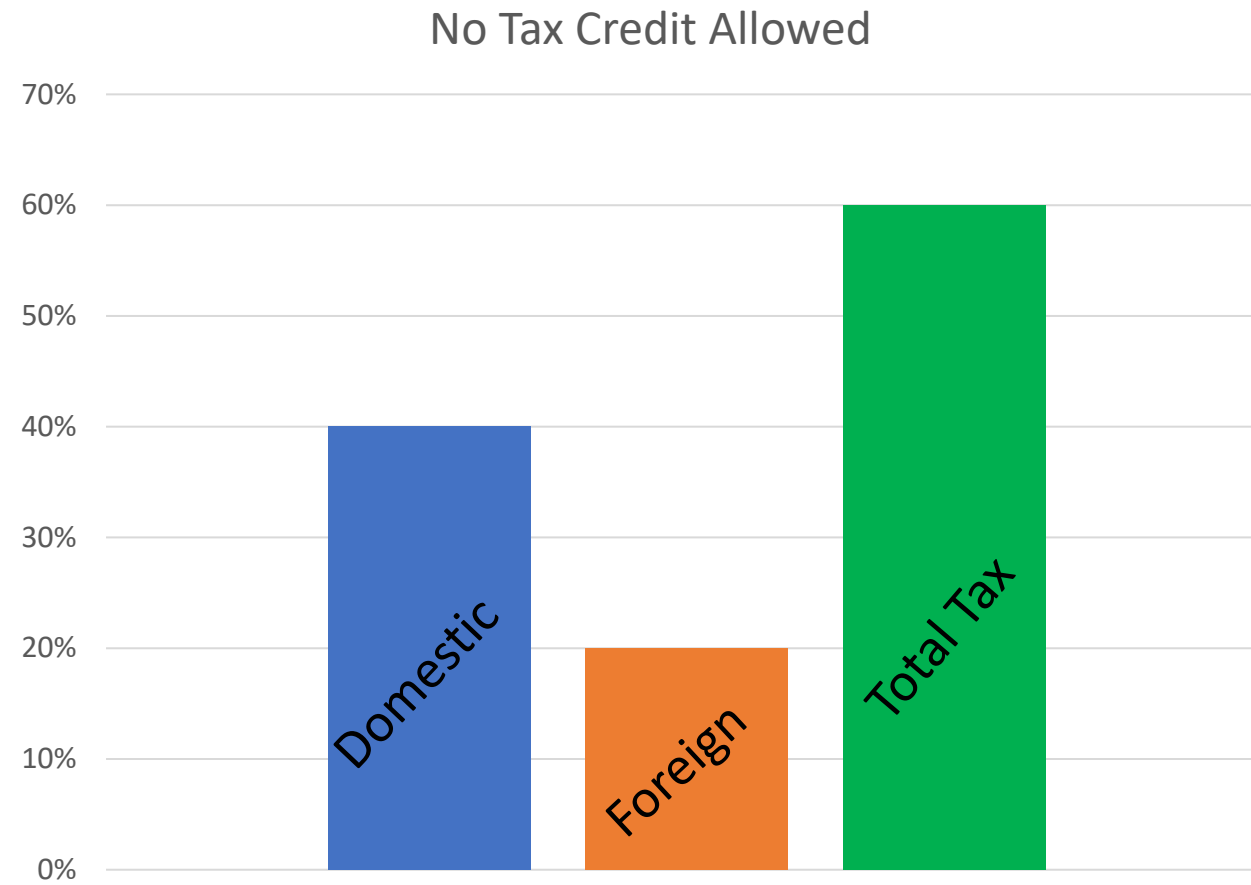


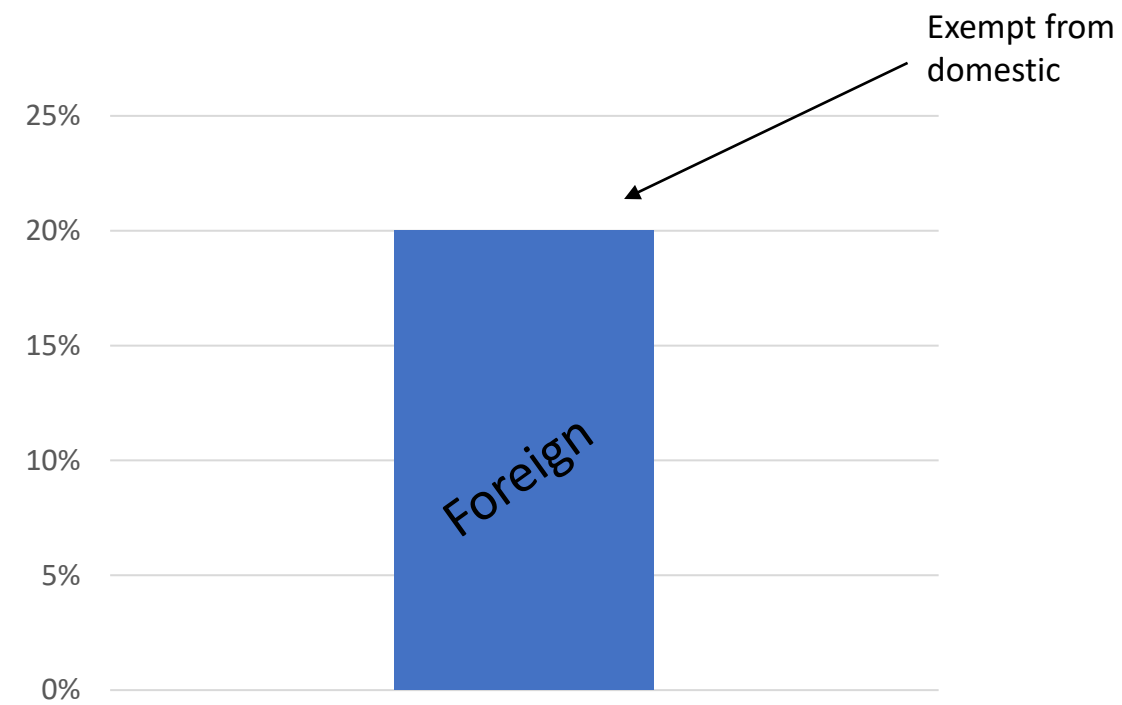
Foundations of a treaty











Interpretation of Treaties

Static

- Domestic law concepts frozen when treaty is signed

Ambulatory

- Treaty adapts to changing domestic circumstances

Multilateral agreements

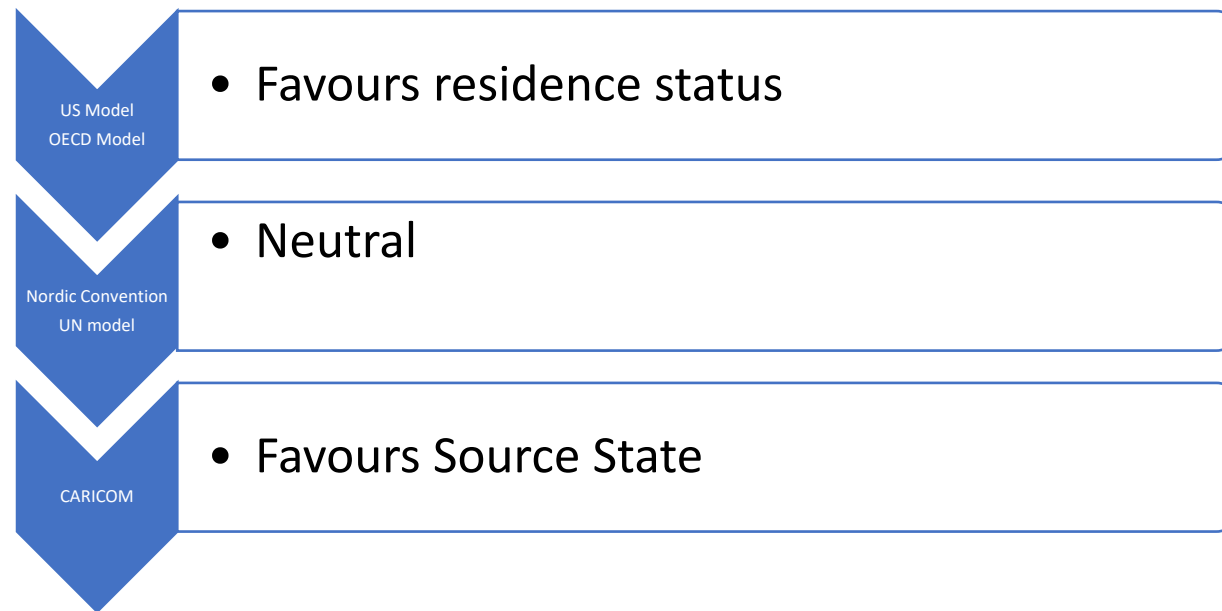
Agreement

- EEA on Social Security
- Nordic Convention

Area

- EU countries plus others
- Faroe Islands, Finland ,Iceland, Norway, Sweden
- (special rules on surveying, exploring and exploiting hydrocarbons)

Range of agreements





Social security
is different, for
example...

NIC



Three types of Social Sec

Country with UK

- Non agreement
- Bilateral
- Multilateral
- Singapore Australia
- USA
- EEA

EEA Principles

01

Pay where you
work

02

Pay in one
system

03

Credit for
contribs. in
other country

Exceptions to EEA –stay in Home Country system

Secondment up to 2 years

Work in 2 countries in EEA and:

Habitually resident and work 25% in home state

Mutual agreement

Tax and Social Sec contrasted

Tax

- Double Tax Treaties
- Few multilateral
- Earnings basis and residency
- Wide range of income and capital
- Apportion between 2 states?

Social Sec

- SS agreements
- EEA one covers >31 countries
- Bums on seats
- Normally earnings
- Normally one state

Rolf

- Rolf, a Ruritanian national spends two days working in the UK and three days in Ruritania per week for the same employer.
- Under the treaty, the UK will tax 40% of his earnings, assuming that he does not qualify under Article 15. 2 for complete exemption.



Article 15 .1

- He will then obtain either a credit for the taxes paid in the UK when filing his Ruritanian tax return or potentially exemption with progression; in other words, the UK income will not be taxed in Ruritania, but will affect his Ruritanian marginal rate of tax.





EEA SSA

“If you work in another EEA country or Switzerland for an EEA or Swiss employer (this includes a UK employer), you are usually insured under the social security laws of the country you work in. You will not usually have to pay UK National Insurance contributions.”

Rolf



Earnings	Subject to UK	Subject to Ruritanian
Tax	40%	60%
NI	Nil	100%

Background to Social Security

The payment of social security protects rights to state benefits for the employee/family

Demographic changes

- Longer life expectancies
- Rising retirement ages

Increases in social security rates; governments facing welfare funding pressures

Globally mobile workers with fragmented contribution records

Social security systems being extended to cover expatriates and more social security agreements being entered into

Social Security Authorities moving to a holistic approach for assessing compliance

- Increasing co-operation with domestic healthcare, immigration and benefits agencies
- E.g. prior notification/registration schemes – Belgium, Sweden, Estonia, Germany
- Working more closely with their international counterparts

Principles of determining social security

Is the country within the EU Social Security region?

Do we have a reciprocal agreement?

Non-agreement countries outside of both of those groups

Don't forget also need to consider healthcare, modified NIC in some cases

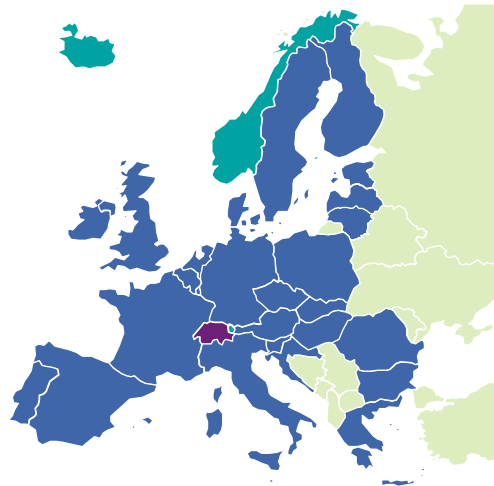
Countries covered by the EU Social Security Regulations

- 28 EU Member States
 - Austria, Belgium, Bulgaria, Cyprus, Croatia, Czech Republic, Denmark**, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden and the UK*
- European Economic Area (EEA) member countries
 - Norway, Iceland and Liechtenstein
- Switzerland**

Notes

- ❖ TCN's – Third country nationals. i.e. individuals who are not EU/EAA/Swiss nationals
- ❖ EU member states: Read throughout as EU/EAA/Switzerland
- ❖ *TCN's not adopted under 883/2004
- ❖ ** TCN's not adopted under 883/2004 or 1408/71

Countries covered by the EC Social Security Regulations



EEA Social Security Compliance



Does the individual have the correct type of certificate in place? (Posted worker v Multi State)



Assignment extensions – do the facts support an extension to the existing certificate?



Is social security being paid in the correct location?



Do the individual's circumstances still support the certificate in place? i.e. Material change

Posted Workers

- Time Limits for ongoing home country social security scheme participation
 - Up to 2 years (new regulations 883/2004) [Up to 1 year (old regulations 1408/71)]
 - Up to 5 years generally (both regulations by 'exceptional' agreement)
- An A1 or E101 Certificate should be obtained to confirm the position
- A signed declaration is required from the individual for applications made under the exceptions Article (Article 16 of 883/04 or Article 17 of 1408/71). Exceptions article can also be used to 'legalise' past situations (e.g. payments of contributions in the wrong Member State) or for other worthy cases



Who is a Multi State Worker?

- Include individuals working across:
 - two or more EU Member States (even if on a formal assignment)
 - who have a number of employers and works across several Member States
 - who live in a country in which they work
 - who live in a country in which they do not work
 - any of the above with some countries within the EU and some are outside the EU
- working substantially (25% of relevant working time (excludes days outside of EU))
- marginally (5% of relevant working times (excludes days outside of EU))
- Who decides?
 - the institution of the Member State of (Habitual) residence of the employee
 - this institution determines the competent Member State and informs the other Member States where activities are pursued





Common Problems

- Application Errors:

- ❖ Application submitted to incorrect authority
- ❖ Insufficient factors provided to the competent authority to determine country of habitual residence
- ❖ Social security position assumed to be either where the employee resides or where the contract of employment is held – consideration to be given to working pattern which will be the deciding factor if employee and employer in different Member States, potential of incorrect A1 being issued

- Increased focus from HMRC:

- ❖ Period of residence in the UK is less than assignment period
- ❖ Nationals of countries to which they are being posted
- ❖ Is HMRC the competent authority?
- ❖ More challenging of regularisation of social security position



Reciprocal Agreements Countries

- Content and duration differ between agreements so ensure conditions are met in each case
- Certificate of Coverage (CoC) to be applied for as confirmation of continuing UK liability
- Exceptions clause for unusual scenarios, where continued participation in the home country social security scheme is in the individual's interests or for simultaneous employment and/or working
- If conditions for a CoC are not met, liability for host country contributions from day 1

Non agreement countries – UK touching

- Home location – UK

- Continuing obligation to UK NIC for first 52 weeks of assignment, if conditions are met:
 - the employer has a place of business in the UK, and
 - the employee is ordinarily resident in the UK, and
 - immediately before the assignment the employee was resident in the UK
 - Voluntary contributions may be made by individual after 52 week period to keep their UK NIC contribution record up to date
 - Class 2 NIC payable
- Host location
 - Social security potentially due from day 1 subject to domestic rules
 - Potentially employer and employee obligations for contributions and registrations

- Host location – UK

- No liability to UK NIC for the first 52 weeks if:
 - the contract of employment remains with the overseas company (even if there is a place of business in the UK)
 - the individual is not ordinarily resident in the UK
 - the employment is in continuation of the employee's normal employment
- Home location
 - Potentially a continuing obligation in home country

Business travellers



Home and host liabilities to be considered

Generally ongoing home liability

Very few countries provide an exemption or a *De-Minimis* number of days worked in the host location



When do you need to obtain a certificate of coverage?

No exemption – from day 1

Is this regular business travel?

Does the individual's role require them to work across 2 or more countries?



Practicalities

Monitor business travel – is there a trigger to consider social security obligations?

When should you obtain a certificate of coverage?

Risk of doing nothing

Often applies to VIP employees (sensitive to compliance)

Successive Assignments

- Example: Individual is assigned by UK employer to Singapore for 2 years. Individual is then reassigned immediately to India for a further 2 year period
- 52 week ongoing liability to UK NIC is not 'restarted' as the individual was not resident in the UK immediately before the assignment to India
- If the individual returns to the UK for a significant period between assignments, then a 'fresh' 52 week period of liability is initiated
- Guidance suggests the following would result in a fresh 52 week period of NIC:
 - ✓ a fresh and distinct assignment abroad
 - ✓ return to the UK is other than on temporary duty, incidental to the overseas assignment
 - ✓ return to the UK is not incidental and for more than 6 weeks

Identifying Overpayments

- Has NIC ceased to be withheld after the initial 52 week period?
- Is the ordinary residence condition met for a continuing liability?
- Can a bonus be paid outside the 52 week period? Current practice is for HMRC not to charge NIC on payments made outside the 52 week period even if they relate to UK periods
- If an error is spotted within the same tax year an in-year adjustment is possible
- If an in-year adjustment is not possible a refund claim must be submitted
- HMRC do not typically issue confirmation that NIC withholding can cease (or be reversed)

Ensuring Compliance

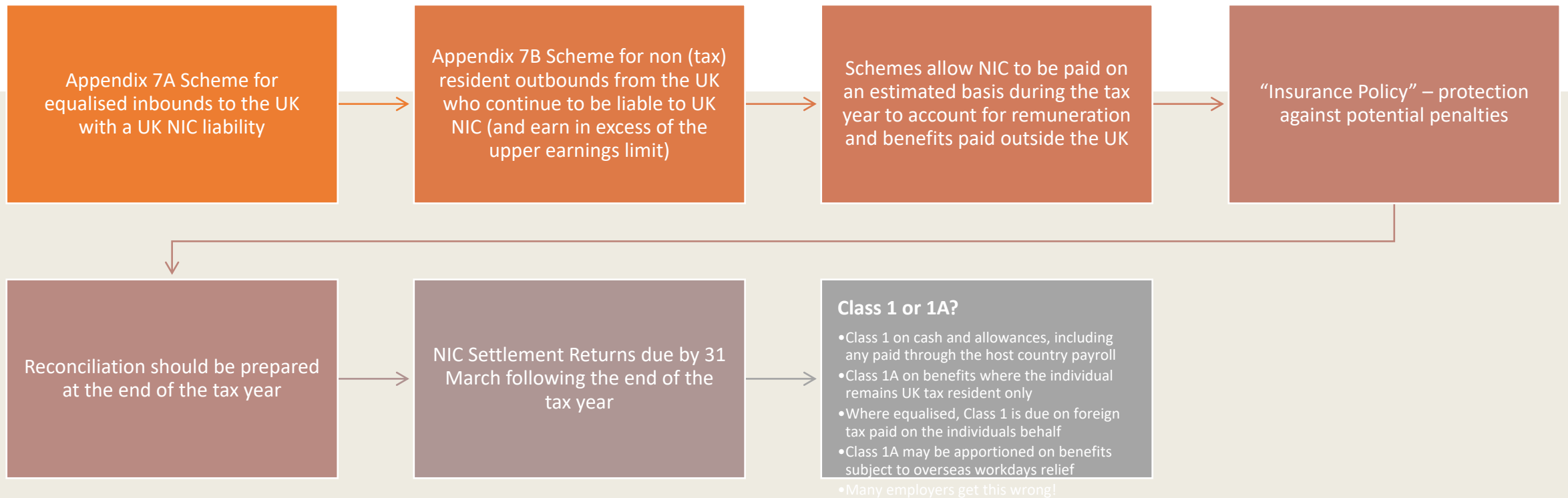
Tracking of 52 week periods for inbound assignees

Consider timing of bonus payments to minimise any potential double exposure (where continuing home country social security liability)

Equalisation policy – does this apply to social security? How is hypothetical tax and social security treated when looking at gross ups?

Is there a modified NIC scheme in operation?

Modified NIC



Summary of Considerations

Inbounds

- Are assignees liable to UK NIC?
- Is a modified NIC scheme for inbounds already in place?
- If a 52 week exemption applies, how will this be tracked?
- Are A1/COCs in place to confirm an exemption from UK NIC?
- Should the individual (assignee or business traveller) be subject to the EU multi state worker provisions?

Outbounds

- If a 52 week liability period applies, how will this be tracked?
- Is a modified NIC scheme for outbounds already in place?
- Are A1/COCs available and in place?
- What is being subjected to NIC?
- Should the individual be subject to the EU multi state worker provisions?
- Sufficient Healthcare coverage?

Healthcare – Non EU

- Totalisation countries
 - Does agreement cover healthcare in host location?
 - Costs incurred
 - Separate/additional coverage
- Non-totalisation countries
 - Separate/additional coverage
 - Reciprocal Healthcare agreements with the UK (sample):
 - Australia
 - New Zealand
 - Russia

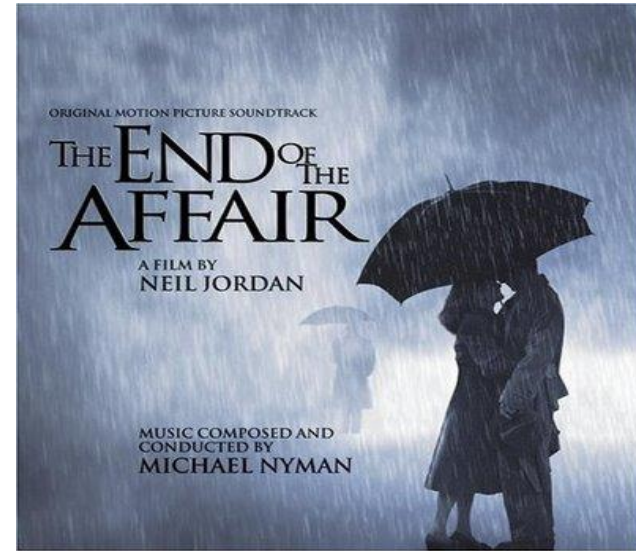
Voluntary NIC & UK State Pension

• Voluntary NIC

- Making voluntary contributions will help maintain entitlement to the UK basic state pension and some other contribution-based UK state benefits, whilst not liable to Class 1 NIC.
- Class 2 NIC (employed abroad)– FY 2018/19 = £2.95 per week – *to be abolished as of 6 April 2019*
- Class 3 NIC (not employed abroad) – FY 2018/19 = £14.65 per week
- Eligibility:
 - Previously lived in the UK for a continuous three year period
 - Before going abroad paid NIC for three years or more (i.e. had sufficient earnings to be liable to NIC during the tax year)
 - Immediately before going abroad ordinarily an employed or self-employed earner in the UK
- Useful Links:
 - ✓ Voluntary NIC while abroad (NI38): [NI38](#)

• UK State Pension

- The maximum entitlement to the UK State Pension for individuals who have 35 qualifying contribution years for NIC purposes
- Minimum of 10 qualifying contribution years to be entitled to a pro-rated State Pension
- Qualifying year is a year in which an individual has paid or credited with NICs at lower earnings limit (2018/19: £6,032)
- Contributions overseas – EU/EEA and some Totalisation Countries –aggregate contributions in order to achieve the qualifying conditions, but not for calculating the actual amount due to the individual.
 - E.g. Eight qualifying years in UK + three qualifying years in US = 11 qualifying years for UK State Pension purposes, receiving 8/35 of the full State Pension amount.
- Useful Links:
 - ✓ Check your UK State Pension: [State Pension](#)
 - ✓ State Pensions abroad: [State Pensions abroad](#)
 - ✓ New State Pension: [New State Pension](#)
 - ✓ Retiring Abroad: [Retiring Abroad](#)



The end of the employment

Termination

Termination payments

Are they taxed under any other provision?



Other charging provisions

ITEPA 2003 section

- Treated as Earning
- NI applied

Type of income

- Ordinary earnings to include:
- Terminal bonus
- Paid leave
- Unused holiday pay
- Benefits post termination
- Back pay
- Garden Leave

Other provisions

Section ITEPA 2003

- Section 393

Type of income

- Restrictive Covenants
- New restrictions

- Chargeable to NIC and tax

Termination payments

Section of ITEPA 2003

- 401
- 403
- 408
- 413 & 414
- 406
- 406

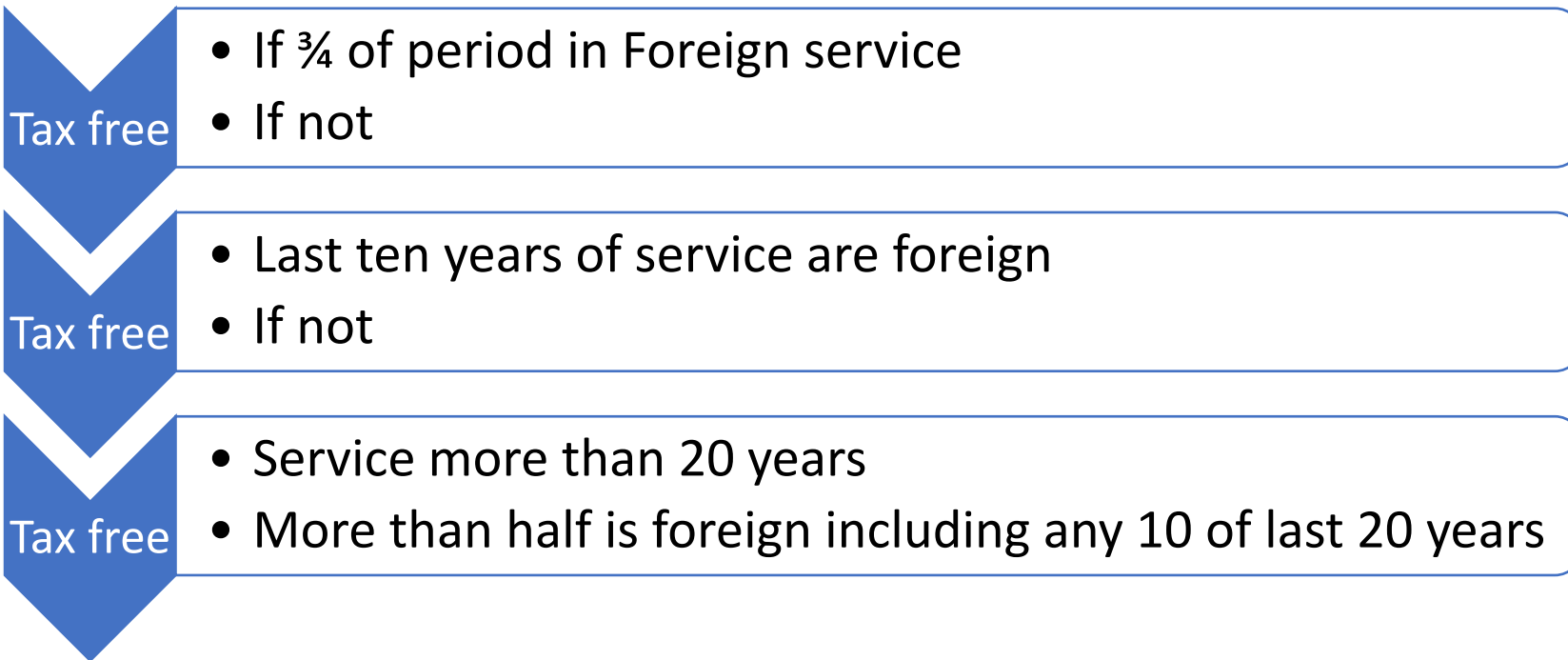
Meaning

- Charge to tax
- £30,000 exemption
- Exemption for contributions to Pension Scheme
- Exemption for foreign service
- Exemption for death
- Exemption for ill health

Terminations payments are Global But carve out foreign income if NR at termination



Foreign Service Relief If non resident in tax year of termination



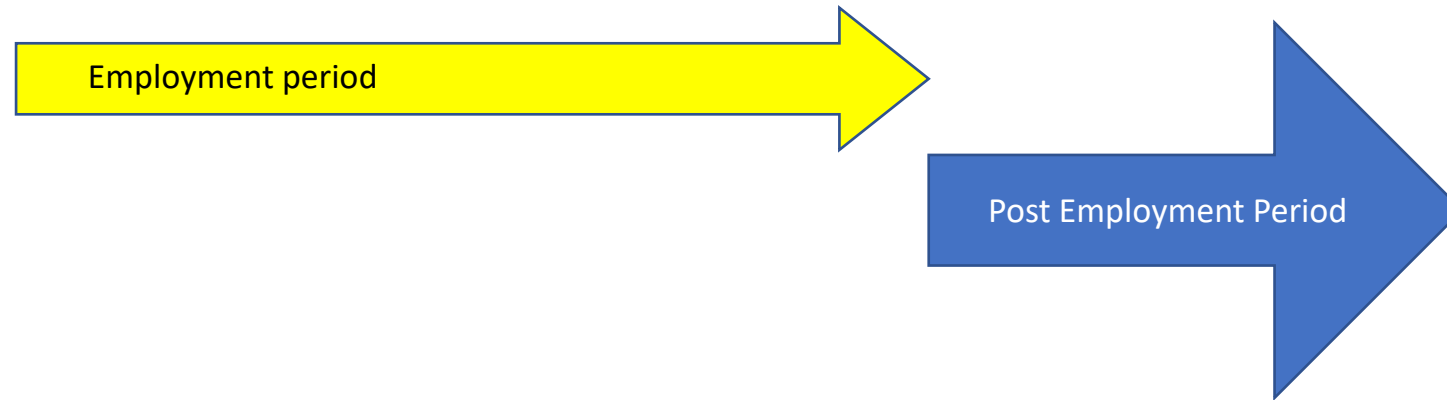
Foreign Service Relief

- If full relief not given
- Then apportion

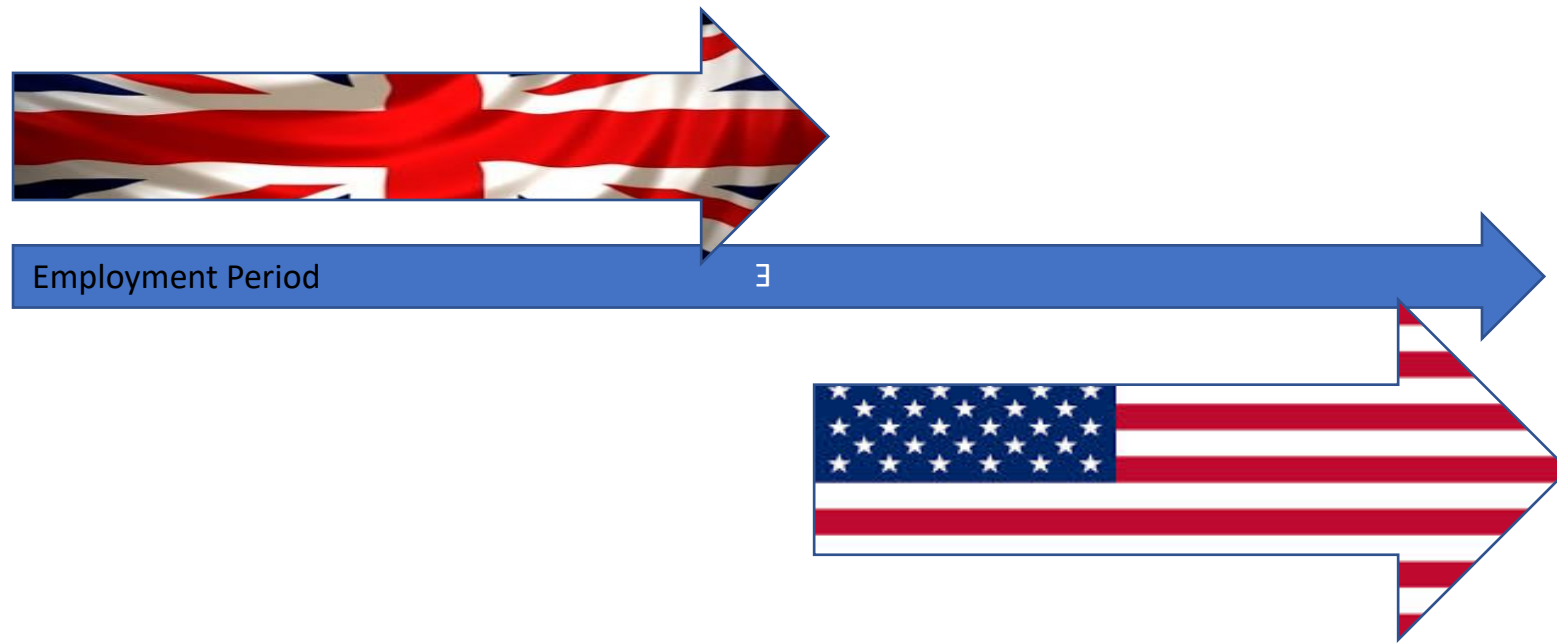
$$\frac{\text{Foreign Service}}{\text{Total Service}}$$

After £30,000 exemption given

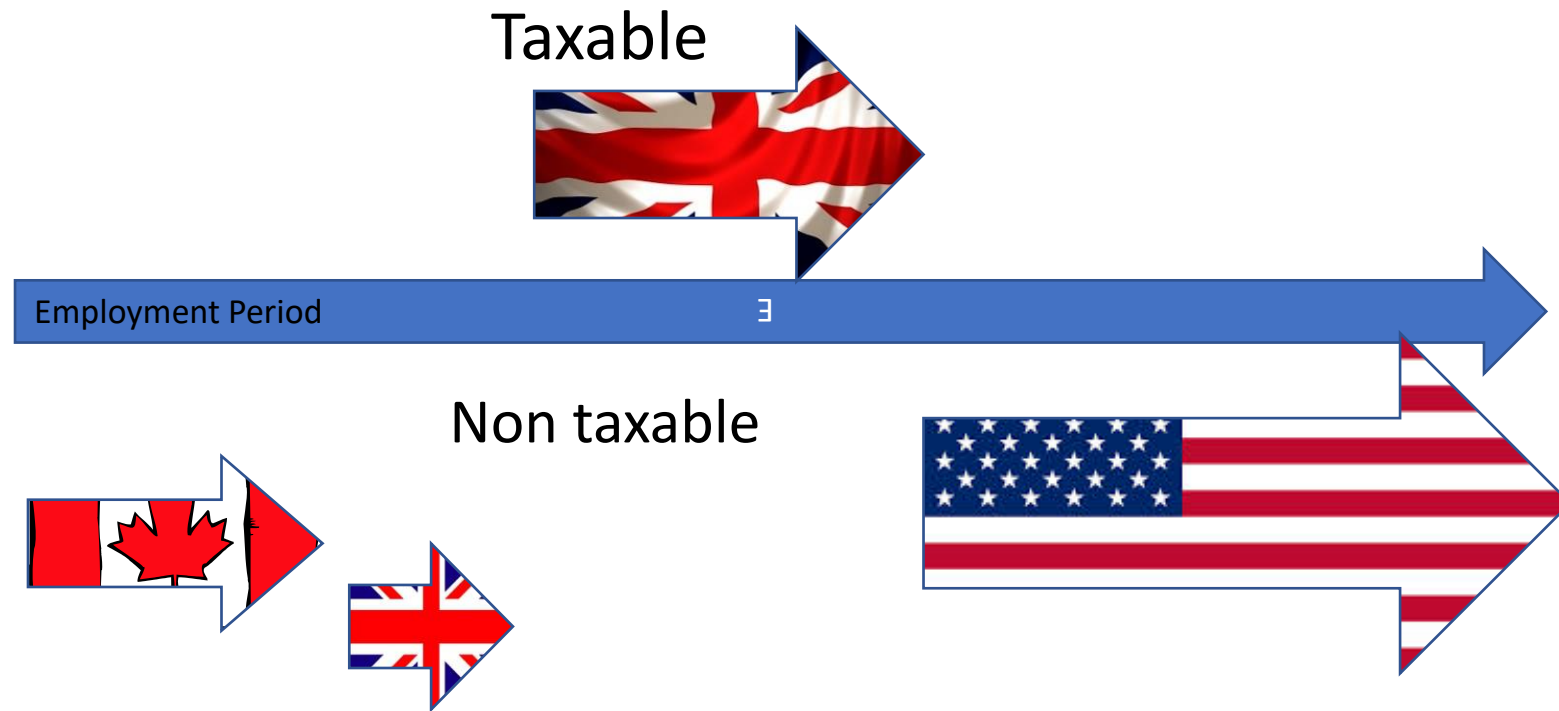
Post employment costs



Employment Periods



Employment Periods



Exemptions

- Automatic exemption for statutory redundancy pay
- NI up to £30 K tax free
- Class 1A thereafter

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