HM TREASURY

HM Revenue & Customs

Legislation of Statement of Practice 1/09 (SP1/09):

second summary of responses and draft legislation

February 2013

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1 Introduction

1.1 The Government published *Reform of the taxation of non-domiciled individuals: a consultation* on 17 June 2011. The consultation closed on 9 September 2011.

1.2 The consultation document included the proposal to put SP1/09[1] on a statutory basis in Finance Bill 2012. SP1/09 provides a simplified tax treatment of income for certain employees who are taxed on the remittance basis.

1.3 Responses to the consultation raised a number of detailed issues for SP1/09 requiring careful consideration to ensure that the legislation does not depart significantly from the way in which SP1/09 currently works. On 6 December 2011, in the publication *Reform of the taxation of non-domiciled individuals: summary of responses to consultation*, the Government announced that it would defer the legislation of SP1/09 until Finance Bill 2013 to give more time to take account of the views received in consultation, and to co-ordinate with the parallel deferral of the abolition of Ordinary Residence for tax purposes.

1.4 The Government published *Legislation of Statement of Practice 1/09 (SP1/09): summary of responses and draft legislation* on 11 October 2012. This contained the first draft of legislation which was exposed for comment, as well as a number of points raised for consultation. The consultation closed on 7 December 2012.

1.5 This document sets out the second draft of legislation and takes into account the views expressed in the October 2012 consultation.

1.6 The Government seeks views on the details of the proposed statutory rules to replace SP1/09 (the new "special mixed fund rules") to ensure they meet the relevant policy objectives.

Overview of the October 2012 consultation: legislating SP1/09

1.7 SP1/09 was introduced following changes made to the remittance basis of taxation in Finance Act 2008 and came into effect on 6 April 2009. It replaced an earlier statement of practice (SP5/84) which had broadly the same purpose and effect. The consultation launched in June 2011 made clear that the Government's intention in legislating SP1/09 was to preserve, in broad terms, the features and details of the current practice.

1.8 A total of ten responses were received in reply to the October 2012 consultation. A summary of responses to the consultation is contained in Chapter 2 of this document. It also contains further suggestions for changes to the mechanics of SP1/09 that might be included in legislation.

1.9 The Government is proposing a number of further changes in legislating SP1/09 which take account of these representations. The changes are also outlined in Chapter 2. The draft legislation can be found in Chapter 3.

[1] Statement of Practice 1/09 – Employees resident but not ordinarily resident in the UK. General earnings chargeable under sections 15 and 26 Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and application of the mixed fund rules under sections 809Q onwards of the Income Tax Act 2007 (ITA) (SP1/09)

2 Summary of consultation responses and questions for further consultation

2.1 This chapter summarises responses to the consultation published on 11 October 2012 and sets out the Government's response. It also explains a number of changes that have been made to the draft legislation that was published on the same date, taking account of consultation responses, and identifies areas where consideration is being given to further changes which may not be reflected in the latest draft of the legislation (available in Chapter 3 of this document).

2.2 A number of questions have been set out in the text below to assist in further refining the legislation. If further changes are needed to the legislation as a result of this consultation, it is expected that these will be made in time for publication of the Finance Bill 2013.

Background – when the legislation will apply

2.3 In the draft legislation published for consultation, the special mixed fund rules will only apply where an individual meets certain conditions:

- they can claim overseas workday relief (this replaces the requirement in SP1/09 that they are resident but not ordinarily resident in the UK);
- they are taxed on the remittance basis;
- they have general earnings from one or more employments which are each subject to sections 15(1) and 26(1) of the Income Tax (Earnings & Pensions) Act 2003 (ITEPA);
- they nominate an account for use as a mixed fund to which the special mixed fund rules will apply (a qualifying account); and
- only certain types of income and gains are paid into the qualifying account.

2.4 Where all these conditions are met, the special mixed fund rules will allow an individual to set aside the transaction by transaction basis of the normal mixed fund rules. Instead, they will be able to aggregate transfers from the account on an annual basis (or part year, if the account is not a qualifying account for the whole of the relevant tax year).

2.5 Individuals who do not meet the conditions to use the special mixed fund rules will be required to operate the existing mixed fund rules in full.

2.6 There has been no change to these rules under the current draft of the legislation.

Consultation questions

2.7 The questions set out in the consultation document published on 11 October 2012 are included in the text of this chapter. Further questions for consultation are also set out within this text (questions 2A-2E) – a summary of them appears at the end of this chapter.

Accounts

2.8 In its consultation document of 11 October 2012, the Government proposed allowing an existing account to be nominated as a qualifying account of an individual and that taxpayers should be able to nominate joint accounts in certain circumstances. The Government also stated that individuals could only have a single qualifying account at a time to avoid the complexity arising if transfers were made between qualifying accounts.

2.9 Where an account became or ceased to be a qualifying account part way through a tax year, the Government proposed that the special mixed fund rules would only apply to the account for the part of the year in which it was a qualifying account. All transfers and remittances out of the account for the rest of the year in which an individual was resident and not subject to split year treatment under the statutory residence test rules would be subject to the normal mixed fund rules.

2.10 The consultation asked "Do the proposed rules to extend the conditions under which an account may be nominated as a qualifying account provide sufficient flexibility for the taxpayers over which account they may nominate?"

Nominations and existing accounts

2.11 The October 2012 draft legislation proposed that an existing account could be nominated as a qualifying account, but that the nomination must be made on a prospective basis. The proposal to use existing accounts was an easement from the current SP1/09 rules which require a new account to be opened.

Consultation response

2.12 Although extending qualifying accounts to existing accounts was welcomed, all respondents commented on the need to make a prospective nomination if the individual wanted to use one. Respondents explained that individuals might not be aware of this requirement in advance of taking up the employment. The period between their arrival in the UK and meeting a UK tax adviser could be several months. If they had not nominated an existing account on taking up their employment, they would have to operate the normal mixed fund rules for that period, and would initially be unable to benefit from the proposed simpler treatment.

Government's response

2.13 In view of the unanimous opposition to the use of prospective nominations, the Government has concluded that the perception of this as a significant restriction outweighs the benefits being able to apply the simpler treatment to an existing account. The Government has therefore decided to revert to the existing position under SP1/09, whereby only a newly opened account may be used as a qualifying account. This would remove the requirement for prospective nominations of accounts.

2.14 As it appears that many individuals already make use of completely new accounts, especially by opening new accounts for each tax year, the difficulties of opening new accounts to access the special mixed fund rules may not be as significant as originally understood.

2.15 Nominations would still be required for qualifying accounts based on new accounts, but these could be made after the relevant year end, for example, as part of an individual's self assessment return.

Change to draft legislation

2.16 Section 809RB has now been recast to cover the use of a new account, including the date for making a nomination or de-nomination as a qualifying account. There has been no change to the rule that a qualifying account cannot be the qualifying account of more than one individual at a time.

Question 2A

Are there any circumstances in which an individual would be significantly disadvantaged by being unable to use an existing bank account, given the current requirements for SP1/09?

2.17 The Government has considered suggestions made that individuals should have the choice whether to nominate an existing account prospectively, or to open a new account where the nomination can be made after the end of the relevant tax year. However, having two different nomination rules operating in tandem would add considerable complexity to the legislation, so unless there were compelling examples given in response to question 2A, such an approach will not be recommended.

2.18 Legislation would have to be able to define both those individuals who could make a prospective nomination to use an existing account as a qualifying account, and also the interaction between those two different methods of creating a qualifying account.

Question 2B

Are there any circumstances in which an individual would be able to nominate an existing account on a prospective basis and who would be disadvantaged by not being able to do so?

Number of qualifying accounts in use

2.19 In the October 2012 consultation document, the Government proposed that individuals used a single qualifying account to avoid the complexity which would arise as a result of transfers made between multiple qualifying accounts. Although this differed from the current SP1/09 rules which allow more than one SP1/09 account to be used at a time, it replicated HMRC's current experience that the majority of individuals with employment income falling within sections 15(1) and 26(1) ITEPA would pay it into a single overseas bank account.

2.20 On the other hand, the proposals allowed an easement of the current SP1/09 rules by allowing income from more than one employment into a qualifying account, as long as the income from each employment fell within both sections 15(1) and 26(1) ITEPA.

2.21 The complexity around the use of multiple qualifying accounts arises when transfers are made back and forth between two or more qualifying accounts. The effect is that the composition of each account at the end of the year cannot be calculated until the composition of the other account or accounts is known. This creates a 'chicken and egg' situation that makes it impossible for the taxpayer to calculate the composition of funds in each account and therefore the composition of the two notional transactions deemed to take place at the end of the year.

Consultation response

2.22 Respondents were disappointed with the restriction to a single qualifying account at any one time. Some individuals used a number of accounts. More importantly, they felt that this would prevent individuals from being able to remit any unused section 15 income which would have already been subject to UK tax from a previous year in preference to being deemed to have remitted section 26 income from the relevant year which would become taxable on remittance.

In their view this went against the spirit of what the Government had been allowing for some considerable time.

2.23 There were some suggestions that the problems surrounding transfers between qualifying accounts could either be overcome by disallowing such transfers, or by introducing a structure in which all qualifying accounts existing in the relevant tax year would be held in a notional 'pool'.

Government's response

2.24 As set out in the summary of responses published in December 2011, the Government does not intend to introduce fundamental changes to the mixed fund rules brought in through the reforms to the remittance basis in Finance Act 2008.

2.25 The draft legislation accommodates the situation where an individual wants to have more than one account to keep income paid in individual tax years separate. An individual can simply choose to de-nominate a qualifying account at the end of a tax year, and nominate a new account to use as a qualifying account in the next tax year. The funds in the previous year's account would not be 'blocked' in any way. Individuals would have to apply the normal mixed fund rules, which should not be too onerous given that the account in question would not, presumably, be used on a daily basis.

Question 2C

Where separate accounts are held for each year, does each account need to be a qualifying account for every year that it is operating? If so, why?

2.26 The Government would like to consider further suggestions that have been made by stakeholders on the possibility of operating a 'pooling' system. The Government's understanding is that this would operate by including all qualifying accounts existing in a relevant year within a notional overarching account or pool. All transactions within the pool could be ignored, and payments made from the pool treated in aggregate rather than matched to particular accounts as HMRC would currently expect. Further work would need to be undertaken to refine the details and ensure that such a structure will not compromise the existing mixed fund rules set out in legislation. It was unclear from the suggestions so far received as to how pooling could work in practical terms.

2.27 However, such a system would significantly add to the complexity of what has already been proposed in legislation. A compelling case for introducing such a system would therefore need to be made.

Question 2D

What are the reasons why an individual should need to use multiple qualifying accounts for a single tax year? How commonplace is this?

Joint accounts/split years

2.28 The draft legislation published in October 2012 set out provisions for extending the use of qualifying account to accounts held jointly with any other person, which was an easement on the SP1/09 rules and on the application of the special mixed fund rules for part of a tax year.

Consultation response

2.29 All respondents welcomed the move on joint accounts.

2.30 Some stated that it was difficult to comment fully on the draft legislation when it was still unclear how the interaction between split years under the statutory residence test and legislating SP1/09 would work.

Government's response

2.31 The legislation on the special mixed fund rules covered circumstances in which an individual could apply those rules only for part of a tax year. It was possible to have a scenario where the special mixed fund rules would only apply for part of a year, whether or not split year treatment under the statutory residence test applied for that year.

2.32 Sections 809RA(4) and 809RA(5)(b) set out the rules for the treatment of accounts opened after the start of the relevant tax year, or which ceased to be nominated accounts before the end of the relevant tax year.

Errors

2.33 The October 2012 draft legislation provided rules for the correction of errors. Under the SP1/09 rules, no errors were allowed and technically any tainted SP1/09 account would be disqualified. Therefore the proposals are an easement of what already strictly existed. An account will cease to be a qualifying account if it is tainted by the introduction of any funds other than the permitted types of income and gains to which the special mixed fund rules can apply.

2.34 The proposals allow for a series of errors to be reversed once an individual becomes or ought to have become reasonably aware that errors have been made. In fact, in that time there might have been a number of errors within that first 'tainting event'. But as long as the total sum of the tainting income is removed within 30 days in a one-off transfer, the account will remain as a qualifying account. However, if there is a further payment of prohibited income within 12 months of the first error, then the account will be disqualified from the beginning of the tax year in which the next tainting (occurring after the 30 day period of grace for reversal) occurs.

2.35 The consultation asked "Does the proposed deposit rule provide sufficient leeway for genuine errors, whilst discouraging repeated errors? If not, how could it be improved to preserve that outcome?"

Consultation response

2.36 Although more than one respondent felt that the legislation should allow unlimited errors, to be corrected at the year end, the general consensus was that it was not unreasonable to set a limit on the number of errors that could be made. However, many felt that the proposed rules on errors were too restrictive and the Government should explore the possibility of easing this rule, for example, allowing for more than one error in a 12 month period before the account was disqualified. There were concerns that a prohibited sum might be deposited into a qualifying account in circumstances outside the taxpayer's control.

Government's response

2.37 The Government does not consider that people should be allowed to make a limitless number of errors and continue to operate qualifying accounts. Under HMRC's Charter, taxpayers were made aware of an obligation to get their tax right, even where they authorised someone to act on their behalf. No errors were allowed under SP1/09, and therefore the opportunity to rectify errors recognises that individuals could make mistakes, but there has to be limits to prevent careless behaviour.

2.38 In addition if errors are not corrected until the end of the year, it will be complex, costly and burdensome to identify them, and there is the possibility that the individual will have insufficient funds within the account in order to make the one-off transfer required, and will thus have applied the special mixed fund rules to ineligible income without being able to reverse that error.

2.39 The Government considers that reversion to the current position under SP1/09 (using new accounts as qualifying accounts) ought to help, as only those whom the individual wanted to make payments into the qualifying account will be given the information to do so.

2.40 Every effort has been taken to try and identify the most common payments and the Government is particularly grateful for specific examples which have been addressed in the latest draft of the legislation. Where these have been identified the draft legislation allows them to be paid into the account rather than be treated as prohibited income.

2.41 The Government will of course consider further evidence of errors which are commonly made by other third parties and which are outside of the individual's control.

2.42 However, the Government took account of representations and agrees that it could extend the proposed treatment to allow two 'tainting events' (that is, the point at which the individual becomes or ought reasonably to have become aware of errors made) to be reversed without disqualifying the account. This has not been reflected in the latest draft of the legislation, but the Government intends to include it in the Finance Bill version.

2.43 The proposal is that where an individual had a first tainting event, and then a second within 12 months of the date of the first instance a prohibited payment had been made, as long as the sum of the errors in the second tainting event is reversed in a one-off transaction within 30 days of the individual becoming aware, the account will remain as a qualifying account.

2.44 If the reversal is not made within 30 days, the account will be disqualified. If, following this second tainting event, a further prohibited payment is made within 12 months of the date of the first instance a prohibited payment has been made, the account will be disqualified from the beginning of the tax year in which the error triggering the third tainting event was made.

Question 2E

Does this proposed relaxation meet the needs of individuals in a way which is fair but recognises that taxpayers must take responsibility for their tax affairs?

Changes to draft legislation

2.45 Section 809RC(5) has been amended to provide for situations where an individual might be paid income which is either wholly or partly for a previous year such as a bonus. It also covers scenarios where income paid into the account is for the relevant tax year but constitutes, for example, income falling only within section 15(1) ITEPA such as a beneficial loan for a UK season ticket. This is set out in section 809RC(5)(b) of the latest draft.

Employment related securities (ERS)

2.46 The Government recognised that the definition of the types of income permitted in a qualifying account was made more complex by the inclusion of income from ERS under certain conditions. The October 2012 consultation outlined a possible alternative to this complexity, in which all deposits of ERS income would be treated as tainting the qualifying account, and for them to be subject to the rules for deposits made in error.

2.47 The consultation asked "Would the alternative approach introduce sufficient simplicity to make an extra administrative burden on the part of individuals worthwhile?"

Consultation response

2.48 Respondents were not in favour of the alternative approach. The practical difficulties exemplified were that employees might not always have control of which account ERS sales proceeds were paid into. This could therefore result in more than one ERS-related tainting event in a 12-month period, which would then disqualify the account. Even where amounts could be reversed, it would be burdensome and could take a considerable time to identify the amounts involved.

2.49 Concerns were raised about the treatment of gains taxed under section 62 ITEPA, which did not appear to be specifically covered in the draft legislation.

Government's response

2.50 The Government acknowledges concerns about the alternative approach and therefore does not intend to adopt this position.

2.51 The Government is content that the draft legislation does allow earnings from ERS taxed under section 62 ITEPA to be paid into a qualifying account without being treated as prohibited amounts. As set out in the draft legislation, the disposal has to occur at or as soon as reasonably practicable after a relevant event. A relevant event includes the acquisition of the securities, which is when the section 62 earnings arise.

Special mixed fund rules

2.52 The October 2012 consultation outlined the detailed steps of how remittances and offshore transfers from a qualifying account were to be aggregated at the end of the year, under the proposed special mixed fund rules.

2.53 The consultation asked "Do these steps provide sufficient certainty for taxpayers and their advisers? If not, how could they be clarified further?"

Consultation response

2.54 Views relating to the question asked were mixed. Some felt that the special mixed fund rules were complicated and administratively burdensome, and that 11 steps were too many.

2.55 Other respondents felt that the proposed rules achieved their aim and provided certainty in respect of the treatment of income and gains remitted to the UK or transferred offshore from a qualifying account. It was suggested that in view of the complex calculations involved, it would be helpful if HMRC provided a tool to help taxpayers.

2.56 One final suggestion was that individuals should be allowed to apply the special mixed fund rules when they had ceased to qualify for overseas workday relief.

Government's response

2.57 The Government acknowledges that expats unused to the UK's tax legislation could find some calculations to be complex. However, the treatment of all transactions made from a qualifying account as two notional transactions is a significant simplification in comparison with the normal mixed fund rules. Even though 11 steps apply, those might only need to be carried out once for a single qualifying account, whereas the lesser number of steps present in the mixed fund ordering rules might have to be repeated for each transaction. The Government therefore does not propose to make any changes to the special mixed fund rules, but will ensure that the guidance relating to the process is as clear as possible.

2.58 The Government also acknowledges the request for an online tool to aid in the operation of the rules. Any introduction would depend on further research as to feasibility and value for money in a time of competing priorities.

2.59 No compelling reason has been made to extend the application of the special mixed fund rules when individuals cease to qualify for overseas workday relief. The new rules on overseas workday relief are very clear on when the treatment could apply, and individuals ought to be aware when it would come to an end.

Proposals for legislation

2.60 The consultation asked "(i) The legislation is intended to give broadly the same treatment to taxpayers as they received under SP1/09, with some easements. Are there any scenarios in which the draft legislation gives a less favourable treatment?" and "(ii) Are there any common sets of circumstances in which you feel that the draft legislation does not meet the stated policy objectives?"

Consultation response

2.61 Most of those respondents who answered these questions referred to concerns around nominations and the number of qualifying accounts allowed as examples of the ways in which the draft legislation gives a less favourable treatment than under the existing rules of SP1/09. Consequently, the conclusion from them was that the draft legislation did not meet its stated policy objectives.

2.62 Respondents asked for the existing SP1/09 rules to be grandfathered for those who are currently making use of them, unless they choose to use the special mixed fund rules instead.

Government response

2.63 The Government notes views expressed on whether the policy objectives had been met and would be interested to see comments based on the latest draft of the legislation.

2.64 The Government agrees that it could be burdensome for some individuals using SP1/09 on 5 April 2013 to change to a different set of rules in order to access the simpler treatment, given that they will only continue to be eligible to overseas workday relief to 5 April 2016 at the latest. The Government will therefore allow any individual making use of the SP1/09 rules on 5 April 2013 to continue using them until such time as they cease to qualify for overseas workday relief (and as long as they are still entitled to use the special mixed fund rules). Individuals may of course choose to switch to the special mixed fund rules.

Summary of questions

2A – Are there any circumstances in which an individual would be significantly disadvantaged by being unable to use an existing bank account, given the current requirements for SP1/09?

2B – Are there any circumstances in which an individual would be able to nominate an existing account on a prospective basis and who would be disadvantaged by not being able to do so?

2C – Where separate accounts are held for each year, does each account need to be a qualifying account for every year that it is operating? If so, why?

2D – What are the reasons why an individual should need to use multiple qualifying accounts for a single tax year? How commonplace is this?

2E – Does this proposed relaxation meet the needs of individuals in a way which is fair but recognises that taxpayers must take responsibility for their tax affairs?

3 Draft legislation

Section {jSP109}

EMPLOYMENT INCOME: DUTIES PERFORMED IN THE UK AND OVERSEAS

Schedule 1 contains provision about employment income in cases where duties are performed in the UK and overseas.

SCHEDULE 1

EMPLOYMENT INCOME: DUTIES PERFORMED IN THE UK AND OVERSEAS

PART 1

APPORTIONMENT OF EARNINGS

1. Part 2 of ITEPA 2003 (employment income: charge to tax) is amended as follows.

2. In section 15 (earnings for year when employee UK resident), as amended by Schedule {jSRTs} to this Act, in subsection (5) –

(a) after paragraph (a) omit "and", and

(b) after paragraph (b) insert ", and

(c) section 41ZA (which is about determining the extent to which general earnings are in respect of United Kingdom duties)."

3. In Chapter 5 (taxable earnings: remittance basis rules and rules for non-UK resident employees), after section 41 insert –

"Apportionment of earnings

41ZA Basis of apportionment

The extent to which general earnings are in respect of duties performed in the United Kingdom is to be determined under this Chapter on a just and reasonable basis."

PART 2

REMITTANCE BASIS OF TAXATION: SPECIAL MIXED FUND RULES

4. Chapter A1 of Part 14 of ITA 2007 (remittance basis) is amended as follows.

5. In section 809Q (sections 809L and 809P: transfers from mixed funds), after subsection (1) insert –

"(1A) But this section must be read subject to section 809RA."

6. After section 809R insert –

"809RA Special mixed fund rules for certain employment cases

(1) This section applies if –

(a) an individual has general earnings from an employment for a tax year,

(b) those earnings include both general earnings within section 15(1) of ITEPA 2003 ("section 15(1) earnings") and general earnings within section 26(1) of that Act ("section 26(1) earnings"),

(c) at least some of the section 15(1) earnings, or sums deriving (wholly or in part, and directly or indirectly) from at least some of the section 15(1) earnings, are paid into an account in hat tax year at a time (a "relevant time") when the account is a qualifying account of the individual, and

(d) at least some of the section 26(1) earnings, or sums deriving (wholly or in part, and directly or indirectly) from at least some of the section 26(1) earnings, are also paid into the account in that tax year at a relevant time.

(2) If this section applies, the composition of each transfer made from the account in that tax year at a relevant time is to be determined as follows –

Step 1 Suppose that all the condition A transfers made from the account in the tax year at a relevant time had been a single transfer made from the account at the end of the tax year.

Step 2 Suppose that all the other transfers made from the account in the tax year at a relevant time had been a single offshore transfer made at the end of the tax year immediately after the single transfer mentioned in step 1.

Step 3 Applying those suppositions –

(a) find under section 809Q(3) the extent to which the single transfer mentioned in step 1 is of the individual's income or chargeable gains, and

(b) find under section 809R(4) the content of the single offshore transfer mentioned in step 2.

Step 4 Each transfer made from the account in the tax year at a relevant time is to be treated as containing the specified proportion of each kind of income or capital contained in the relevant deemed transfer.

"The specified proportion" is the amount of the transfer divided by

the amount of the relevant deemed transfer.

"The relevant deemed transfer" is –

(a) if the transfer is a condition A transfer, the single transfer mentioned in step 1, and

(b) otherwise, the single offshore transfer mentioned in step 2.

(3) Subsection (2) applies in determining the composition of a transfer for the purposes of sections 809Q and 809R but it does not otherwise affect the date on which a transfer is considered to occur for the purposes of this Chapter.

(4) If the tax year is the tax year in which the account is opened, for the purpose of applying section 809Q(3) in relation to the single transfer mentioned in step 1 of subsection (2), treat the part of the tax year falling before the day on which the account is opened as a separate tax year.

(5) If the account ceases to be a qualifying account of the individual during the tax year other than as a result of a breach of the deposit rule –

> (a) subsection (2) has effect as if references to the end of the tax year were to the end of the day on which the account ceases to be a qualifying account, and
>
> (b) for the purpose of applying section 809Q(3) in relation to the single transfer mentioned in step 1 of subsection (2), treat the part of the tax year falling after the day mentioned in paragraph (a) as a separate tax year.

(6) A transfer from the account is a "condition A transfer" if and to the extent that –

> (a) condition A in section 809L is met, and
>
> (b) either.
>
> > (i) the property or consideration for the service is (wholly or in part), or derives (wholly or in part, and directly or indirectly) from, the transfer, or
> >
> > (ii) the transfer, or anything deriving (wholly or in part, and directly or indirectly) from the transfer, is used as mentioned in section 809L(3)(c).

(7) A transfer from the account is an "other transfer" if and to the extent that it is not a condition A transfer.

(8) Treat a transfer as an "other transfer" if and to the extent that, at the end of the tax year –

> (a) it is not a condition A transfer, and
>
> (b) on the basis of the best estimate that can reasonably be made at that time, it will not become a condition A transfer.

(9) If the account ceases to be a qualifying account of the individual during the tax year other than as a result of a breach of the deposit rule, subsection (8) has effect as if the reference to the end of the tax year were to the end of the day on which the account ceases to be a qualifying account.

(10) "Qualifying account" is defined in section 809RB.

(11) For the purposes of this section and sections 809RB and 809RC –

> (a) "employment" is to be read in accordance with section 4(1) of ITEPA 2003, and includes an office (as read in accordance with section 5(3) of that Act),
>
> (b) whether general earnings are "for" a tax year is to be determined as for the purposes of the employment income Parts of ITEPA 2003 (see section 3(2) of that Act),
>
> (c) a reference to anything "paid into" an account includes anything credited to the account by whatever means, and
>
> (d) references to a breach of the deposit rule are to be read in accordance with section 809RC.

809RB Qualifying accounts

(1) An individual may by notice to the Commissioners nominate an account to be a qualifying account of the individual for the purposes of section 809RA.

(2) The notice must specify the date on which the account is opened.

(3) An account may be nominated only if –

> (a) it is opened on or after 6 April 2013, and
>
> (b) when it is opened, it is an ordinary bank account held by and for the benefit of the individual (alone or jointly with others).

(4) An account is an "ordinary bank account" if it is a cash account in a bank (whether a current or savings account) where sums standing to the credit of the account from time to time represent a debt owed by the bank to the account-holder.

(5) The individual may withdraw the nomination by giving a further notice to the Commissioners, specifying the date with effect from which the nomination is withdrawn.

(6) A notice under subsection (1) or (5) must be in writing and include such information as the Commissioners may reasonably require.

(7) A notice under subsection (1) or (5) must be given no later than –

> (a) 31 January in the tax year following the tax year in which, as the case may be –
>
> > (i) the account is opened, or
> >
> > (ii) the date with effect from which the nomination is withdrawn falls, or
>
> (b) such later date as the Commissioners may allow.

(8) If an individual nominates an account under this section, the account is a "qualifying account" of the individual throughout the period –

> (a) beginning with the date on which the account is opened, and
>
> (b) ending with the date before the earliest of the following dates –
>
> > (i) the date on which the account is closed or ceases to be an ordinary bank account held by and for the benefit of the individual (alone or jointly with others);
> >
> > (ii) the date with effect from which the nomination is withdrawn under this section;
> >
> > (iii) the date on which another account nominated by the individual under this section is opened;
> >
> > (iv) 6 April in the tax year in which there is a breach of the deposit rule.

(9) If there is a breach of the deposit rule in the tax year in which the account is opened, the account is not to be a qualifying account.

(10) Subsection (8)(b)(iv) or (9) (as relevant) is to be ignored if the breach occurs on or after a date falling within subsection (8)(b)(i) to (iii).

(11) If, apart from this subsection, an individual might have nominated two or more accounts opened on the same day, the individual may nominate only one of those accounts.

(12) If, apart from this subsection, an account would be a qualifying account of two or more individuals, it is not to be a qualifying account of either or any of them.

809RC Breaches of the deposit rule

(1) There is a breach of the deposit rule if –

(a) a prohibited sum is paid into the account, and

(b) within 30 days beginning with the day on which the individual became or ought reasonably to have become aware of that payment, the required amount has not been transferred out of the account by way of a single one-off transfer.

(2) "The required amount" is an amount equal to –

(a) the prohibited sum, plus

(b) all the other prohibited sums (if any) that have been paid into the account since that sum was paid in.

(3) There is also a breach of the deposit rule if –

(a) the required amount was transferred out of the account in accordance with subsection (1)(b), but

(b) a further prohibited sum (not represented by the required amount) is paid into the account within 12 months beginning with the date on which the sum mentioned in subsection (1)(a) was paid in.

(4) A breach of the deposit rule is to be treated as having occurred –

(a) in the case of a breach under subsection (1), when the sum mentioned in paragraph (a) of that subsection was paid into the account, and

(b) in the case of a breach under subsection (3), when the further prohibited sum mentioned in paragraph (b) of that subsection was paid into the account.

(5) A "prohibited sum" is anything other than a sum that is, or derives wholly (whether directly or indirectly) from, any of the following kinds of income or capital –

(a) general earnings of the individual from an employment for a tax year which is a relevant tax year in relation to the employment,

(b) general earnings of the individual from an employment which consist of money and are paid in a tax year which is a relevant tax year in relation to the employment,

(c) an amount of specific employment income which, by virtue of Part 6, 7 or 7A of ITEPA 2003 or any other enactment, counts as employment income of the individual in respect of an employment for a tax year which is a relevant tax year in relation to the employment,

(d) interest on the account, or

(e) consideration for the disposal of employment-related securities or employment-related securities options in the circumstances described in subsection (6).

(6) The circumstances are –

(a) the securities or options were acquired pursuant to a right or opportunity available by reason of an employment of the individual,

(b) the disposal is or occurs in conjunction with, or as soon as reasonably practicable after, a relevant event involving those securities or options, and

(c) the tax year in which the relevant event occurs is a relevant tax year in relation to the employment.

(7) For the purposes of subsection (6) each of the following is a "relevant event" –

(a) the acquisition mentioned in subsection (6)(a), and

(b) any event on the occurrence of which an amount (if positive) counts as employment income by virtue of Part 7 of ITEPA 2003 or would do so but for –

(i) section 421E or 474 of that Act (exclusions: residence etc), or

(ii) an election under section 430 or 431 of that Act.

(8) For the purposes of this section a tax year is a "relevant" tax year in relation to an employment if –

(a) the individual has general earnings from the employment for the tax year,

(b) those earnings include both general earnings within section 15(1) of ITEPA 2003 ("section 15(1) earnings") and general earnings within section 26(1) of that Act ("section 26(1) earnings"),

(c) at least some of the section 15(1) earnings, or sums deriving (wholly or in part, and directly or indirectly) from at least some of the section 15(1) earnings, are paid into the account in the tax year, and

(d) at least some of the section 26(1) earnings, or sums deriving (wholly or in part, and directly or indirectly) from at least some of the section 26(1) earnings, are also paid into the account in the tax year.

(9) For the purposes of this section –

(a) "employment-related securities" has the meaning given in section 421B(8) of ITEPA 2003, and

(b)".employment-related securities options" has the meaning given in section 471(5) of that Act.

809RD Effect where 30-day deadline is met

(1) This section applies if the required amount was transferred out of the account in accordance with section 809RC(1)(b).

(2) Sections 809Q and 809R have effect as if –

(a) the intervening transactions had never taken place, and

(b) each prohibited sum represented by the required amount had instead been transferred directly (at the time that sum was paid into the qualifying account) into the account or other property into which the required amount was transferred by virtue of the single one-off transfer.

(3) Each of the following is an "intervening transaction" –

(a) each payment into the qualifying account of a prohibited sum represented by the required amount, and

(b) the single one-off transfer out of the qualifying account.

(4) If it is supposed under step 1 or 2 of section 809RA(2) that a single transfer had been made in the intervening period, re-apply section 809Q or 809R in relation to that transfer taking account of subsection (2).

(5) "The intervening period" is the period –

(a) beginning with the day on which the prohibited sum mentioned in section 809RC(1)(a) was paid into the account, and

(b) ending with the day on which the single one-off transfer was made in accordance with section 809RC(1)(b).

(6) If more than one transfer of a sum equal to the required amount was transferred out of the qualifying account within the 30-day grace period, the first of those transfers is assumed to be the single one-off transfer.

(7) "The 30-day grace period" is the period of 30 days mentioned in section 809RC(1)(b)."

PART 3

COMMENCEMENT

7. The amendments made by Part 1 of this Schedule have effect in relation to to earnings for the tax year 2013-14 and subsequent tax years.

8. The amendments made by Part 2 of this Schedule have effect in relation to transfers from a mixed fund that are made in the tax year 2013-14 or any subsequent tax year.

4 Summary of impacts

Legislation of SP1/09

4.1 This chapter provides an initial assessment of the impact of legislating SP1/09.

Policy objective

4.2 The Government aims to simplify the rules for determining tax liability and to remove the uncertainty and complexity of the transaction basis of the normal mixed fund rules for employees based in the UK for a relative short time, as long as they meet certain conditions.

Policy change

4.3 Following consultation, the Government is committed to legislating the broad effects of SP1/09 and has also identified a number of further easements relating to the use of existing accounts, offshore transfers and the proceeds of employee-share schemes which will be provided for in the legislation.

Other options considered

4.4 The Government considered a number of other suggestions from consultees which would have materially affected the operation of the mixed fund rules but is not attracted to these.

Table 4.A: Impacts of legislating SP1/09

Exchequer impact	The Government estimates that the Exchequer impact will be negligible.
Economic impacts	Not expected to have a direct economic impact.
Impact on individuals and households	Legislating SP1/09 would be a significant simplification to the current rules and would lessen the administrative burden for individuals. 2008-09 shows that around 15,000 individuals claimed the remittance basis on the basis of being non-domiciled but not ordinarily resident.
Equalities impacts	These reforms are not expected to have any impact on individuals with protected characteristics.
Impact on business including civil society organisations	There will be no increase in administrative burdens or compliance costs for business or civil society organisations.
Operational impact	There may be an initial cost for HMRC in providing further guidance to individuals and employers, but in the longer term, costs are likely to reduce because of simplifying the rules.
Other impacts	No other impacts have been identified.

5 The consultation process

5.1 This consultation is being conducted in line with the Tax Consultation Framework. There are five stages to tax policy development:

Stage 1: Setting out objectives and identifying options.

Stage 2: Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3: Drafting legislation to effect the proposed change.

Stage 4: Implementing and monitoring the change.

Stage 5: Reviewing and evaluating the change.

5.2 This consultation is taking place during Stage 3 of the process. The purpose of the consultation is to seek views on the detailed policy and draft legislation for legislation of SP1/09, building on previous consultations.

How to respond

5.3 The Government welcomes comments and responses to this consultation. The key consultation questions are summarised at the end of Chapter 2. All email correspondence should be sent to SP1-09.PTPP@hmrc.gsi.gov.uk and copied to SRT@hmtreasury.gsi.gov.uk by close of business on 25 February 2013.

5.4 This consultation document is available on the HM Revenue and Customs website at http://www.hmrc.gov.uk/consultations. Where possible, all correspondence should be sent electronically. Alternatively, mail correspondence can also be sent to the following address:

Jamal Ali
SP1/09 legislation consultation
Employment Income Team
Personal Tax Product and Process
HM Revenue and Customs
Room 1E/08
100 Parliament Street
London SW1A 2BQ

5.5 When responding please state if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of the people you represent.

Confidentiality disclosure

5.6 Information provided in response to this consultation document, including personal information, may be published in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

5.7 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why your regard the information you have provided as confidential.

5.8 If we receive a request for disclosure of information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclosure generated by your IT systems will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC) or HM Treasury (HMT). HMRC and HMT will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

5.9 This consultation is being run in accordance with the Government's Consultation Principles, which are available on the Cabinet Office website at http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance.

5.10 If you have any comments or complaints about the consultation process please contact:

Amy Burgess,
Consultation Coordinator,
Budget & Finance Bill Co-ordination Group,
HM Revenue & Customs,
100 Parliament Street,
London SW1A 2BQ

E-mail: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

5.11 Please do not send responses to the consultation to this address.

6 List of respondents

Allen Associates Tax Consulting LLP

BDO LLP

British American Business

Chartered Institution of Taxation

Confederation of British Industry (CBI)

Deloitte LLP

Ernst and Young LLP

Frank Hirth plc

Institute of Chartered Accountants in England and Wales (ICAEW)

KPMG LLP

Pricewaterhousecoopers LLP

HM Treasury contacts

This document can be found in full on our website: http://www.hm-treasury.gov.uk

If you require this information in another language, format or have general enquiries about HM Treasury and its work, contact:

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1 Horse Guards Road
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SW1A 2HQ

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