**EXPLANATORY NOTE**

**CLAUSE 26, SCHEDULE 10: TRANSFER OF ASSETS ABROAD**

**AMENDMENTS 21-22**

## SUMMARY

1. Schedule 10, introduced by clause 26, makes changes to the "transfer of assets" anti-avoidance legislation in Chapter 2 of Part 13 of the Income Tax Act 2007 (ITA 2007). This legislation applies to UK resident individuals who have transferred assets so that income has become payable to a 'person abroad', while the UK resident individual continues to be able to enjoy the income of the person abroad, or receive a capital sum directly or indirectly from the income. The legislation also applies to UK resident individuals who have not made the transfer which results in the income arising to the person abroad , but who can benefit directly or indirectly from the income arising. The changes do two things. They provide a new exemption from charge for "genuine transactions" where European Union treaty freedoms are engaged, and they make a series of other changes to the transfer of assets provisions aimed at clarifying the way certain aspects operate. One of the changes introduced by Schedule 10 refines the definition of a 'person abroad'.

## DETAILS OF THE AMENDMENT

2. Paragraph 2 of Schedule 10 changes the definition of a 'person abroad' for the purposes of the transfer of assets abroad legislation. As currently drafted paragraph 2 removes the specific provision, in section 718 ITA 2007, that UK resident companies that are incorporated outside the UK are treated as resident outside the UK and therefore 'persons abroad'.

3. Amendment 21 amends paragraph 2 and introduces an additional change to the definition of a 'person abroad' so that a person abroad is:

   - either a person who is resident outside the United Kingdom, or
   - an individual who is domiciled outside the United Kingdom.

4. Therefore a company's domicile is not relevant in determining whether the company is a 'person abroad'. A company will be a 'person abroad' if it is resident outside the United Kingdom.

## BACKGROUND

5. In the transfer of assets abroad legislation a 'person abroad' means a person who is resident or domiciled outside the United Kingdom. The aim of paragraph 2 of Schedule 10 is to ensure that companies incorporated outside the United Kingdom but nevertheless resident in the United Kingdom for tax purposes are not automatically treated as a 'person abroad' for these purposes. To achieve this, the specific provision that a UK resident body corporate that is incorporated outside the United Kingdom is treated as resident outside the United Kingdom is repealed with effect from 6 April 2012.

6. However, a company that is incorporated outside the United Kingdom will be domiciled outside the United Kingdom. Therefore, without the further change introduced by this amendment, a company incorporated outside the UK would likely still be within the definition of a 'person abroad' by virtue of its domicile status, even where it is UK resident.

7. This amendment makes it clear that a company's domicile is not taken into account to determine whether it is a 'person abroad'. A company will be a 'person abroad' if it is resident outside the United Kingdom.

# Thursday 16 May 2013

# PUBLIC BILL COMMITTEE

Mr David Gauke

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☐ Schedule **10**, page **221**, line **9**, leave out paragraph 2 and insert—

‘2(1) Section 718 (meaning of “person abroad” etc) is amended as follows.

(2) For subsection (1) substitute—

“(1) In this Chapter “person abroad” means—

(a) a person who is resident outside the United Kingdom, or

(b) an individual who is domiciled outside the United Kingdom.”

(3) Omit subsection (2)(a).’.

Mr David Gauke

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☐ Schedule **10**, page **224**, line **1**, leave out ‘amendment made by paragraph 2 above has’ and insert ‘amendments made by paragraph 2 above have’.