Guidance Note: Changes to the Remittance Basis

Guidance Note

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Introduction

Status of this guidance

The purpose of this interim guidance is to provide further detail on how the draft legislation published on 29 March 2012 will operate. This legislation is subject to amendment by Parliament; until the Finance Bill receives Royal Assent the legislation may be subject to amendment. This guidance therefore cannot be relied upon as if it were HM Revenue & Customs' (HMRC) guidance on the final legislation as enacted by Parliament.

Introduction

This note gives you information about changes to the taxation of UK resident, non-domiciled and not ordinarily resident individuals who choose to be taxed on the remittance basis. The changes are included in this year's Finance Bill; subject to parliamentary approval they will come into effect from the start of the 2012-13 tax year.

HM Treasury have consulted on some related issues such as the abolition of the concept of ordinary residence for UK tax purposes, a statutory residence test and Statement of Practice 1/09. Those consultation proposals are not discussed or reflected in these documents.

This Guidance Note is a detailed explanation of the changes being made; it is intended to be read in conjunction with the less detailed Information Note published alongside this Guidance Note, to gain a comprehensive understanding.

These guidance documents, taken together, give a comprehensive explanation of proposed changes to the taxation of non-domiciled individuals in the Finance Bill. The Guidance Note contains statutory references; these are to the sections of the Income Tax Act 2007 which are to be amended by, or inserted by, Schedule 12 to the Bill unless another Act is specified.

Where we use a phrase that has a specific meaning or may require clarification, we have shown the phrase in bold text. An explanation of these phrases is in the glossary at the end of this note. If, having worked through the guidance, if you need clarification you can contact us. Our contact details are in Section 6.

How do I know if I need to read this note?

This guidance applies to taxpayers **resident** in the UK but **non-domiciled** in the UK, or resident but **not** **ordinarily** **resident** in the UK, who claim the **remittance** **basis** from the 2012-13 tax year onwards in respect of foreign income or chargeable gains. It explains changes to the remittance basis of taxation from 6 April 2012. This Guidance Note, and the Information Note, should be read in conjunction with the booklet Residence, Domicile and the

Remittance Basis (HMRC6) and the Remittance, Domicile and Remittance Basis Manual (RDRM) which explain the current rules.

1 Higher Remittance Basis Charge

1.1 The £30,000 Remittance Basis Charge (RBC) is payable by a taxpayer who:

- is UK **resident** in a tax year
- is not domiciled or not ordinarily resident in the UK
- makes a claim to use the **remittance basis**; and
- meets the 7-year residence test for the tax year.

Further detail on the RBC can be found in Section 5 of HMRC6.

1.2 From tax year 2012-13 a higher annual RBC of £50,000 applies if a taxpayer:

- is UK resident in a tax year
- is not domiciled or not ordinarily resident in the UK
- makes a claim to use the remittance basis in 2012-13 or in later tax year;
- meets the 12-year residence test for the tax year

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12-year residence test

1.3 The 12-year residence test is met in any tax year if the individual has been UK resident in at least 12 of the 14 tax years immediately prior to the tax year in question. (s809C(1A))

The first tax year that the higher RBC can apply is 2012-13; so, for the purpose of calculating the 12-year residence test, potential RBC payers will need to look at the 14 tax years preceding 2012-13.

7-year residence test

1.4 Where an individual does not meet the 12-year residence test in a tax year, but has been resident in the UK for at least seven of the nine tax years preceding that tax year, then the 7-year residence test is met. (s809C(1B))

Example 1

Constance is resident, but not domiciled, in the UK in 2012-13. Constance's residence status for the preceding years was as follows:

Year count		UK Resident	Not UK resident
	1997-98	✓	
14	1998-99		✓
13	1999-2000		✓
12	2000-01		✓
11	2001-02	✓	
10	2002-03	✓	

9	2003-04	✓
8	2004-05	✓
7	2005-06	✓
6	2006-07	✓
5	2007-08	✓
4	2008-09	✓
3	2009-10	✓
2	2010-11	✓
1	2011-12	✓

In 2012-13, Constance has been resident in the UK for 11 of the preceding 14 years so if she were to make a claim for the remittance basis, she would not have to pay the higher RBC of £50,000. She would, however, have to pay the £30,000 RBC as she has been resident in seven out of the last nine years and so meets the 7-year residence test.

When considering her position for 2013-14, Constance realises that if she is still resident in the UK in that year, she will have been resident in the UK for 12 of the preceding 14 tax years. She will therefore have to pay the higher RBC charge of £50,000 if she decides to claim the remittance basis in 2013–14.

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Basis of the charge

1.5 Resident non domiciled or resident not ordinarily resident individuals who meet the new 12-year residence test will have to choose on an annual basis whether they wish to claim the remittance basis or be taxed on their worldwide income and gains on the **arising basis** in the same way as they do for the current £30,000 charge.

1.6 The RBC is not payable in any tax year where the individual is either:

- under 18 in the year or
- their unremitted foreign income and gains for the year is less than £2000.

1.7 Individuals choosing to use the remittance basis of taxation will need to make a claim to use it for each year they wish to do so, on their Self Assessment tax return; they will need to indicate whether they met the 7-year or the 12-year residence test for the relevant tax year.

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Payment of the RBC using foreign income or gains

1.8 Foreign income or gains used to pay either the existing £30,000 or the new £50,000 charge are treated as not remitted to the UK if they are paid direct to HMRC and made in relation to a tax year to which the remittance basis applies. The maximum amount of foreign income or gains qualifying for this exemption is the amount of RBC payable for the year. (s809V)

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2 Business investment relief for remittance basis taxpayers

Overview of business investment relief

2.1 The following paragraphs give a brief overview of the main principles for the business investment relief. This is generally from the perspective of the individual whose foreign income and gains, or something derived from their foreign income and gains, are used to make the investment, detailing how the rules of the scheme will apply to them.

2.2 However, as any **relevant person** can make the investment, they too will need to know the rules and take any appropriate actions they consider appropriate, bearing in mind that there may be tax consequences for someone other than themselves as the investor. For example, taxpayers may gift an amount of their income and gains to a trust of which they are a beneficiary. The trustees, a relevant person for the purposes of the **remittance basis**, make the investment. If the conditions for business investment relief are not met or there is a potentially chargeable event where the appropriate mitigation steps are not taken, the tax liability that arises will fall on the individual.

2.3 Money or property that is, or that derives from, foreign income or gains of a remittance basis user, and is used, brought to or received in the UK is normally taxable as a remittance. From 6 April 2012 remittance basis taxpayers who bring their foreign income or gains to the UK and invest it in a **target company** may claim relief from the UK tax charge that would otherwise arise. The investment can be made in the form of money or other property derived from foreign income and gains.

2.4 In order for the foreign income or gains to qualify for relief from UK tax, the conditions that must be met are:

- the investment is a qualifying investment made in a target company, within 45 days of the foreign income and gains being brought to the UK
- the taxpayer must claim relief from UK tax under this provision as part of their Self Assessment tax return.

The qualifying investment, target company and other conditions are explained in more detail in the remainder of this section.

Example 2

Jamal, a remittance basis taxpayer, brings £250,000 of his foreign income into the UK on 1 October 2012 and immediately invests the money in a target company. Jamal makes a claim for business investment relief on his 2012-13 Self Assessment tax return.

If there have been no potentially chargeable events during 2012-13, the whole of the £250,000 foreign income is treated as not having been remitted to the UK in that year.

2.5 Relief is not available where the investment is made, or where the foreign income and gains are brought to the UK, as part of, or as a result of, a scheme or arrangement whose main purpose, or one of the main purposes of which, is tax avoidance. (s809VA(7))

When is business investment relief due?

2.6 Prior to 2012-13, foreign income and gains of a remittance basis user which were brought to or received in the UK to make investments were regarded as remitted to the UK and liable to tax. From 2012-13 the business investment relief allows foreign income and gains from years in which a person was taxed on the remittance basis (before or after 2012-13) to be treated as not remitted to the UK when money or other property is:

- used by a relevant person to make a qualifying investment, or
- brought to or received in the UK to be used by a relevant person to make a qualifying investment.

This is called a 'relevant event'. The investor may be taxed on either the arising basis or the remittance basis in the tax year in which the investment is made and still benefit from the relief. (s809VA(3))

2.7 A relevant event is also treated as occurring when:

- proceeds from the disposal of all or part of a previous qualifying investment are re-invested in another qualifying investment (s809VL(4)(a))
- disposal proceeds from the sale of exempt property (see Section 3 of this Guidance) are used to make a qualifying investment (s809YC(5)) or
- all or any part of a tax deposit made in relation to the business investment relief is withdrawn by the depositor and used to make another qualifying investment. (s809VM(6) and (7))

Qualifying investments are explained in paragraph 2.10.

2.8 The taxpayer must claim relief from UK tax on their Self Assessment tax return in respect of the amounts of their foreign income or gains that were used to make qualifying investments. Claims must be made no later than the first anniversary of 31 January following the end of the tax year in which the investment was made. (s809VA(1)(c) and (8))

2.9 The investment must be made within 45 days of the date on which the money or property was brought to or received in the UK. See paragraph 2.30 for information about any failure to invest within 45 days. (s809VA(5))

Example 3

Fu pays tax on the remittance basis. He has foreign interest in an offshore bank account, which he earned in 2009-10. He decides to use £15,000 of this to make a qualifying investment and brings the money to the UK on 14 February 2013 and makes the investment on 17 March 2013, within the 45 day period allowed.

Fu must make his claim for business investment relief by 31 January 2015 via his Self Assessment tax return. If he fails to make a claim, Fu will be considered to have remitted the £15,000 foreign interest to the UK on 14 February 2013.

Qualifying investments

2.10 A qualifying investment can be made by either:

- obtaining newly issued shares in, or
- making a loan (secured or unsecured) to

a **target company.** To qualify for relief there are two qualifying conditions that must be met - Conditions A and B. See below for more information on these two conditions.

2.11 Shares may be ordinary or preference. The reference to shares includes any securities that may be held in the target company. (s809VC(6))

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2.12 Where a relevant person enters into a loan agreement which authorises the company to draw down separate amounts over a period of time, the individual cannot claim business investment relief on the entire loan on the basis of the agreement. Instead, each amount drawn down is treated as a separate loan and a separate investment. (s809VC(7) and (8))

Example 4

William is a remittance basis taxpayer who has decided to use some of his foreign income to make a qualifying investment in a target company. He makes his investment in the form of a £1 million loan.

On 1 March 2013 a loan agreement is signed and the target company draws down an initial instalment of £250,000 on 31 March 2013. The balance of the loan remains offshore.

William has invested the £250,000 of his foreign income in the target company within 45 days of bringing the money to the UK. The funds are treated as not remitted to the UK, provided he makes a claim for the relief for this initial instalment by 31 January 2015.

William will need to make further claims to relief whenever the company draws down further amounts under the loan agreement.

2.13 Where interest is paid to the investor, those payments may be liable to UK income tax subject to the usual rules. If any of the capital is repaid it must be taken **offshore** within the grace period.

Condition A

2.14 To meet the requirements for a qualifying investment, the investment must be made in an eligible trading company, an eligible stakeholder company or an eligible holding company. The company in which the investment is made is referred to as a target company. (s809VC(2))

2.15 An eligible trading company is a **private limited company** which is;

- carrying on at least one **commercial trade**, or
- is preparing to do so within two years of the date on which the funds to be invested were brought to the UK (this is the 2-year start-up rule) and
- carrying on a commercial trade is all or substantially all it does, or it is reasonably expected to do once it begins trading. (s809VD(2))

2.16 In most cases it is obvious when a trade exists, but where there is doubt you will need to fully investigate the facts and consider case law. Further guidance on what is trade can be found in the Business Income Manual at BIM20050. For business investment relief purposes, there is an additional requirement that the trade should be commercial, that is, conducted on a commercial basis with a view to making profits. Trade also includes:

- any activity that is treated as if it were a trade for corporation tax purposes. This includes farming or market gardening, the commercial occupation of land (but not woodland) and the profits of mines, quarries and other concerns
- a business of generating income from land. This will include profits arising from the renting or leasing of land or property.
- a company carrying on research and development activities which are intended to lead to a commercial trade. However, preparing to carry out research and development activities is not itself a commercial trade for the purposes of the business investment relief.

The extension of the definition of trade to include generating income from land and research and development activities only applies for business investment relief purposes. It does not change the definition of trade for other tax purposes. (s809VE)

Example 5

Constance is a remittance basis taxpayer who intends to invest £100,000 of her foreign income and gains in Sparks Moore Limited, a company which produces electronic components for a well known car manufacturer. The company is a private limited company which is not listed on a recognised stock exchange and is carrying out a commercial trade.

Sparks Moore Limited is therefore an eligible trading company for the purposes of the business investment relief.

2.17 The phrase 'all or substantially all' used in paragraph 2.15 is not defined in the legislation. Whether or not carrying on a commercial trade is all or substantially all of a trading company's activities will depend on a consideration of all the relevant facts. However, where carrying on a commercial trade accounts for at least 80% of a company's total activities, the company will generally be regarded as meeting this requirement.

2.18 An eligible stakeholder company is a private limited company which;

- exists wholly for the purpose of making investments in eligible trading companies (as defined in paragraph 2.15), ignoring minor or incidental purposes and
- must actually hold at least one investment in an eligible trading company or be preparing to do so within two years of the relevant event.

(s809VD(3))

2.19 An eligible holding company is a private limited company that;

- is a member of an eligible trading group or,
- is a member of a group which is expected to become an eligible trading group within two years of the relevant event and,
- has a 51% subsidiary which is an eligible trading company and which is also a member of the **eligible group**.

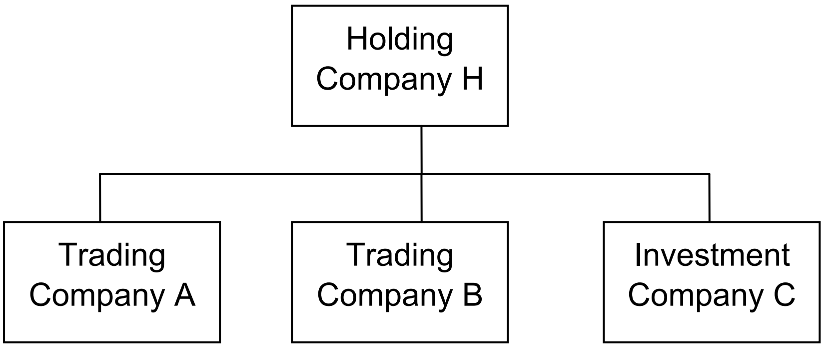
Where the eligible holding company owns the share capital of the eligible trading company indirectly, each intermediary company in the series of companies must also be a member of the group. Section 1155 of the Corporation Tax Act 2010 applies to determine whether a company owns the share capital of a subsidiary indirectly.

2.20 For business investment relief purposes, a group consists of the parent company and its 51% subsidiaries. The parent company must not, itself, be a 51% subsidiary of any other company.

2.21 All the companies in the group must be private limited companies for the group to be an eligible trading group. The group activities, as a whole, must be the carrying on of commercial trades. It is not necessary for all the members of the group to carry on a trade; the test is that, considering the activities of all the group members together, all or substantially all of what the group does is carrying on commercial trades.

2.22 Whether or not carrying on a commercial trade is all or substantially all of an eligible trading group's activities will depend on a consideration of all the relevant facts. However, where carrying on a commercial trade accounts for at least 80% of an eligible group's total activities, the group will generally be regarded as meeting this requirement. (s809VD (5) to (10))

Example 6



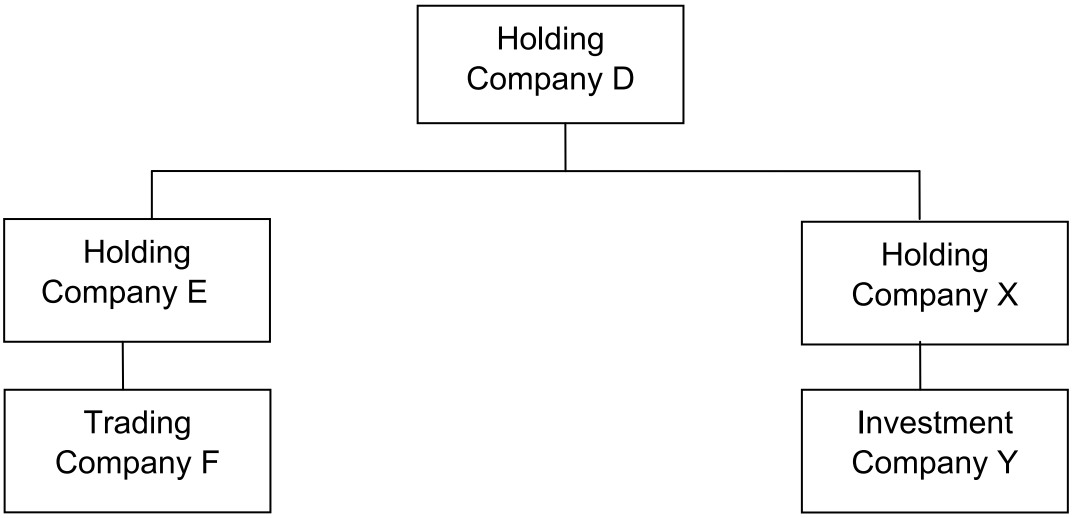
The shares in holding company H Limited are all owned by Mr and Mrs Smith, making it a private limited company. H Limited owns 100% of the share capital in A Limited, B Limited and C Limited. As it is not itself a subsidiary company, and each of its subsidiaries are private limited companies, H Limited it is the parent company of an eligible group.

If the activity of C Limited is negligible, so that substantially all that the group does is carry on a commercial trade, the group will qualify as an eligible trading group. Qualifying investments could be made directly in H Limited (an eligible holding company), A Limited or B Limited (both eligible trading companies); however direct investments in C Limited would not be eligible for relief.

If the activities of C Limited were significant enough to mean that the group was not an eligible trading group. H Limited would not be an eligible holding company. However, investments could still be made directly in A Limited and B Limited if they were eligible trading companies.

2.23 Investments in intermediate holding companies can also qualify for business investment relief, provided they are members of an eligible trading group and have at least one 51% subsidiary that is an eligible trading company.

Example 7



The shares in holding company D Limited are all owned by Mr and Mrs Davies making it a private limited company. D Limited owns 100% of the share capital in E Limited and X Limited, two intermediary holding companies that own 100% of F Limited and Y Limited respectively. As D Limited is not itself a subsidiary company, it is the parent company of an eligible group.

If the activity of Y Limited is negligible compared to the activity of F Limited the group will qualify as an eligible trading group. Qualifying investments could be made directly in D Limited, E Limited or F Limited; however direct investments in X Limited or Y Limited would not be eligible for relief.

If the activities of Y Limited were significant enough to mean that the group was not an eligible trading group, D Limited would not be an eligible holding company. However, investments could still be made directly in E Limited and F Limited.

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Condition B

2.24 In addition to making an investment in a target company, the relief is available provided that:

- no relevant person has either directly or indirectly obtained a benefit or become entitled to obtain a benefit, and
- there is no expectation that such a benefit will be received

which is related, directly or indirectly, to the making of the investment. (s809VF)

2.25 A benefit for these purposes can include anything (for instance money, in any form, property, capital, goods or services of any kind) that is provided to a relevant person. In particular it includes, but is not limited to, the provision of anything that:

- would not be provided by the company to the relevant person in the ordinary course of business, or
- would be provided but on less favourable terms, or
- would not be available at all in the absence of the investment.

However, a benefit for these purposes does not include anything that would be provided to the relevant person in the ordinary course of business on arms length terms.

A benefit will be related to the making of the investment if it is:

- directly or indirectly attributable to the making of the investment (whether received before or after the investment is made), or
- It is reasonable to assume that the benefit would not be available in the absence of the investment.

2.26 This means that when money or other property is brought to the UK to make a qualifying investment, those funds qualify for the business investment relief only if any subsequent payments or benefits made available to the investor represent a commercial return for their investment, or are benefits made available on arm's length terms. So, for example,

- dividends that are paid out of profits, or
- interest that is charged on a loan of money

that any similar investor might reasonably expect to receive would not disqualify the investment from receiving the relief.

2.27 Where benefits are not provided in the normal course of business, the investment may be treated as a remittance. So, for example, a yacht provided to a relevant person at no charge, by a boat hire company in which they had made an investment, fails Condition B but one hired out at the full market rate would not.

Example 8

In March 2012 Todd is invited to invest some money in a private limited company. The company expects to start trading commercially in the near future.

Todd has been a remittance basis taxpayer for a number of years and decides to invest £500,000 of his foreign income and gains. On 6 April 2012 Todd transfers the money to his UK bank account and on 1 May 2012 (25 days later) he makes his investment in the company. In return for this investment Todd is issued with shares in the company and he becomes a working director of the company, receiving a salary at a market rate. The company commences trading on 1 June 2012.

The investment was made within 45 days of Todd bringing his foreign income and gains to the UK and the company began commercial trading within two years of the investment having been made. Conditions A and B are both satisfied and so Todd's foreign income and gains qualify to be treated as not remitted to the UK.

Todd is in receipt of a salary for his work as a director and, because the company is profitable, he and other shareholders are paid a dividend on 31 July 2013. These payments would reasonably have been expected to be made to any other similar director and shareholder of the company and so are not benefits for the purpose of Condition B. Todd's foreign income and gains continue to be treated as not remitted to the UK.

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Investments made in a close company

2.28 Once a qualifying investment has been made, the foreign income and gains used to make the investment are treated as not remitted to the UK. Those income and gains will only become taxable in the UK where a potentially chargeable event occurs and the appropriate mitigation steps are not taken within the grace period.

It is possible for a qualifying investment to be made in a close company which is itself a relevant person. In such cases, where the company subsequently uses the invested funds in the UK, such as to purchase stock or to pay employees, the foreign income and gains will not be treated as a taxable remittance, provided they are not used in a way which would itself be a potentially chargeable event.

Advance assurance procedure for qualifying investments

2.29 An individual intending making a business investment will be able to ask HMRC (after Royal Assent) for their opinion on whether a proposed investment can be treated as a qualifying investment under the Business Investment Relief provisions. The remittance basis user, or a person authorised to act on their behalf, may make this request using the CAP1 service (How non-business customers or customers with a query about non-business activities get advice on HMRC's interpretation of recent tax legislation). Where the investment is made by someone other than the remittance basis user, the remittance basis user will need to make the request.

Failure to invest within 45 days (abortive investments)

2.30 Where money or other property is brought to the UK for the purpose of making a qualifying investment, and no qualifying investment is actually made within 45 days, a taxable remittance of the amount not invested would normally occur. However, the money or other property will be treated as not remitted to the UK if it is taken **offshore** within 45 days beginning with the day on which it was originally brought to the UK. (s809VB)

Example 9

On 20 August 2012 Vedat brings £300,000 foreign income to the UK intending to invest in Hassan's eligible trading company. Before Vedat makes the investment Hassan tells him he has failed to secure funding from other investors. Vedat decides not to go ahead with his investment.

On 25 September 2012 he transfers his £300,000 back to his offshore bank account. As Vedat took his foreign income offshore within 45 days of bringing it to the UK, and can evidence his original intentions to make a qualifying investment, there is no taxable remittance.

2.31 If, following an abortive investment, only part of the income or gains brought to the UK is taken offshore within the 45 day period then the part treated as remitted is to be determined on a just and reasonable basis, taking the facts of the case into consideration. (s809VB(3))

Example 10

Morena brings £500,000, consisting of £250,000 capital and £250,000 foreign income to the UK, on 16 September 2013, intending to make an investment in A Limited, an eligible trading company. However, following a due diligence report, she reviews her decision and decides that she will only invest £250,000. Morena receives 40,000 shares in A Limited on 28 October 2013. The remaining £250,000 is left in her UK bank account.

Morena is able to evidence her changed intentions, and all the money remained in her UK bank account until she used it to buy the shares. She will be considered to have made a qualifying investment with the £250,000 and remitted £125,000* foreign income to the UK. If Morena had taken the £250,000 not invested back offshore within 45 days, she would not have made a remittance.

* The proportion of foreign income in the amount originally brought to the UK (£250,000/£500,000) multiplied by the amount not invested (£250,000)

Income or gains treated as remitted following certain events

2.32 Foreign income and gains used to make a qualifying investment will become taxable as a remittance if a potentially chargeable event occurs and the appropriate mitigation steps are not taken within the relevant grace period. (s809VG to VJ)

Potentially chargeable events

2.33 After a qualifying investment is made, a number of situations might arise which will be treated as a potentially chargeable event. A potentially chargeable event occurs where:

- the relevant person who made the investment disposes of all or part of their investment
- the company in which the investment was made ceases to be an eligible trading company, an eligible stakeholder company or an eligible holding company
- the 2-year start-up rule is breached, or
- the extraction of value rule is breached.

(s809VH)

These are covered in more detail in the following paragraphs.

Disposal of all or part of a holding

2.34 Where:

- an investor disposes of some or all of their shares in the company or
- a loan is repaid either in part or in full

the investor must take certain steps if the foreign income or gains that were originally invested are not to be treated as remitted to the UK. (s809VH(1)(b))

The steps that need to be taken are known as the appropriate mitigation steps. (s809VI)

2.35 If the consideration for a disposal is paid in instalments, the disposal will be treated as a series of separate disposals. For the purposes of the business investment relief each of these disposals is a separate potentially chargeable event. (s809VH(8))

Ceasing to be an eligible trading company, stakeholder company or holding company

2.36 A potentially chargeable event occurs if, at any point, the company in which the investment was made is no longer an eligible trading company, eligible stakeholder company or eligible holding company. The foreign income or gains that were used to make the investment will be treated as having been remitted to the UK unless the investor takes the appropriate mitigation steps.

2.37 It is possible for a target company to change its status, yet remain a qualifying company. For example, as a consequence of a share reorganisation, a company changes from being an eligible trading company, eligible stakeholder company, or a eligible holding company, to being one of the other qualifying types of company (e.g. stops being an eligible trading company and starts being an eligible stakeholder company). The investment will be viewed as having been a qualifying investment throughout. There is no potentially chargeable event. (s809VH(1)(a))

The extraction of value rule

2.38 The extraction of value rule is breached if any relevant person receives value from a company that is directly or indirectly linked to the investment. An extraction of value can be either money or money's worth received by or for the benefit of any relevant person.

2.39 If a breach of the extraction of value rule occurs, the taxpayer will be treated as having made a taxable remittance of their foreign income or gains unless they take the appropriate mitigation steps. (s809VH(1)(c) and (2))

2.40 Any payments received in respect of a disposal which is itself a potentially chargeable event is not treated as an extraction of value.

2.41 The extraction of value rule is not breached where the value received by a relevant person is:

- subject to income tax or corporation tax or would be if the relevant person were liable to such tax, and
- is paid or provided to the relevant person in the ordinary course of business and on arm's length terms.

So, for example, where an individual makes a qualifying investment in a company of which they are a director, the receipt of director's remuneration on commercial terms would not constitute an extraction of value (as in Example 8). (s809VH(3))

2. 42 The extraction of value rule will be triggered by the receipt of value from:

- an involved company or
- from anyone else in circumstances directly or indirectly attributable to the investment.

2.43 An involved company is:

- the company in which the qualifying investment was made
- if the investment is in an eligible stakeholder company, any eligible trading company in which the stakeholder company has invested or intends to invest
- if the investment is in an eligible holding company, any 51% subsidiary that is an eligible trading company
- any company connected with any of the above.

(s809VH(4))

2.44 If there is an extraction of value, the investor must take the appropriate mitigation steps to avoid a remittance. The following examples refer to the correct mitigation steps; more detail on these is in paragraph 2.56. (s809VI(2))

Example 11

Marco has made a qualifying loan to an eligible trading group of hotels with extensive leisure facilities. On his 50th birthday, the group treats Marco and his wife to a golfing and spa break at no cost to the couple. This break is not provided on arm's length terms and as neither Marco nor his wife are employees of the group, the benefit is not liable to UK tax. Marco realises that accepting the golfing and spa break is a potentially chargeable event and takes appropriate mitigation steps.

Example 12

Nelka sets up a trading company, Nelka Fashions Limited, and asks Luther to invest in it. Luther invests £1 million of his foreign income in the company which is an unlisted private limited company for which he receives newly issued shares.

Nelka Fashions Limited trades successfully and pays dividends to its shareholders, which Nelka and Luther declare on their respective tax returns. This is a commercial return on the investment and is not a potentially chargeable event.

Nelka Fashions Limited acquires an interest in a flat in Wimbledon and tickets for Centre Court for each day of the tennis tournament. It originally intended to use these for marketing and publicity purposes. Instead, Luther and his family stay in the flat free of charge and use the tickets. The use of the flat and the tickets are not provided on arm's length terms. This is an extraction of value by Luther.

Unless Luther takes the appropriate mitigation steps, he will be treated as having made a taxable remittance of £1 million.

Alternatively if Luther had paid the commercial rate to Nelka Fashions Limited for the use of the flat and the tickets, there would not have been an extraction of value by Luther and he would not have to take any mitigation steps.

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2-year start-up rule

2.45 The 2-year start-up rule requires a target company to be operational within two years of making the qualifying investment and to remain operational from then on.

The 2-year start-up rule is breached if:

- the target company was non-operational 2 years after the day the investment was made , or
- at any time after the end of the two year period, the company becomes non-operational.

2.46 If the target company is an eligible trading company, non-operational means that the company is not actually carrying out a commercial trade.

2.47 If the target company is an eligible stakeholder company , non-operational means that the company:

- holds no investments in eligible trading companies or
- none of the eligible trading companies in which it holds investments is carrying out a commercial trade

2.48 If the target company is an eligible holding company, non-operational means:

- the group in which the company is a member is not an eligible trading group or,
- none of its 51% subsidiaries is carrying out a commercial trade.

2.49 In each of the above circumstances there will be a potentially chargeable event and a taxable remittance of the foreign income or gains will occur unless the appropriate mitigation steps are taken. **(**s809VH(5), (6) and (7))

2.50 Where more than one investment is made in a qualifying company or group and one or more of the investments is a qualifying investment and one or more of the investments is not a qualifying investment, it is only the qualifying investments that must be disposed of when a potentially chargeable event occurs. (s809VG(5))

Example 13

Sigmund has owned 100% of the shares in a qualifying trading company (B Limited) since he came to the UK in 2005. He had purchased the shares from an unconnected party for £100,000 using UK taxed income and gains. As this transaction took place before the business investment relief was introduced it is not a qualifying investment.

In 2013-14 Sigmund invests a further £100,000 of his foreign income and receives 100 newly issued shares in B Limited in return. Sigmund makes a valid claim to business investment relief on his tax return and the foreign income is not treated as remitted at that time.

In 2015-16 B Limited sells its trade to an unrelated third party and becomes an investment company. As B Limited is no longer a qualifying company this is a potentially chargeable event and Sigmund must take the appropriate mitigation steps if he wants to avoid his foreign income being remitted. Sigmund arranges for B Limited to buy back the 100 shares issued in 2013-14 for their current market value of £100,000 which he takes offshore immediately.

Sigmund does not have to dispose of the shares purchased in 2005 as these were not qualifying investments.

Insolvency

2.51 Where a target company:

- enters into administration or receivership, or
- is being wound up or dissolved,

there would in most circumstances be a potentially chargeable event, requiring the investor to dispose of the holding. However, where this occurs for genuine commercial reasons, it will not be treated as a potentially chargeable event as it would be impossible, in most cases, for the investor to take the appropriate mitigation steps. (s809VH(9) and (10))

2.52 If the investor or any other relevant person receives value as a result of the insolvency process, for example a capital distribution, the appropriate mitigation steps will need to be taken to prevent the foreign income or gains being treated as remitted to the UK.

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Amount of foreign income or gains remitted

2.53 Where a potentially chargeable event occurs and the appropriate mitigation steps are not taken, a taxable remittance of foreign income or gains occurs immediately after the end of the relevant grace period. The amount of foreign income or gains remitted is the amount that relates to the part of the holding affected by the potentially chargeable event. (s809VG(5))

2.54 Where that potentially chargeable event is something other than a part disposal of the holding, for example if either the extraction of value or the 2-year start-up rule is breached, the affected amount is the whole of the investment. (s809VG(6)(b))

2.55 Where the potentially chargeable event is a part disposal of the holding, the investment affected is equal to the portion disposed of. (s809VG (6)(a))

Example 14

On 31 May 2012, Yuvi acquires 1000 shares in an eligible trading company, using £250,000 of his foreign income and gains. His investment meets all the conditions for business investment relief.

On 27 October 2013 Yuvi sells 500 shares and takes the appropriate mitigation steps. None of his foreign income and gains are treated as remitted.

On 19 April 2014 Yuvi sells the remainder of his holding (the other 500 shares) and fails to take the appropriate mitigation steps. The underlying foreign income and gains are treated as remitted to the UK

The amount of foreign income or gains to be treated as a taxable remittance is half the amount originally invested, i.e. £125,000.

Appropriate mitigation steps

2.56 Where an investor disposes of all or part of their holding in the company, if they wish to avoid a remittance, they must:

- take the proceeds **offshore**, or
- reinvest them in another qualifying investment, or
- a combination of the two

within the relevant grace period. (s809VI(1))

For information about using disposal proceeds to make a tax deposit, see Certificate of Tax Deposit scheme.

2.57 In the case of full or part disposals, the investor is required to take the whole of the proceeds offshore (or reinvest them), up to the amount originally invested. Where a partial disposal is made, the individual must calculate an amount, called ‘amount X’, to determine how much of the disposal proceeds should be taken offshore or reinvested. (s809VI(1) to (4))

2.58 Amount X is calculated as:

- the sum originally invested, less
- any part of that sum that has previously been
  - treated as remitted to the UK, or
  - sent offshore or invested in another qualifying investment, or
  - used to make a tax deposit on a previous part disposal.

If the disposal proceeds exceed amount X, the individual has only to take offshore or reinvest amount X.

Example 15

Luther has made a qualifying investment of £1 million in Nelka Fashions Limited. The company flourishes, and after several years, Luther decides to dispose of half of his holding. The disposal proceeds are £1,200,000.

There have been no prior potentially chargeable events.

Amount X is £1 million as that is the amount originally invested. This is less than the disposal proceeds of £1,200,000 so Luther is only required to take £1 million offshore in order to take the appropriate mitigation steps.

Example 16

Rory brings £1 million of his foreign income to the UK and invests in an eligible trading company for which he acquires 1000 newly issued shares.

Twelve months later Rory sells 250 shares for £325,000. The acquisition cost of these shares is £250,000 and so there is a UK capital gain of £75,000. As amount X is £1 million, Rory must take the entire £325,000 offshore or reinvest it in a target company if he is to avoid a taxable remittance of the £250,000 used to buy the shares. Rory accordingly takes £325,000 offshore.

In the following tax year Rory sells a further 250 shares for £450,000 which gives rise to a UK capital gain of £200,000. Amount X is now £675,000 – that is the original investment of £1 million less the amount of £325,000 previously taken offshore. Rory must again take the entire proceeds of £450,000 offshore or reinvest in an eligible company to avoid a taxable remittance of £250,000. Rory takes £450,000 offshore.

Five years later Rory sells his remaining 500 shares for £2.5 million, making a UK capital gain of £2 million. At this point Rory has taken offshore £775,000 of his original £1 million qualifying investment, amount X is now £225,000. Rory must therefore take a further £225,000 offshore or reinvest it if he is to avoid a taxable remittance of £500,000. The remaining £2.25 million can be retained in the UK.

2.59 If the potentially chargeable event is something other than a disposal, that is, where:

- the target company ceases to qualify as an eligible company, or
- the extraction of value rule is breached, or
- the 2-year start-up rule is breached

the relevant person must dispose of their entire holding, or as much of it as they still hold, within the relevant grace period and then take the steps outlined in the paragraph 2.56 above if the full amount of the foreign income or gains that were originally invested are not to be treated as remitted to the UK. If only part of the holding is disposed of rather than the entire holding, the full amount of the foreign income or gains originally invested will be treated as remitted to the UK and not just the portion left invested in the company(s809VI(2))

2.60 If the appropriate mitigation steps are taken for the entire holding or as much of it as the relevant person still holds, the foreign income or gains used to make a qualifying investment will continue to be treated as not remitted to the UK. (s809VL)

Share for share exchanges

2.61 During corporate restructuring, old shares can be disposed of and new shares in the same company, or another company, issued in their place. The disposal of the old shares is a potentially chargeable event. However, provided both the old and new shares are qualifying investments, the exchange will be treated as an immediate reinvestment in another target company and no potentially chargeable event will occur. The new shares are derived from the original foreign income and gains in the same way as the original shares. (s809VI(7) and VL(3))

Grace periods

2.62 When a potentially chargeable event occurs, the investor has specific time limits in which to take appropriate mitigation steps. These time limits are called grace periods. The table below sets out the grace periods that apply to different potentially chargeable events. (s809VJ)

Potentially Chargeable Event	**Grace period to dispose of the holding**	**Grace period for dealing with the proceeds**
Disposal of all or part of the holding	Not applicable See next column	45 days to take the **disposal proceeds** offshore or to reinvest them, beginning on the day on which the disposal proceeds become available to a relevant person. The disposal proceeds, up to amount 'X', must be taken offshore or reinvested to successfully carry out the mitigation steps.
Extraction of value	90 days to dispose of the holding, beginning on the day on which value is received. See next column	
Ceasing to be an eligible company or breach of the 2-year rule	90 days to dispose of the holding, beginning on the day on which a relevant person becomes aware, or ought reasonably to have been aware, of the potentially chargeable event. See next column	

2.63 If payments are received in instalments, each payment is considered to be a separate disposal and each will trigger the start of a grace period.

2.64 In the case of a breach of the 2-year rule or where a target company ceases to be an eligible company, the grace period starts when the investor ‘becomes aware or ought reasonably to have been aware’ of the potentially chargeable event. Whether it is reasonable for an investor to be aware of a potentially chargeable event will be considered on the merits and specific facts in each case.

2.65 Where the extraction of value rule is breached, the grace period commences on the day the value is received.

2.66 The Government will introduce regulations that will specify circumstances in which HMRC may agree to extend the grace periods. An example would be when an individual is prevented from disposing of shares due to a ‘lock in’ agreement which comes into force when a company becomes listed on a recognised stock exchange.

2.67 HMRC may also agree, in exceptional circumstances, to extend a grace period. Each case will be considered on its own facts. A process for requesting such an extension will be put in place in due course and will be outlined later in more detailed guidance.

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Retention of funds to meet UK Capital Gains Tax liabilities: Certificates of tax deposit (CTD)

2.68 HMRC operates a general **Certificate of Tax Deposit scheme**. Under the scheme a taxpayer can make tax deposits in advance of tax liabilities becoming due and payable. There is more information about how to make a tax deposit and the administration of the CTD scheme on our website Certificate of Tax Deposit Scheme.

2.69 In the case of full or part disposals, the appropriate mitigation steps are that the investor must:

- take the disposal proceeds **offshore**, up to the amount originally invested, or
- reinvest the **proceeds**, up to the amount originally invested, in another qualifying investment or
- a combination of the two.

See paragraphs 2.56 to 2.60 for further information about mitigation steps.

2.70 An individual, claiming business investment relief, who sells the whole of their investment at a gain, will usually have sufficient proceeds to take the mitigation steps and to pay any Capital Gains Tax on the gain made. That is because, in order to take the appropriate mitigation steps, they are only required to take the original invested amount outside the UK and can leave the “gain” element in the UK to pay any resulting tax liability. However, in the case of a partial disposal where the proceeds received from the sale are less than the amount originally invested, the whole of the disposal proceeds must be taken outside the UK or reinvested in order to take the appropriate mitigation steps. In such a case, there may be no funds available in the UK to pay any resulting Capital Gains Tax liability.

Example 17

Kylie’s initial qualifying investment is £100,000 for which she receives 10,000 shares.

Two years later she sells 5,000 shares for £80,000 giving rise to a capital gain of £30,000 on which she calculates the maximum Capital Gains Tax payable would be £8,400. The proceeds are less than the sum originally invested (£100,000) so the whole of the £80,000 must be taken offshore or reinvested in order to take the appropriate mitigation steps. If Kylie does not have sufficient UK funds to pay the Capital Gains Tax liability she could have to remit offshore funds to the UK, which themselves could become taxable as a remittance.

2.71 The CTD scheme can be used in situations such as this in order to pay the UK Capital Gains Tax. When taxpayers make a tax deposit within 45 days of the disposal proceeds being paid, the amount of the disposal proceeds that must be taken offshore or reinvested in order to take the appropriate mitigation steps is reduced by the amount of the tax deposit. (s809VK)

Example 18

Following on from the example above, Kylie makes a tax deposit of £8,400 ten days after receiving the disposal proceeds. The amount that Kylie must take offshore or re-invest in order to carry out the mitigation steps is now £71,600 (£80,000 less £8,400); Kylie has a further 35 days to reinvest this sum or take it offshore.

How much of the disposal proceeds can be deposited?

2.72 The CTD scheme webpages give details of minimum amounts that can be deposited. The maximum tax deposit that can be made after a partial disposal is the difference between the actual disposal proceeds and, if higher, “amount Y”. If an individual makes a tax deposit from the disposal proceeds of an amount greater than this:

- the amount to be taken **offshore** or re-invested can only be reduced by the calculated maximum amount
- any excess deposited, above the calculated maximum, will be regarded as a remittance.

2.73 Amount Y is the sum of the amount required to be taken offshore or re-invested to satisfy the appropriate mitigation steps and the chargeable gain accruing on the disposal charged at the highest potential Capital Gains Tax rate applying for the year in which the gain accrues (s809VK(4))

2.74 If the actual disposal proceeds exceed ‘Y’, the CTD scheme cannot be used by the taxpayer to reduce the amount of the disposal proceeds to be taken offshore or re-invested in order to satisfy the appropriate mitigation steps.

2.75 When making a tax deposit the taxpayer is required to send HMRC a confirmation letter. In addition to the normal information required the investor must include a statement advising that ‘ITA07/s809VK Retention of funds to meet Capital Gains Tax liabilities’ is intended to apply to the tax deposit. Further information on how this will work will be given in later guidance. (s809VK(8))

Example 19

Charan pays tax on the remittance basis. In 2012-13 he made a qualifying investment of £1 million in an engineering company. He received 20,000 shares. He subsequently makes a claim for the business investment relief on his Self Assessment tax return for the tax year 2012-13, and so does not pay any UK tax on what would otherwise have been a chargeable remittance of £1 million.

In July 2015 Charan disposes of 10,000 shares for £800,000 making a capital gain of £300,000. To comply with the appropriate mitigation steps Charan must move the entire £800,000 proceeds offshore or reinvest them in a target company. In this case Charan can choose to make a tax deposit with HMRC under the CTD scheme and if he does so the tax deposit will reduce the amount of the proceeds that must be taken offshore or reinvested.

Charan calculates the potential maximum Capital Gains Tax liability accruing on the gain from his part disposal as:

£300,000 x 28%* = £84,000

Amount Y is therefore £884,000 (£800,000 plus £84,000). As this is higher than the amount that must be taken offshore to satisfy the mitigation steps Charan is able to make a tax deposit of the difference.

If Charan makes a tax deposit of £84,000, he need only take offshore or reinvest £716,000 (£800,000 less £84,000) to complete the mitigation steps. Charan must also confirm, in writing, to HMRC that ITA07/s809VK is intended to apply to the tax deposit.

*Based on Capital Gains Tax rates at May 2012.

Example 20

Izaak has made a qualifying investment of £1 million. He was issued with 250,000 shares at a cost of £4 per share. He makes a claim for business investment relief on his Self Assessment tax return for the tax year 2012-13, and does not pay any UK tax on what would otherwise have been a chargeable remittance of £1 million. Izaak disposes of his holding over several years as illustrated below.

	2012-13	2013-14	2014-15	2015-16
Shares held at start of year	250,000	250,000	150,000	112,500
shares disposed of		100,000	37,500	112,500
Disposal proceeds (a)	-	£500,000	£200,000	£700,000
Cost of shares disposed of: (b)	-	£400,000	£150,000	£450,000
Chargeable gain: (a) – (b) = (c)	-	£100,000	£50,000	£250,000
Maximum Capital Gains Tax liability[1] (c) x 28% = (d)	-	£28,000	£14,000	£70,000
Amount to be taken offshore or reinvested under mitigation steps (e)		£500,000	£200,000	£300,000
Amount Y – amount to be taken offshore or reinvested plus maximum CGT liability (d) + (e) = (f)		£528,000	£214,000	£420,000
Shortfall – difference between Y and disposal proceeds, unless disposal proceeds are greater than Y (f) – (e) = (g)		£28,000	£14,000	Disposal proceeds greater £0
Amount that Izaac can deposit in CTD within 45 days of disposal		£28,000	£14,000	Not Applicable
Amount Izaac must take offshore or reinvest within 45 days of disposal if he chooses to make the maximum deposit under the CTD scheme (e) - (g)	-	£472,000	£186,000	£300,000

[1] Assumes rate in force at May 2012 continues to apply

2.76 There is no requirement for the taxpayer to make a tax deposit if they prefer to meet their Capital Gains Tax liabilities from other funds. If they do not make a tax deposit, the amount to be taken offshore or reinvested is not reduced.

The Certificate of Tax Deposit (CTD) conditions

2.77 The first condition is that, where a tax deposit is used to pay an individual's Capital Gains Tax liability, it can only be used to pay the liability for the tax year in which the disposal took place.

2.78 The second condition is that, if any part of the tax deposit is withdrawn rather than used to pay the tax liability, to avoid a potential remittance, the amount withdrawn must be taken **offshore** or reinvested within 45 days of the day on which the withdrawal was made.

2.79 Finally, if the individual has not instructed HMRC to apply the tax deposit to the Capital Gains Tax liability or withdrawn the amount deposited by the date that such liability becomes payable, to avoid a potential remittance, the deposit must be withdrawn and taken offshore or reinvested within 45 days starting with the due date of payment of the Capital Gains Tax.

2.80 If the above CTD conditions are met, the amount used to make the tax deposit will not be treated as remitted.

Example 21

Following a part disposal of her holding, Verena calculates the amount of the disposal proceeds that she is able to retain in the UK to meet her Capital Gains Tax liabilities as £176,000 and makes a tax deposit of that amount.

When she submits her tax return the total Capital Gains Tax liability including gains and losses on other disposals is £149,000. Verena asks HMRC to apply the tax deposit to the liability and return the surplus to her. She receives a bank credit for the balance of the tax deposit - £27,000, which she takes offshore 30 days later.

Verena has complied with the CTD conditions. Neither the £149,000 used to settle the Capital Gains Tax liability nor the amount returned to her and taken offshore is treated as remitted to the UK.

Failure to satisfy CTD conditions

2.81 If the CTD conditions described above are not complied with, the amount of the tax deposit affected will be treated as having been remitted to the UK. The affected amount will be treated as remitted immediately after the day on which any breach occurs; normal remittance basis rules will apply.

Example 22

Arkady calculates that he is able to make a tax deposit of up to £325,000 in respect of a capital gain that accrued on a partial disposal of a qualifying investment made entirely from his foreign income; he makes a tax deposit of the full allowable amount. A few months later, realising that his final Capital Gains Tax liability will not be this large because of losses, Arkady withdraws £120,000 and immediately takes it offshore.

When Arkady submits his tax return his final Capital Gains Tax liability is £198,000. He instructs HMRC to use the tax deposit to settle this liability, and requests return of the balance of £7,000. He uses the refund to buy a jet ski in the UK.

Arkady has failed to take the surplus tax deposit (of £7,000) offshore; he is treated as having remitted the £7,000 of his foreign income to the UK.

2.82 Any interest arising on tax deposits under the CTD scheme will be taxable as UK investment income.

Insufficient funds deposited

2.83 If there are insufficient funds deposited to pay the Capital Gains Tax liability the taxpayer has to meet the liability from other funds. If foreign income or gains are remitted to pay this liability, they will be treated as a remittance and subject to tax in the normal way under section 809L of the Income Tax Act 2007.

Order of disposals

2.84 Ordering rules must be applied where the appropriate mitigation steps are not taken, following a part disposal, and the investor holds multiple qualifying investments (or a mixture of qualifying and non-qualifying investments) in;

- the same target company, or
- target companies within an **eligible group**. (s809VN)

2.85 Qualifying investments are investments made using an individual's foreign income or gains that would be taxed under the remittance basis but for the business investment relief. All such investments are deemed to be a single qualifying investment and a single holding. Disposals from that single holding are treated as being made in the same order in which the qualifying investments were originally made, that is, a first in, first out order.

Example 23

In tax year 2011-12 Asif is a UK resident remittance basis taxpayer. He had substantial foreign earnings that year, and in June 2012 he makes an investment of £100,000 of his foreign earnings in Kadigan Limited, a private limited trading company. Asif receives 50,000 newly issued ordinary 'A' shares in the company in respect of his investment. The conditions applying to the making of his investment under the business investment relief provisions are met and Asif makes a valid claim on his 2012-13 SA return. The £100,000 foreign earnings are treated as not remitted to the UK.

In June 2013 Asif makes a further investment of £100,000 that consists entirely of foreign chargeable gains from 2012-13. As the value of Kadigan Limited has increased, Asif receives 40,000 newly issued ordinary 'B' shares for his investment. Once again, Asif makes a valid claim to business investment relief on his 2013-14 SA return in respect of the £100,000 investment of foreign chargeable gains, which are treated as not remitted to the UK.

In June 2014 Asif wants to buy a property in the UK and partially finances the purchase by selling the 40,000 ordinary 'B' shares in Kadigan Limited for £180,000. As Asif requires the money in the UK he does not carry out the appropriate mitigation steps and will be taxable on the foreign income or gains used to make the qualifying investment.

There has been more than one qualifying investment by Asif in Kadigan Limited so, for remittance basis purposes, the sale is matched against the June 2012 investment first, that is Asif's original purchase of 50,000 ordinary 'A' shares. Asif is taxable on £100,000 of his foreign earnings from 2011-12 and this is regarded as remitted to the UK in 2014-15. Asif has also made a UK capital gain on the disposal of his ordinary 'B' shares and he reports this on his 2014-15 SA return. The 50,000 'A' shares remaining invested in the company are treated as deriving from £100,000 foreign chargeable gains arising in 2012-13.

2.86 These rules apply whether the investments are made by the taxpayer himself or by another relevant person or a mixture of the two. If the investments are derived, wholly or in part, from a taxpayer's foreign income and gains they will be regarded as being a single holding and disposals will be on a first in, first out order.

2.87 Where there are:

- multiple investments in the same target company or eligible group and
- one or more of the investments is not a qualifying investment (because it was made from non taxable funds or taxed UK funds)

the rules are slightly different. The investments, whether qualifying or not, are treated as a single investment or holding. However, rather than a 'first in first out' rule, a part disposal is treated as coming from all of the qualifying investments before any of the non qualifying investments.

Example 24

Erik holds 100 shares in a UK trading company he set up in 2004 using £500,000 of his UK taxed income. This is not a qualifying investment. In June 2012 Erik invests a further £500,000 of his foreign income into the company and receives an additional 100 newly issued shares. As Erik's investment is a qualifying investment, he makes a claim to business investment relief on his tax return for 2012-13 and the foreign income is not taxed as a remittance.

In 2013-14 Erik decides to sell half of his 200 shares to help fund the purchase of a property in the UK and receives £750,000 for them. As Erik does not carry out the appropriate mitigation steps, the 200 shares are treated as a single holding and the disposal of 100 of the shares is treated, for remittance basis purposes, as out of qualifying investments first. Erik is treated as disposing of the investment made in June 2012 first and so will be taxed on £500,000 foreign income on the remittance basis. Erik has also made a capital gain that he declares on his 2013-14 Self Assessment tax return.

2.88 Once again, it does not matter whether Erik or another relevant person makes the investments. All investments are treated as a single holding and disposals will be treated as coming from the qualifying investments first.

2.89 If an investment is made with some funds that would qualify for business investment relief and some that would not, it is treated as two separate investments, one containing the qualifying funds and one containing the non qualifying funds. (s809VG(8))

2.90 In Example 23 above, if Asif's second investment of £100,000 in June 2013 had been funded half from foreign chargeable gains and half from a UK taxed source, this would be treated as two separate investments of £50,000. One of the investments of £50,000 would derive from the foreign chargeable gains and the other from UK taxed income. In any subsequent disposal where the mitigation step is not taken, the investment containing the foreign chargeable gains would be deemed as disposed of before the investment containing the non taxable funds.

Mixed Funds

2.91 Ordering rules exist to deal with situations where qualifying investments are made from a mixed fund. A mixed fund is a fund held overseas which contains;

- more than one type of income, gains or capital or,
- income, gains or capital from more than one tax year.

A mixed fund can be a bank account or other property.

2.92 Where a qualifying investment is made from a mixed fund the investment is treated as an offshore transfer. This means the qualifying investment will contain a proportional amount of the types of income and gains that were in the mixed fund immediately before the transfer was made. In the absence of this rule, a transfer from an offshore mixed fund to the UK would be treated as being made in the order set out in section 809Q of the Income Tax Act 2007. RDRM35210 contains more information on mixed funds and the order of remittances to the UK. (s809VO)

Example 25

Uki, a UK resident remittance basis taxpayer has an offshore bank account containing £5 million. The account is a mixed fund containing £2 million foreign employment income, £2 million foreign chargeable gains and £1 million capital, all arising in the 2010-11 tax year. In September 2012 Uki transfers £2,500,000 to the UK and loans the money to an eligible trading company within 45 days. Uki makes a valid claim to business investment relief on her 2012-13 tax return so none of the £2,500,000 is taxed on the remittance basis.

The £2,500,000 brought to the UK is treated as containing proportional amounts of each kind of income or capital in the offshore fixed fund, in this case £1 million foreign employment income, £1 million foreign chargeable gains and £500,000 capital. If a valid claim to business investment relief had not been made, the taxable remittance to the UK from the offshore mixed fund would have been £2 million foreign employment income and £500,000 foreign chargeable gain.

2.93 Where a qualifying investment is made from a mixed fund, the proportion of each type of income and capital within the investment is referred to as 'the fixed proportion' of that kind of income and capital. When the invested property is partly or wholly disposed of, the **disposal proceeds** will contain proportional amounts, in the fixed proportion, whether or not the appropriate mitigation steps are taken. Section 809Q of the Income Tax Act 2007 would not apply to disposal proceeds retained in the UK because of s809VO(8)(c).

Example 26

In 2013-14 Vladimir has a mixed fund of £6 million from which he invests £3 million into a UK trading company which meets the provisions for the business investment relief. He receives 10,000 newly issued shares. The mixed fund contained £2 million foreign income, £2 million foreign chargeable gains and £2 million capital, all from the same tax year. The fixed proportion within the invested property is £1 million foreign income, £1 million foreign chargeable gains and £1 million capital. Vladimir makes a claim for business investment relief on his 2013-14 Self Assessment tax return.

In a later tax year, Vladimir disposes of 5,000 of the shares for £2 million and takes the appropriate mitigation step by taking the full £2 million offshore. The £2 million will contain £500,000 foreign income, £500,000 foreign chargeable gains, £500,000 capital and £500,000 UK chargeable gain. Vladimir will report the UK chargeable gain on his tax return for the year of disposal.

If Vladimir had not taken the proceeds of disposal offshore, he would be regarded as remitting the £500,000 foreign income, £500,000 foreign chargeable gains and £500,000 capital to the UK and would report, on his Self Assessment tax return, the foreign income and foreign chargeable gains in addition to the UK chargeable gain.

Record keeping

2.94 See paragraph 3.25 of the Information Note for guidance on record keeping.

3 Sales of Exempt Property

3.1 Under existing legislation, **exempt property** can be brought to the UK without triggering a taxable remittance, provided the relevant conditions are met. See the **RDRM**34070 for details.

3.2 Where exempt property is sold or otherwise converted into money while in the UK, the foreign income and gains with which the property was purchased are treated as having been remitted to the UK. Under new provisions effective from 6 April 2012, sales of exempt property will not give rise to a taxable remittance, provided all the following conditions are met:

Condition A: The exempt property must not be sold to a **relevant person**. (s809YA(2))

Condition B: The sale must be made on commercial arm's length terms. (s809YA(3))

Condition C: After the sale has taken place, no relevant person has any interest in the property, is able or entitled to benefit from the property by virtue of any interest, right or arrangement or has any right to acquire such an interest in the future. (s809YA(4))

Condition D: The whole of the disposal proceeds must be released by the final deadline. The final deadline is the first anniversary of 5 January following the tax year in which sale takes place. As an example, for a sale taking place in February 2013 the proceeds must be released by 5 January 2015. Proceeds or instalments are released on the day on which they first become available for use by or for the benefit of a **relevant person**. (s809YA(5), (6) and (10))

Condition E: Within 45 days of the date on which the sale proceeds are released, they must be taken **offshore,** used to make a qualifying investment or a mixture of both. Where the proceeds are paid in a series of instalments, each instalment must be taken offshore or used to make a qualifying investment, or a mixture of both, within 45 days of the date on which it is released. (s809YA(7))

If any sale proceeds are released in the 45 days ending on the date given in Condition D, they must be taken offshore, used to make a qualifying investment or a mixture of both, by 5 January of the relevant year. (s809YA(8))

For additional information on disposal proceeds see Section 4.

Condition F: If Condition E is met wholly or in part by making a qualifying investment, the investor must claim relief for the reinvestment as part of their

Self Assessment tax return, on or before 31 January following the end of the tax year in which the property is sold. (s809YA(9))

3.3 The exemption for sales of exempt property is not available where the sale is part of a scheme or arrangement that has a tax avoidance purpose. (s809YA(11))

3.4 If conditions A-F are all met, the foreign income and gains from which the exempt property is derived are treated as not having been remitted to the UK, even though the property has ceased to be exempt property. (s809YC(2))

Example 27

Mostyn was taxed on the remittance basis in 2012-13. During the course of the year, Mostyn brought an antique vase, purchased using £75,000 of his foreign income, to the UK to be displayed at an exhibition. The vase is exempt property under section 809Z ITA.

During the exhibition Mostyn receives an offer for the vase from a fellow collector who lives in the UK and who is not a relevant person. Mostyn accepts the offer and receives £75,000 (market value) in full payment on 18 July 2014 into his UK bank account.

Mostyn transfers £50,000 from his UK bank account to his Jersey bank account on 20 July 2014 and a further £25,000 on 5 August 2014.

As Mostyn has transferred the whole of the sales proceeds offshore within 45 days of them becoming available to him, all of conditions A-F have been met. The foreign income or gains with which the vase was purchased are not treated as remitted to the UK.

The result would have been the same if Mostyn had invested the £75,000 proceeds in a qualifying business within 45 days and made a valid claim to business investment relief. Mostyn could also have invested part of the proceeds in a qualifying business and taken the balance outside the UK.

3.5 In exceptional circumstances HMRC may agree to extend the 45 day limit in Condition E where a request is made. We will provide guidance on the steps to follow once the Finance Bill receives Royal Assent. (s809YB)

3.6 Sale proceeds will be subject to the normal remittance basis rules once they are taken **offshore**. If sale proceeds are brought back to the UK, either in the form in which they were received or as property purchased with foreign income and gains, the money or property will be treated as a taxable remittance unless used to make a further qualifying investment or unless it is brought back as exempt property. See paragraph 3.1 above. (s809YC(3))

Example 28

Carrying on from Example 27, on 8 November 2016, Mostyn purchases a property in the UK for £150,000. He decides he will use the disposal proceeds from the sale of the vase as part payment and transfers the £75,000 from his Jersey account to the UK. This is a taxable remittance of the £75,000 foreign income that Mostyn originally purchased the vase with and is taxable in 2016-17.

3.7 Where the disposal proceeds are used to make a qualifying investment together with funds from other sources, the investment made using the disposal proceeds is treated as a separate qualifying investment from those other funds used. (s809YC(5)(b))

Exempt property used to make a qualifying business investment

3.8 Exempt property can be invested directly into a company to make a qualifying investment. To qualify the property must be invested whilst it is still exempt or within a period of 45 days of it ceasing to be exempt. A valid claim for relief must be made. (s809Y(6))

3.9 Where exempt property is invested directly, the foreign income and gains the property is derived from are not regarded as remitted to the UK, even though the property may no longer be exempt. Where this is the case the business investment provisions apply to the foreign income and gains as they would for any other investment. (s809Y(8))

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Chargeable gains on sales of exempt property

3.10 A chargeable gain or allowable loss can arise when exempt property is sold in circumstances which meet conditions A to F. For sales of exempt property which take place on or after 6 April 2012, any gain accruing will be treated as a foreign chargeable gain. This is referred to as a deemed foreign chargeable gain. This gain will be subject to the existing remittance basis rules and will be taxable if it is subsequently remitted to the UK.

Example 29

The circumstances are as in Example 27 above, but this time Mostyn sells the vase for £100,000 and takes the entire proceeds offshore within 45 days. He has met Conditions A-F and the £75,000 foreign income Mostyn purchased the vase with is not treated as remitted to the UK. Mostyn’s gain of £25,000 on the sale is treated as a deemed foreign chargeable gain. The £100,000 proceeds taken offshore will be a mixed fund consisting of £75,000 foreign income and £25,000 foreign chargeable gain.

3.11 Some individuals do not need to make a remittance basis claim because they have no UK income or gains and do not remit any foreign income and gains (**RDRM** 32140 gives details). For those individuals, the deemed foreign chargeable gain will not be treated as part of their UK income and gains.

Where an allowable loss accrues on the sale, the loss will be treated as a UK loss and available to be used against any UK gains under existing rules for capital losses. (s809YD(2) and (1)(a))

3.12 Where an individual has unremitted foreign income and gains of less than £2000, they can be taxed on the remittance basis without making a claim. Such individuals are also not required to pay the annual remittance basis charge which is payable by long term UK residents claiming the remittance basis. Where such an individual sells exempt property which gives rise to a chargeable gain, treating the gain as a deemed foreign chargeable gain might mean that their total unremitted foreign income and gains exceed the £2000 limit. This would mean they would need to make an election to be taxed on the remittance basis and potentially become liable to pay the remittance basis charge.

3.13 An individual can therefore elect for the deemed foreign gain arising on the sale of exempt property to be treated as a UK chargeable gain. This election must be made in writing to HMRC, identifying the gain in question on or before the first anniversary of the 31 January following the tax year in which the gain is treated as accruing. This election is irrevocable once that anniversary has passed. (s809YD(9) and (10))

Example 30

Georgina is a non domiciled remittance basis taxpayer who has been resident in the UK for 9 years. For the last few years, her only foreign income has been investment income of less than £2,000 per annum. In 2012-13 Georgina brings a piece of modern art, purchased overseas using £10,000 of her foreign income, to the UK and sells it at auction for £25,000 making a gain of £15,000. Georgina takes the entire sales proceeds offshore within 45 days of receiving them. The conditions for relief have been met and the £10,000 foreign income the art is derived from is not treated as remitted to the UK.

Ordinarily the chargeable gain of £15,000 would be regarded as a deemed foreign chargeable gain. However, that would mean that Georgina's unremitted foreign income and gains for 2012/13 would be over £2,000. As a long term UK resident, if Georgina made a claim to the remittance basis for 2012-13, so that she does not have to pay tax on her foreign income and gains, she would have to pay the remittance basis charge of £30,000. Her only other foreign income in 2012-13 is investment income of £1,575 and she had no other foreign gains.

When submitting her Self Assessment tax return for 2012-13, Georgina elects, in writing, for the deemed foreign chargeable gain to be treated as a UK gain. As Georgina's unremitted foreign income and gains are the investment income, which is less than £2,000, she does not have to pay the £30,000 remittance basis charge. She also does not lose her personal allowances or capital gains tax annual exempt amount. The annual exempt amount will be available to reduce the tax liability on the £15,000 chargeable gain.

4 Interpretative provisions

Disposal proceeds

4.1 The definition of "disposal proceeds" applies both to sales of qualifying investments (Section 2) and sales of exempt property (Section 3). For sales of qualifying investments, if the proceeds of a disposal are greater than the amount invested in the target company, it is only necessary for an amount of money up to the original amount invested (amount X) to be taken **offshore** or reinvested in a qualifying investment in order to take the appropriate mitigation steps. Where exempt property is sold, the full disposal proceeds must be taken offshore or invested. Paragraphs 2.34 and 2.35 cover disposals of holdings.

4.2 Disposal proceeds means:

- the consideration for the disposal
- less any agency fees deducted from those proceeds.

(s809Z8)

Agency fees

4.3 Agency fees are defined as fees or other incidental costs of a disposal deducted from the sale proceeds before they are paid to the seller.

Example 31

Joanne has decided she will sell shares she purchased using her foreign income for £7,250,000. She appoints an agent to act for her. The agent sells the shares for £8,000,000 and charges £50,000 in professional fees.

£7,950,000 is credited to Joanne's bank account after the sale (£8,000,000 minus £50,000 agency fees). Joanne has to take the amount originally invested, £7,250,000, offshore or reinvest it within the grace period to prevent a taxable remittance of the foreign income she used to buy the shares. The agency fees reduce the disposal proceeds and not the amount to be taken offshore.

4.4 When exempt property is sold, the whole of the disposal proceeds must be taken offshore or invested in order to qualify for the exemption. The agency fees incurred will reduce the disposal proceeds that have to be taken offshore or invested.

Example 32

Suzannah, a UK resident non domiciled remittance basis taxpayer, brings an antique vase, purchased overseas using £75,000 of her foreign income, to the UK with the intention of selling it through a London auction house. The vase is sold at auction to an unrelated third party for £120,000. Three weeks later the auction house transfers £108,000 to Suzannah's UK bank account, having deducted a seller's fee of 10%. A week later Suzannah transfers the full £108,000 to her Jersey bank account.

The seller's fee is an incidental cost of disposal; the disposal proceeds that must be taken offshore are £108,000. Suzannah has therefore complied with Condition E and the £75,000 foreign income from which the vase was derived is not treated as remitted to the UK. The gain that Suzannah has made on the sale of the vase is a deemed foreign gain.

4.5 Fees or other incidental costs that are charged by another relevant person are not treated as agency fees. This exclusion does not apply to the extent that the fees or costs:

- relate to a service actually provided by the relevant person, and
- do not exceed the amount that would be charged if the service were provided on commercial arm's length terms.

(s809Z8(6) and (7))

Example 33

Mario is a UK resident remittance basis taxpayer who owns a painting by a famous Italian artist purchased with £300,000 of his foreign chargeable gains. Mario's wife, Antonia, works in the art market as an agent, matching buyers with sellers.

Mario brings the painting to the UK and asks Antonia to find a buyer. Antonia agrees a price of £400,000 with an unrelated collector in Edinburgh and receives the purchase price direct from the purchaser. Shortly afterwards Antonia pays £200,000 to Mario, having deducted a fee of 50%, and Mario immediately takes the £200,000 offshore. Antonia normally charges a fee of 10% to her clients.

As Antonia is a relevant person whose fees have not been charged on arm's length terms, those fees are not deductible from the disposal proceeds. The fee paid by Mario is not deductible from the disposal proceeds so the appropriate mitigation steps must be taken on the full disposal proceeds of £400,000.

As Mario has not taken the whole of the £400,000 out of the UK within the grace period, Condition E of the exempt property relief has not been met and Mario will be treated as having remitted £300,000 of his foreign chargeable gains from which the painting was derived. In addition, the gain on disposal is a UK chargeable gain.

Non-monetary disposal proceeds

4.6 In most cases, the consideration received for the sale of a qualifying investment or the sale of exempt property will be in monetary form. If other property or benefits are received the value of the disposal proceeds will be the market value of the property received at the time of the disposal. Market value has the same meaning as in the Taxation of Chargeable Gains Act 1992, and in particular sections 272 and 273 of that Act. (s809Z8(3) and 809Z(10))

Disposals not at commercial rates

4.7 Disposals not made at commercial rates, will be treated as a transaction made at market value. The amount to be taken **offshore** or invested will be the market value of the property immediately before the disposal takes place, less any agency fees deducted. (s809Z8(4))

4.8 Disposals made to another relevant person, or to a person connected with another relevant person, will always be treated as not made at commercial rates. (s809Z8(5))

Taking proceeds offshore or investing them

4.9 This part applies to the disposal proceeds from qualifying business investments and from sales of exempt property. It covers both taking property or money offshore or investing the proceeds of a disposal. (s809Z9(1))

4.10 In most cases it will be obvious when property has been taken offshore. Money or other property will be treated as having been taken offshore where it is not able to be used or enjoyed in the UK by a relevant person or to be used or enjoyed in any other way that would count as a remittance to the UK. (s809Z9(2))

4.11 Disposal proceeds are invested if a relevant person uses them to make a qualifying investment, whether in the same or another target company. The business investment relief provisions apply to any subsequent investment of disposal proceeds in the same way as they applied to the original investment.

4.12 Proceeds in the form of money may be temporarily placed into an account in the UK before being taken offshore or invested. When the disposal proceeds are subsequently taken offshore or invested, the money must come from that same bank account. (s809Z9(3))

Example 34

Shakir disposes of some of his qualifying investment for £50,000. He deposits the £50,000 proceeds into a joint bank account he holds with his wife Sumayyah. The joint account contains UK taxed income of both Shakir and Sumayyah.

A fortnight later, Shakir transfers £50,000 from the joint account to an account in his sole name in the Isle of Man. Shakir is regarded as having taken the proceeds of sale from his qualifying investment offshore and thus to have taken the appropriate mitigation steps.

If Shakir had transferred the £50,000 from the joint account to another UK bank account before transferring the money to the Isle of Man, or transferred £50,000 from a different UK bank account, he would not have carried out the appropriate mitigation step and would be taxable on the foreign income or gains used to make his original investment.

4.13 There may be rare occasions when proceeds are received in the form of property rather than money. When this happens, proceeds will be treated as having been taken offshore or invested if:

- the property is taken out of the UK or invested in a qualifying investment, or
- money or property of an equivalent value is taken out of the UK or invested in a qualifying investment.

The second bullet point covers situations where, for example, immovable property such as shares or land and buildings are received as disposal proceeds. If those assets are UK based it may not be possible for an individual to take them **offshore** or invest them. The legislation therefore allows for something else to be taken offshore or invested in place of those assets. (s809Z9(4))

4.14 Where money or property of an equivalent value is taken offshore or invested, the money or property taken offshore or invested cannot be;

- exempt property
- sale proceeds from the disposal of any exempt property, or
- the disposal proceeds from an investment qualifying for business investment relief.

The money or property of an equivalent value that is taken offshore or invested will be treated as containing the same proportion of income, gains and capital that the disposal proceeds contained. (s809Z9(8))

4.15 The equivalent value means the **market value** of the property that is taken offshore at the date of the sale of the exempt property, or the date of disposal of the qualifying investment.

Example 35

Magnus, a UK resident remittance basis taxpayer loaned £20,000 of his foreign chargeable gains to a friend's eligible trading company in 2012-13 and made a valid claim to business investment relief on his Self Assessment tax return.

The business is successful and in 2014-15 the company is in a position to repay the loan. As Magnus is looking to upgrade his car, his friend offers him a 6 month old company car that has a market value of £20,000. Magnus takes ownership of it in full repayment of the loan.

The car is now treated as deriving from Magnus' foreign chargeable gains used to make the original loan. Magnus wants to use the car in the UK so, to carry out the appropriate mitigation step, he decides to take £20,000 of his UK taxed income offshore instead. Although it is UK taxed income, the £20,000 will now be treated as deriving from the foreign chargeable gains Magnus originally invested.

The £20,000 taken offshore will be taxed as Magnus' foreign chargeable gains if it is remitted to the UK in the future

Example 36

In the above example, instead of taking £20,000 of his UK taxed income offshore, Magnus decides to take offshore an antique vase purchased with £25,000 of his UK employment income. The vase has a market value of £30,000 at the time that Magnus takes possession of the car in satisfaction of the loan he made to his friend's company.

Magnus has taken the appropriate mitigation step and no tax under the remittance basis is due on the disposal of his qualifying investment. The vase is now regarded as deriving from Magnus' £20,000 foreign chargeable gains originally loaned to the company.

If the value of the vase had fallen to £15,000 by the time loan was repaid, it would not be regarded as fulfilling the mitigation steps. Magnus would have to take additional property offshore to the value of £5,000.

4.16 Disposal proceeds are subject to the normal remittance basis rules once they are taken offshore or invested. Subsequent actions may result in the foreign income and gains contained in the disposal proceeds being treated as a remittance.

4.17 A relevant person may take part of the disposal proceeds offshore and invest the remaining part. Provided the full amount of the disposal proceeds are taken offshore or invested (or a combination of the two), the appropriate mitigation step will have been carried out. (s809Z9(9) and (10))

4.18 If a relevant person invests disposal proceeds in a target company, they must make a further claim to business investment relief. Further information on claims can be found in paragraph 2.8. If no claim is made the relevant part of the original foreign income or gains invested is treated as having been remitted to the UK at the end of the relevant grace period. (s809VJ)

4.19 The investment does not have to be made by the relevant person who made the initial disposal. It is sufficient that any relevant person makes a qualifying investment.

Example 37

Consuela, a UK resident remittance basis taxpayer, owns a piece of antique furniture she purchased in Madrid using £200,000 of her foreign chargeable gains that arose in 2010-11.

In 2015-16 Consuela brings the furniture to the UK to sell to an antique dealer for £400,000. Within 45 days of receiving the sales proceeds, Consuela transfers £200,000 to her sole account in Madrid and gives the remaining £200,000 to her husband Alejandro, who loans the money to his brother Carlos' company. The company is an eligible trading company and Consuela makes a valid claim to business investment relief on her 2015-16 tax return.

The £400,000 proceeds of sale have all been taken offshore or invested. The conditions in s809YA have been met and the sale is not a remittance by Consuela of her foreign chargeable gains. Unless Consuela elects to disapply s809YD by giving relevant notice to HMRC, the gain on the sale is a deemed foreign chargeable gain.

As all of the transactions are offshore transfers for remittance basis purposes, the £200,000 in Consuela's Madrid bank account and the £200,000 investment in Carlos' company are both deemed to contain £100,000 of Consuela's foreign chargeable gains for 2010-11 and £100,000 of her foreign chargeable gains for 2015-16.

5 Simplification of the remittance basis rules

5.1 There are two further changes that simplify the operation of the **remittance basis** rules in the following areas:

- nominated income
- foreign currency bank accounts.

Simplification of the treatment of nominated income

5.2 If a long term UK resident taxpayer claims the remittance basis and pays the Remittance Basis Charge (RBC) they are required to nominate some of their income or gains each year, to which the RBC applies. (ITA s809C)

5.3 Where a taxpayer;

- remits any of their **nominated income or gains**, and
  - has other foreign income or gains that have not been taxed in the UK because the remittance basis applied in the tax year that they arose, and
  - which have not subsequently been remitted to the UK

There are rules that determine what part of the unremitted income or gains are deemed remitted to the UK for tax purposes in place of the nominated income or gains actually remitted. More information can be found in **RDRM** 35100.

5.4 The simplification will apply from 6 April 2012. From tax year 2012-13 onwards an individual can remit nominated income up to £10 for any tax year for which a nomination has been made without becoming subject to the identification rules. (The identification rules are explained in the **RDRM** at RDRM35130). (s809I(1)(c), (5) and (6))

Example 38

In 2012-13 Rozalia nominates £15 of her foreign bank interest for the purposes of the RBC. She remits £5 of that interest to the UK in February 2015. The amount of nominated income and gains from 2012-13 remitted is less than £10, so the remittance does not trigger the identification rules. As the interest has already been taxed in 2012-13 no further tax is due on the £5 remittance.

In May 2015, Rozalia remits the balance of £10, from the income she nominated in 2012-13. The cumulative total of nominated income and gains remitted to the UK from 2012-13 now exceeds £10. Rozalia will have to apply the identification rules to determine what she has remitted to the UK for tax purposes in 2015-16.

The identification rules apply even though Rozalia has only remitted £10 in 2015-16, as the simplification is based on the aggregate amount of nominated income and gains from each tax year.

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Foreign currency bank accounts

5.5 Up to tax year 2011-12, foreign currency bank accounts are chargeable assets for Capital Gains Tax purposes. Withdrawals from an account are therefore part disposals of a chargeable asset, necessitating part disposal calculations. This often made necessary a significant number of complex Capital Gains Tax calculations.

5.6 This change prevents chargeable gains or allowable losses from arising on withdrawals made on or after 6 April 2012 from such bank accounts held by individuals, trustees of settled property, and personal representatives of deceased persons. Amendments will be made to the Capital Gains Manual once the changes are enacted.

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Additional information about the taxation of non-domiciled individuals

This is available in:

Booklet HMRC6 - Residence, Domicile and the Remittance Basis explains the rules that apply to tax years up to 5 April 2012. This is available on the HMRC website at: http://www.hmrc.gov.uk/cnr/hmrc6.pdf

The Residence, Domicile and Remittance Basis Manual - RDRM. This is available on the HMRC website at:

http://www.hmrc.gov.uk/manuals/rdrmmanual/index.htm

We will update the booklet HMRC 6 and the Residence, Domicile and Remittance Basis Manual after these proposed changes become law.

If you have questions that relate to a specific individual's circumstances please contact us.

General technical questions on the changes to the taxation of non-domiciled individuals covered by this Guidance Note should be sent to: offshorepersonal.taxteam@hmrc.gsi.gov.uk

Glossary

Arising basis

A person who is resident in the UK is normally taxed on the arising basis. This means that they will pay UK tax on all of their income as it arises and on their gains as they accrue, wherever that income and those gains are in the world.

Certificate of Tax Deposit scheme

Under the Certificate of Tax Deposit scheme you can deposit money with HMRC and use it later to pay your liabilities for certain taxes. Your tax deposits with HMRC attract interest on a daily basis for up to six years. Every time you make a tax deposit with HMRC, you will be issued with a Certificate of Tax Deposit. You must keep these certificates, as you will need them later to use your tax deposits to pay a tax liability or to withdraw them.

Disposal Proceeds

Broadly the consideration for the disposal less agency fees incurred. For further detail, see Section 4.

Eligible Group

A group is an eligible group if a parent company and each of its 51% subsidiaries are private limited companies.

Exempt Property

This is defined in ITA s809X as property deriving wholly or partly from foreign income and gains which meets certain conditions:

- a work of art or antique brought to the UK to be displayed in a public institution for a period of up to 2 years
- an item of personal clothing, footwear or jewellery used personally by a relevant person
- an item brought to the UK temporarily (up to 275 days in total)
- an item brought to the UK for repair; or
- an item derived from foreign income or gains if the amount that would be regarded as remitted is less than £1,000.

If these conditions are not met, the property will be subject to tax on the remittance basis when brought to the UK. Exempt property does not include property which derives wholly from capital or from UK income and gains or a combination of the two.

Generating Income from Land

The meaning of ‘generating income from land’ is provided by CTA s207.

Market Value

This is the price which the asset might reasonably be expected to fetch on a sale in the open market or on arm's length terms. No reduction should be made for the costs of the valuation.

Nominated Income or Gains

The foreign income or gains of a tax year that a taxpayer, as a long-term resident remittance basis user, nominates and on which they pay the Income Tax or Capital Gains Tax that will constitute the RBC for that tax year. These must be reported on their Self Assessment tax return for that year.

Non-domiciled

A taxpayer's domicile is usually where they have their permanent home. Domicile is a general law concept; it is not defined in tax law. A taxpayer's domicile is distinct from their nationality and citizenship and from their place of residence. A taxpayer can be resident in the UK but have a domicile somewhere else, in which case they would be non-domiciled in the UK. Domicile can be a complex matter and further detail can be found in the booklet Residence, Domicile and the Remittance Basis (HMRC6).

Offshore

The term offshore refers to anywhere outside the UK. The UK comprises England, Wales, Scotland and Northern Ireland, including the territorial sea (that is, waters within 12 nautical miles of the shore). The Isle of Man and the Channel Islands are not part of the UK.

Ordinarily Resident

Someone who is resident in the UK year-on-year or who intends to be resident in the UK for more than three years will usually be ordinarily resident here. Residency can be a complex matter and further detail can be found in the booklet Residence, Domicile and the Remittance Basis (**HMRC6**).

Private Limited Company

This is a body corporate with limited liability, none of whose shares are listed on a recognised stock exchange. It excludes all limited liability partnerships.

Proceeds

Broadly the consideration for the disposal less agency fees reasonably incurred. For further detail, see Section 4.

Relevant Person

A relevant person is:

- the individual themselves, that is, the person to whom the foreign income and gains belong
- the individual's spouse or civil partner, or people living together as if they are spouses or civil partners

- the individual's children or grandchildren under 18 years of age (this includes children/grandchildren of their spouse/civil partners)
- trustees of a settlement, if the individual or another relevant person is a beneficiary of the trust
- close companies in which a relevant person is a participator (for example a shareholder).

A full definition of relevant person is set out in ITA s809M and at **RDRM**33030.

Remittance Basis

This is an alternative basis of taxation which a taxpayer can use only if they are resident in the UK but not domiciled in the UK, or if they are resident but not ordinarily resident in the UK.

If a taxpayer uses the remittance basis, their foreign income and foreign chargeable gains (where they are a non-UK domiciled individual) are subject to UK Income Tax or Capital Gains Tax only when remitted to the UK. Broadly speaking this occurs when the income or gains are brought to, received in or used in the UK. A detailed definition of what is meant by remitted to the UK can be found in **RDRM**33000 - Remittance Basis: Identifying Remittances.

Resident

There is currently no legal definition of residence for tax purposes. The current rules are based on a mixture of limited legislation and case law. Residence, in part, depends on the amount of time an individual spends in the UK. However, other non-time factors can be significant, such as accommodation, family, economic interests and social ties. Booklet HMRC6 - Residence, Domicile and the Remittance Basis gives more detail and is available on the HMRC website at: http://www.hmrc.gov.uk/cnr/hmrc6.pdf

RDRM

Residence, Domicile and Remittance Basis Manual – a guidance manual published by HMRC and available on our website at;

http://www.hmrc.gov.uk/manuals/rdrmmanual/index.htm

Target Company

The collective name for companies that are:

- Eligible trading companies
- Eligible stakeholder companies or
- Eligible holding companies.

For more detail see paragraph 2.14

Tax Deposit

See Certificate of Tax Deposit Scheme in this glossary.