



Comp & Benefits News

BDO Seidman, LLP
Accountants and Consultants

SUBJECT:

U.S.-U.K. DOUBLE TAXATION AGREEMENT &
EXPATRIATE PARTICIPATION IN A FOREIGN PLAN

ISSUE:

Until the U.S.-U.K. Double Taxation Agreement of March 31, 2003, a U.S. resident participating in a U.K. pension plan was not eligible for the tax relief normally associated with contributions to a qualified plan. Under the new Agreement, subject to certain conditions, individual and employer contributions to the foreign plan made on behalf of the U.S. or U.K. expatriate will be treated as though those contributions were made in the home country to a qualified plan.

TREATY CONDITIONS:

The new double taxation treaty, ratified on March 31, 2003, contains a number of new provisions relating to pensions. The pension provisions became effective in the U.K. on April 6, 2003 and will become effective in the U.S. on January 1, 2004. The two relevant provisions are Articles 17 and 18, which address the tax treatment of benefits paid from a pension plan in one country to a resident of the other country and the tax treatment of contributions and pension accrual prior to payment of benefits, respectively.

Article 18 of the U.S.-U.K. double taxation treaty addresses the tax treatment of cross-border pension contributions. Generally, individuals are allowed to transfer from their home country to work in a host country and continue to accrue benefits and make tax-deductible contributions to their home country plan. In addition, the employer may make contributions to the home country plan without creating taxable income for the employee in the host country. Under the treaty, either country may tax residents on pension income earned through a pension plan in the other country until such income is distributed. In addition, if a member of a pension plan established in one country goes to work in the other country, the state of residence will not tax the plan member on income earned by the plan unless it is paid to him (or for his benefit). Moreover, there will be no tax if income is transferred to another pension plan until the benefits are actually received.

Material Discussed in this newsletter is meant to provide general information and should not be acted on without obtaining professional advice tailored to your firm's individual needs.

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*With the rules changing daily, you can rely on BDO Seidman's
Comp & Benefits Practice to guide you through it all...*

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TREATY CONDITIONS (continued...)

The conditions for relief are two-fold. First, the contributions were made by or on behalf of the individual or his employer before the individual began to exercise an employment or self-employment in the other contracting state. Second, the competent authority of the other state agrees that the pension plan generally corresponds to a pension plan established in that other state.

The following U.K. plans will be treated as generally corresponding to a U.S. plan:

1. Approved employment-related retirement benefits plans (for purposes of Chapter 1 of Part XIV of the Income and Corporation Taxes Act of 1988), and
2. Personal pension plans approved under Chapter IV of Part XIV of such Act.

Likewise, the following U.S. plans will be treated as generally corresponding to a U.K. plan:

1. Qualified plans under IRC 401(a)(including 401(k) plans,
2. Individual retirement plans (including SEPs, IRAs, individual retirement annuities, 408(p) accounts, and Roth IRAs),
3. 403(a) qualified annuity plans, and
4. 403(b) plans.

If a U.S. citizen contributes to a U.S. qualified plan while working in the U.S. and then establishes residence in the United Kingdom, paragraph 1 of Article 18 prevents the U.K. from taxing currently the plan's earnings and accretions with respect to that individual.

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