

Reform of the Taxation of Non-Domiciled Individuals

Who is likely to be affected?

UK resident non-domiciled individuals who claim the remittance basis of taxation.

General description of the measure

The measure makes three key changes.

The first is to introduce a higher annual charge of £50,000 for those non-domiciles who claim the remittance basis in a tax year and have been resident in at least 12 of the previous 14 tax years.

The second removes the charge to UK tax on overseas income or capital gains remitted to the UK for the purpose of making a commercial business investment in an unlisted company or a company listed on an exchange regulated market.

The third introduces simplifications to the existing remittance basis rules in respect of nominated income and the taxation of assets remitted to and sold in the UK.

Policy objectives

This measure supports the Government's objective of creating a fairer tax system by building on the existing rule. This rule requires non-domiciles who have been in the UK for more than a short period to pay an annual charge of £30,000 if they wish to retain access to the beneficial tax regime. The measure introduces a higher £50,000 annual charge for those who have been in the UK the longest to reflect their closer connection to the UK.

Furthermore, this measure will support the Government's objective of encouraging investment into the UK. Currently overseas income or capital gains remitted to the UK by individuals claiming the remittance basis are liable to UK tax, regardless of the purpose for which they are used. This measure will remove this disincentive to bring funds into the UK to invest in trading and commercial property companies.

This measure will support the Government's objective of a simpler tax system by simplifying some aspects of the rules related to nominated income and taxation of assets remitted and sold in the UK.

Background to the measure

The Government announced a package of reforms to the taxation of non-domiciles at Budget 2011.

A consultation document *Reform of the taxation of non-domiciled individuals* was published on 17 June 2011 on the HM Treasury and HM Revenue & Customs (HMRC) websites. The Government has considered all the responses to the consultation, as detailed in the summary of responses document published on 6 December 2011.

A separate Tax Information and Impact Note covers changes to the capital gains tax treatment of foreign currency bank accounts proposed in the consultation.

Detailed proposal

Operative date

This measure will have effect on and after 6 April 2012.

Current law

Increased remittance basis charge: Under section 809H of the Income Tax Act 2007 (ITA 2007), non-domiciles taxed on the remittance basis in a tax year who have been resident in at least seven of the nine tax years preceding the year of claim are required to pay an annual charge of £30,000.

Encouraging business investment: Under section 809L ITA 2007, overseas income or capital gains remitted to the UK by resident non-domiciles claiming the remittance basis are liable to UK tax, regardless of the purpose for which they are used.

Nominated income: Under section 809H ITA 2007, non-domiciles who have been UK resident in at least seven of the past nine tax years are liable to pay an annual charge of £30,000 if they wish to be taxed on the remittance basis. They are also required, under section 809C, to nominate an amount of their overseas income and capital gains which is taxable on the arising basis to ensure that the £30,000 is a recognised tax charge for the purposes of the UK's double taxation agreements. Identification rules in sections 809I and 809J ITA 2007 prevent such individuals from subsequently remitting any of these nominated income or capital gains before their other overseas income and capital gains.

Taxation of assets remitted to and sold in the UK: Assets purchased overseas using overseas income or capital gains are normally a taxable remittance when they are brought to the UK. There are limited exemptions to this rule in section 809X ITA 2007 which treats certain assets as exempt from tax in the UK. However, these exemptions cease to be available if the asset is sold in the UK, with the result that the individual will become liable to UK tax on the overseas income and gains used to purchase the asset.

Proposed revisions

Legislation will be introduced in Finance Bill 2012 to amend or simplify current legislation.

Increased remittance basis charge: The £50,000 charge will work in the same way as the current £30,000 charge. In each tax year, resident non-domiciled individuals will have a choice whether to pay the charge or to be liable to UK tax on their worldwide income and capital gains. Individuals will be able to opt in and out of the remittance basis from year to year, and choosing the arising basis in one year will not preclude claiming the remittance basis in a future year. The annual charge will not be payable if the individual is under 18 or if they have unremitted overseas income and capital gains of less than £2,000 in the tax year.

Encouraging business investment: From 6 April 2012 non-domiciles will be able to remit their overseas income or capital gains to the UK tax-free, where they do so for the purposes of making a 'qualifying investment'. A 'qualifying investment' is an investment in unlisted companies, or those listed on exchange regulated markets, which carry out trading activity on a commercial basis or undertake the development or letting of commercial property. There will be specific anti-avoidance provisions to ensure the investment is made on proper commercial terms.

Simplification of the treatment of nominated income: The nominated income rules will be amended to allow individuals to remit up to £10 of overseas income or capital gains which they have nominated for the purposes of the annual remittance basis charge, without being taxed on that remittance and without becoming subject to the identification rules. This will

apply both for the purposes of the existing £30,000 charge, and for the new increased £50,000 charge.

Simplification of the taxation of assets remitted to and sold in the UK: The Government proposes to build on the existing exemptions and introduce a new provision which would remove the tax charge that arises where exempt property remitted to the UK ceases to be exempt property as a result of being sold in the UK. This exemption will apply to all exempt property and will not be restricted to any particular class of asset or sector of the economy. There will be specific anti-avoidance provisions requiring the vendor to send the sale proceeds offshore in order to benefit from the exemption.

Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	<p>The figures were set out as part of a wider reform to the taxation of non-domiciled individuals in Table 2.1 of Budget 2011 and have been certified by the Office of Budget Responsibility. More detail can be found in the policy costings document published alongside the Budget. This element of the reform is expected to increase receipts by approximately £75 million a year.</p>				
Economic impact	<p>The increase in the annual remittance basis charge could have a negative economic impact in isolation and there may be an increase in the number of individual non-domiciles who choose to either leave the UK or not to settle here. However, the increased charge is one element of a package of reforms that is expected, overall, to have a positive impact on the economy.</p> <p>The measure includes an incentive for additional inward investment from non-domiciles. This is expected to have a positive economic impact by helping businesses across a variety of sectors to grow, increasing economic activity and creating additional employment, with resulting benefits for the Exchequer.</p> <p>The simplifications to existing remittance basis rules are not expected to have a direct economic impact but will have an indirectly positive impact. The complexity of the current rules, and the administrative burdens this can create, may create disincentives to invest or do business in the UK. The simplifications will help to remove some of those disincentives.</p>				
Impact on individuals and households	<p>The increase to the annual remittance basis charge will only impact individuals and households already liable to pay the £30,000 charge. It is estimated that around 3,500 such individuals will choose to pay the higher £50,000 charge in 2012-13. It is assumed that only those who have significant levels of overseas income and gains in the relevant tax year will choose to pay the charge.</p> <p>Affected individuals who are non-domiciled and choose not to pay the charge will lose access to the remittance basis of taxation. They will become liable to UK tax on their worldwide income and gains (the arising basis) and will be required to disclose all their worldwide income and gains on a self assessment (SA) tax return. It is estimated that around 3,500 individuals will choose to move to the arising basis in 2012-13. A small number of individuals may chose to leave the UK instead.</p> <p>It is difficult to quantify how many will benefit from the measure to encourage business investment as there is no requirement for remittance basis users to provide information about their unremitted overseas income</p>				

	<p>and gains. Some individuals and households will pay less tax on remittances of overseas income and capital gains, if they are currently making remittances for business investment. There are also expected to be benefits from the investment opportunities this policy will make available. No-one will pay more tax on remittances of overseas income and capital gains as a result of this policy.</p> <p>The option will be open to any remittance basis user who wishes to invest in UK business, regardless of the level of personal wealth, and is designed to be as simple as possible to operate, to ensure minimal costs for those wishing to use this measure to invest.</p> <p>Although individuals may need to make additional declarations on their SA tax returns, the information required will be limited. As most affected individuals will already be submitting an annual SA tax return, this will not be a large additional administrative burden.</p> <p>The simplifications to the existing remittance basis rules will not have a material impact on the amount of tax paid for any individual and household. However, they will reduce the administrative burden of operating and complying with the rules for many individuals who claim the remittance basis.</p> <p>Figures for number of individuals are rounded to the nearest 500.</p>
<p>Equalities impacts</p>	<p>These reforms are not expected to have any impacts on people with protected characteristics.</p> <p>Any non-domiciled individual who has been resident in the UK for the relevant period will have a choice whether to pay the increased charge and retain access to the remittance basis, or to be taxed on their worldwide income in the same way as all other UK resident taxpayers.</p>
<p>Impact on business including civil society organisations</p>	<p>It is expected that any increase in administrative burdens through the increased annual remittance basis charge would be negligible as the change will only affect individuals. In addition, the vast majority of expatriate employees are assigned to the UK for six years or less and so this policy will not affect them or their employers.</p> <p>It is expected that the measure to encourage business investment will have a negligible impact on the administrative burden or compliance costs for businesses or civil society organisations. Qualifying businesses will benefit from increased investment helping to generate growth, additional employment and further economic activity.</p> <p>The simplifications to the existing remittance basis rules are expected to result in a reduction in administrative burdens for employers, particularly those with employees on tax equalisation contracts, and for agents with clients taxed on the remittance basis whose compliance obligations will be reduced. This reduction is expected to be negligible.</p>
<p>Operational impact (£m) (HMRC or other)</p>	<p>Any individual who pays the £50,000 charge will already be paying the £30,000 charge, so there are not expected to be any significantly increased operational costs for HMRC from the increase to the remittance basis charge.</p> <p>Although there is not expected to be a significant operational impact from the measure to encourage business investment, there will be limited compliance costs for HMRC from the decision to require an individual to claim the relief as part of the Self Assessment process. Such costs will</p>

	<p>include amending HMRC forms to enable a claim to be made, and the capture and processing of that information.</p> <p>The simplifications to the existing remittance basis rules will result in overall reduction in compliance burdens and decreased operational costs for HMRC associated with remittance basis taxpayers.</p>
Other impacts	The potential for other impacts has been considered for the full package of reforms and none have been identified.

Monitoring and evaluation

This measure will be monitored through HMRC's existing operational systems and processes, including receipts and data collected from Self Assessment tax returns.

Further advice

If you have any questions about these changes, please email:
offshorepersonal.taxteam@hmrc.gsi.gov.uk

1 Foreign income and gains

Schedule 1 contains provision about the taxation of foreign income and gains.

SCHEDULE 1

Section 1

FOREIGN INCOME AND GAINS

PART 1

INCREASED REMITTANCE BASIS CHARGE

Increased charge

- 1 Chapter A1 of Part 14 of ITA 2007 (remittance basis) is amended as follows.
- 2 (1) Section 809C (claim for remittance basis by long-term UK resident: nomination of foreign income and gains to which section 809H(2) is to apply) is amended as follows.
 - (2) In subsection (1), for paragraph (b) substitute—
 - “(b) meets the 12-year residence test or the 7-year residence test for that year.”
 - (3) After that subsection insert—
 - “(1A) An individual meets the 12-year residence test for a tax year if the individual has been UK resident in at least 12 of the 14 tax years immediately preceding that year.
 - (1B) An individual meets the 7-year residence test for a tax year if the individual—
 - (a) does not meet the 12-year residence test for that year, but
 - (b) has been UK resident in at least 7 of the 9 tax years immediately preceding that year.”
 - (4) In subsection (4), for “£30,000” substitute “—
 - (a) for an individual who meets the 12-year residence test for that year, £50,000;
 - (b) for an individual who meets the 7-year residence test for that year, £30,000.”
- 3 (1) Section 809H (claim for remittance basis by long-term UK resident: charge) is amended as follows.
 - (2) In subsection (1), for paragraph (c) substitute—
 - “(c) the individual meets the 12-year residence test or the 7-year residence test for the relevant tax year.”
 - (3) After that subsection insert—
 - “(1A) See section 809C(1A) and (1B) for when an individual meets the 12-year residence test or the 7-year residence test for a tax year.”
 - (4) In subsection (4), for “£30,000”, in each place it occurs, substitute “the applicable amount”.

(5) After subsection (5A) insert –

- “(5B) “The applicable amount” is –
- (a) if the individual meets the 12-year residence test for the relevant tax year, £50,000;
 - (b) if the individual meets the 7-year residence test for the relevant tax year, £30,000.”

4 For section 809V substitute –

“809VMoney paid to the Commissioners

- “(1) Subsection (2) applies to income or chargeable gains of an individual if –
- (a) the income or gains would (but for subsection (2)) be regarded as remitted to the United Kingdom by virtue of the bringing of money to the United Kingdom,
 - (b) the money is brought to the United Kingdom by way of one or more direct payments to the Commissioners, and
 - (c) the payments are made in relation to a tax year to which section 809H applies as regards the individual.
- (2) The income or chargeable gains are to be treated as not remitted to the United Kingdom to the extent that the payments do not exceed the applicable amount (as defined in section 809H).
- (3) Subsection (2) does not apply to payments if or to the extent that they are repaid by the Commissioners.”

Application of increased charge

5 The amendments made by this Part of this Schedule have effect for the tax year 2012-13 and subsequent tax years.

PART 2

REMITTANCE FOR INVESTMENT PURPOSES

Exemption for investments

6 After section 809V insert –

“809VA Money or other property used to make investments

- (1) Subsection (2) applies if –
- (a) a relevant event occurs,
 - (b) but for subsection (2), income or chargeable gains of an individual would be regarded as remitted to the United Kingdom by virtue of that event, and
 - (c) the individual makes a claim for relief under this section.
- (2) The income or gains are to be treated as not remitted to the United Kingdom.
- (3) A “relevant event” occurs if money or other property –
- (a) is used by a relevant person to make a qualifying investment,
 - or

- (b) is brought to or received in the United Kingdom in order to be used by a relevant person to make a qualifying investment.
- (4) Subsection (2) does not apply by virtue of subsection (3)(a) if the property –
 - (a) is exempt property under section 809X, and
 - (b) is treated under section 809Y as having been remitted to the United Kingdom because of being used to make the investment.
- (5) Subsection (2) does not apply by virtue of subsection (3)(b) unless the investment is made within the period of 45 days beginning with the day on which the money or other property is brought to or received in the United Kingdom.
- (6) Subsection (2) does not apply if the relevant event occurs, or the investment is made, as part of or as a result of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (7) A claim for relief under this section must be made on or before the first anniversary of the 31 January following the tax year in which the income or gains would, but for subsection (2), be regarded as remitted to the United Kingdom by virtue of the relevant event.
- (8) “Relevant person” has the meaning given in section 809M.

809VB Qualifying investments

- (1) For the purposes of section 809VA, a person makes an investment if –
 - (a) shares in a company are issued to the person, or
 - (b) the person makes a loan (secured or unsecured) to a company.
- (2) The company is referred to as “the target company”.
- (3) The shares or the person’s rights under the loan (or both) forming the subject of the investment are referred to as “the holding”.
- (4) The investment counts as a “qualifying investment” if conditions A and B are met when the investment is made.
- (5) Conditions A and B are defined in sections 809VC and 809VD.
- (6) A reference in this section to “shares” includes any securities.
- (7) If a loan agreement authorises a company to draw down amounts of a loan over a period of time, the loan is treated as made when the first amount is drawn down.

809VC Condition A

- (1) Condition A is that the target company is –
 - (a) an eligible trading company, or
 - (b) an eligible stakeholder company.
- (2) A company is an “eligible trading company” if –

- (a) it is a private limited company,
 - (b) it carries on one or more commercial trades or is preparing to do so within the next 2 years, and
 - (c) carrying on commercial trades is all or substantially all of what it does (or of what it is reasonably expected to do once it begins trading).
- (3) A company is an “eligible stakeholder company” if –
- (a) it is a private limited company,
 - (b) it exists wholly for the purpose of making investments in eligible trading companies (ignoring any minor or incidental purposes), and
 - (c) it holds one or more such investments or is preparing to do so within the next 2 years.
- (4) A company is a “private limited company” if –
- (a) it is a body corporate whose liability is limited,
 - (b) it is not a limited liability partnership, and
 - (c) none of its shares are listed on a recognised stock exchange.
- (5) “Trade” also includes –
- (a) anything that is treated for corporation tax purposes as if it were a trade, and
 - (b) a business carried on for generating income from land (as defined in section 207 of CTA 2009).
- (6) A trade is a “commercial trade” if it is conducted on a commercial basis and with a view to the realisation of profits.
- (7) The carrying on of activities of research and development from which it is intended that a commercial trade will be derived, or will benefit, is to be treated as the carrying on of a commercial trade.
- (8) But preparing to carry on activities within subsection (7) is not to be treated as the carrying on of a commercial trade.
- (9) A company preparing to carry on commercial trades “begins trading” when it begins to carry on one or more such trades.
- (10) References in this section to making investments are to be read in accordance with section 809VB(1).

809VD Condition B

- (1) Condition B is that no relevant person has (directly or indirectly) obtained or become entitled to obtain any related benefit, and no relevant person expects to obtain any such benefit.
- (2) A “benefit” –
- (a) includes the provision of anything that would not be provided to the relevant person in the ordinary course of business, or would be provided but on less favourable terms, but
 - (b) does not include the provision of anything provided to the relevant person in the ordinary course of business and on arm’s length terms.

- (3) A benefit is “related” if—
 - (a) it is directly or indirectly attributable to the making of the investment (whether it is obtained before or after the investment is made), or
 - (b) it is reasonable to assume that the benefit would not be available in the absence of the investment.
- (4) For the purposes of subsection (2)—
 - (a) a reference to the provision of anything is to the provision of anything in money or money’s worth, including property, capital, goods or services of any kind, and
 - (b) “provision” includes any arrangement that allows a person to enjoy or benefit from the thing in question (whether temporarily or permanently).

809VE Income or gains treated as remitted following certain events

- (1) Subsection (2) applies if—
 - (a) income or chargeable gains are treated under section 809VA as not remitted to the United Kingdom as a result of a qualifying investment,
 - (b) a potentially chargeable event occurs after the investment is made, and
 - (c) the appropriate mitigation steps are not taken within the grace period.
- (2) The affected income or gains are to be treated as having been remitted to the United Kingdom immediately after the end of the grace period.
- (3) “The affected income or gains” means such portion of the income or gains mentioned in subsection (1)(a) as reflects the portion of the investment affected by the potentially chargeable event.
- (4) That portion (which may in some cases be all of the income or gains) is to be determined on a just and reasonable basis.
- (5) Section 809VJ makes further provision for the purposes of this section.

809VF Meaning of “potentially chargeable event”

- (1) For the purposes of section 809VE, a “potentially chargeable event” occurs if—
 - (a) the target company ceases to be an eligible trading company or an eligible stakeholder company,
 - (b) the relevant person who made the investment (“P”) ceases to be a relevant person,
 - (c) P disposes of all or part of the holding,
 - (d) the extraction of value rule is breached, or
 - (e) the 2-year start-up rule is breached.
- (2) The extraction of value rule is breached if—
 - (a) value (in money or money’s worth) is received by or for the benefit of P or another relevant person,
 - (b) the value is received—

- (i) from an involved company, or
 - (ii) from anyone else but in circumstances that are directly or indirectly attributable to the investment or to any other investment made by a relevant person in an involved company, and
 - (c) the value is not received by virtue of a disposal of all or part of the holding.
- (3) But the extraction of value rule is not breached merely because a relevant person receives value that –
- (a) is treated for income tax or corporation tax purposes as the receipt of income or would be so treated if that person were liable to such tax, and
 - (b) is paid or provided to the person in the ordinary course of business and on arm’s length terms.
- (4) Each of the following is an “involved company” –
- (a) the target company,
 - (b) if the target company is an eligible stakeholder company, any eligible trading company in which it has made or intends to make an investment, and
 - (c) any company that is connected with a company within paragraph (a) or (b).
- (5) In a case where the target company is an eligible trading company, the 2-year start-up rule is breached if –
- (a) the company had not begun trading when the investment was made,
 - (b) 2 years have passed since the investment was made, and
 - (c) the company has not begun trading in that time.
- (6) In a case where the target company is an eligible stakeholder company, the 2-year start-up rule is breached if –
- (a) 2 years have passed since the investment was made, and
 - (b) in that time –
 - (i) the company has held no investments in any eligible trading company, or
 - (ii) no eligible trading company in which it has held investments has carried on any commercial trade.
- (7) If consideration for a disposal of all or part of the holding is to be paid in instalments, the disposal is to be treated for the purposes of this section as if it were separate disposals, one for each instalment (and each giving rise to a separate potentially chargeable event).
- (8) An event listed in subsection (1) does not count as a potentially chargeable event if it is due to an insolvency step taken for genuine commercial reasons (but this does not prevent the receipt of any value as a result of the insolvency step from counting as a potentially chargeable event).
- (9) For the purposes of subsection (8), an insolvency step is taken if –
- (a) the target company enters into administration or receivership or is wound up or dissolved,

- (b) an eligible trading company in which the target company has made an investment enters into administration or receivership or is wound up or dissolved, or
- (c) a similar step is taken in relation to a company mentioned in paragraph (a) or (b) under the law of a country or territory outside the United Kingdom.

809VG The grace period

- (1) The grace period is the period of 45 days beginning –
 - (a) in a case where all or part of the holding is disposed of, with the day on which the proceeds are paid to a relevant person,
 - (b) in a case where the extraction of value rule is breached, with the day on which the value is received, and
 - (c) in any other case, with the day on which a relevant person became aware or ought reasonably to have become aware of the potentially chargeable event.
- (2) An officer of Revenue and Customs may agree to extend the grace period in a particular case in exceptional circumstances.

809VH The appropriate mitigation steps

- (1) If the potentially chargeable event is a disposal of all or part of the holding, the appropriate mitigation steps are regarded as taken if the proceeds have been taken offshore or re-invested.
- (2) For any other potentially chargeable event, the appropriate mitigation steps are regarded as taken if –
 - (a) P has disposed of the entire holding (or so much of it as P retains when the event occurs), and
 - (b) the proceeds have been taken offshore or re-invested (or a combination of the two).
- (3) But if the proceeds exceed X, subsections (1) and (2)(b) apply only to so much of the proceeds as is equal to X.
- (4) “X” is –
 - (a) the amount (determined under section 809P) of the income or gains that would, but for section 809VA, have been remitted to the United Kingdom by virtue of the relevant event, less
 - (b) the sum of the amounts (if any) that have been treated as remitted under section 809VE(2) or been taken offshore or re-invested on a previous occasion involving the same qualifying investment.
- (5) Proceeds are “taken offshore” if they are taken outside the United Kingdom (in the form in which they are received) such that, on leaving the United Kingdom, they cease to be available to be used or enjoyed in the United Kingdom by or for the benefit of a relevant person.
- (6) Where proceeds are taken offshore within the grace period, nothing prevents anything subsequently done in relation to them from counting as a remittance of the affected income or gains to the United Kingdom at the time when the thing is subsequently done.

- (7) Proceeds are “re-invested” if a relevant person uses them to make another qualifying investment (whether in the same or a different company).
- (8) Where proceeds are re-invested within the grace period, section 809VE applies to the re-investment as it applies to the original investment.

809VI The proceeds

- (1) In section 809VH, “the proceeds” means the consideration for the disposal less any agency fees reasonably incurred by P.
- (2) The following rules apply in determining the consideration for a disposal.
- (3) If the consideration is provided in the form of anything other than money, the amount of the consideration is the market value of the thing at the time of the disposal.
- (4) If the disposal is made other than by way of a bargain made at arm’s length, the disposal is deemed to be made for a consideration equal to the market value of the holding (or the part of the holding being disposed of) at the time of the disposal.
- (5) Without limiting the generality of subsection (4), a disposal made to another relevant person or to a person connected with a relevant person is treated in all cases as made other than by way of a bargain at arm’s length.
- (6) “Agency fees” means fees and other incidental costs of the disposal that are charged to P by any person by or through whom the disposal is effected, but excluding any such fees or costs that –
 - (a) are charged to P by a relevant person, or
 - (b) are to be passed on to or otherwise applied for the benefit of a relevant person.
- (7) “Market value” has the same meaning as in TCGA 1992 (see in particular sections 272 and 273 of that Act).

809VJ Order of disposals etc

- (1) Subsection (2) applies if income or chargeable gains of an individual are treated under section 809VA as not remitted to the United Kingdom as a result of –
 - (a) more than one qualifying investment made in the same target company, or
 - (b) qualifying investments made in an eligible trading company and in an eligible stakeholder company that makes (or intends to make) investments in the same eligible trading company.
- (2) In the application of section 809VE, disposals of all or part of the holdings are assumed to affect the investments in the order in which the investments were made (that is to say, on a first in, first out basis).
- (3) It does not matter whether the investments were made by the same relevant person or different ones.

809VK Mixed funds

- (1) This section applies if –
 - (a) but for section 809VA, income or gains would have been remitted to the United Kingdom by virtue of a relevant event, and
 - (b) section 809Q would have applied in determining the amount that would have been so remitted.
- (2) Each of the following steps is to be treated for the purposes of section 809R(4) as if it were an offshore transfer –
 - (a) the relevant event,
 - (b) a disposal of all or part of the holding,
 - (c) the taking offshore of any of the proceeds, and
 - (d) the re-investment of any of the proceeds.
- (3) Section 809Q applies in determining under section 809P the amount of the affected income or gains treated under section 809VE(2) as remitted to the United Kingdom.”

Application of exemption

- 7 The amendments made by this Part of this Schedule have effect where the relevant event (as defined in section 809VA of ITA 2007) occurs on or after 6 April 2012.

PART 3

SALES OF EXEMPT PROPERTY

Relief from deemed remittance rule

- 8 In section 809Y of ITA 2007 (property that ceases to be exempt property treated as remitted), in subsection (1), after “is” insert “, subject to section 809YA,”.
- 9 After that section insert –

“809YA Exception to section 809Y: proceeds taken offshore or invested

- (1) Section 809Y(1) does not apply to property if –
 - (a) it ceases to be exempt property because the whole of it is sold whilst it is in the United Kingdom, and
 - (b) conditions A to E are met.
- (2) Condition A is that the sale is to a person other than a relevant person.
- (3) Condition B is that the sale is by way of a bargain made at arm’s length.
- (4) Condition C is that, once the property is sold, no relevant person –
 - (a) has any interest in the property,
 - (b) is able or entitled to benefit from the property by virtue of any interest, right or arrangement, or

- (c) has any right (whether conditional or unconditional) to acquire any interest mentioned in paragraph (a) or ability or entitlement mentioned in paragraph (b).
- (5) Condition D is that the whole of the sale proceeds are paid to the seller (whether in one go or in instalments) within the period of 95 days beginning with the day on which the property is sold.
- (6) Condition E is that the whole of the sale proceeds are taken offshore or used to make a qualifying investment (or both) within the period of 45 days beginning with—
 - (a) the day on which the proceeds are paid to the seller, or
 - (b) if the proceeds are paid in instalments, the day on which the last of the instalments is paid to the seller.
- (7) An officer of Revenue and Customs may agree to extend the period specified in Condition E in exceptional circumstances if the individual whose income or gains would otherwise be treated under section 809Y as remitted to the United Kingdom requests such an extension.
- (8) This section does not apply if the sale is made as part of or as a result of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (9) In this section, “relevant person” has the meaning given in section 809M.

809YB Sale proceeds

- (1) This section applies for the purposes of section 809YA.
- (2) “The sale proceeds” means the consideration for the sale less any agency fees that are deducted before the consideration is paid to the seller.
- (3) “Agency fees” means fees and other incidental costs of the sale that are charged to the seller by any person by or through whom the sale is effected, but excluding any such fees or costs that—
 - (a) are charged to the seller by a relevant person, or
 - (b) are to be passed on to or otherwise applied for the benefit of a relevant person.
- (4) The sale proceeds are “taken offshore” if they are taken outside the United Kingdom (in the form in which they were paid to the seller) such that, on leaving the United Kingdom, they cease to be available to be used or enjoyed in the United Kingdom by or for the benefit of a relevant person.
- (5) The sale proceeds are “used to make a qualifying investment” if they are used by the seller to make a qualifying investment within the meaning of section 809VB.
- (6) References in section 809YA to the payment of sale proceeds to a seller include payment to anyone else on the seller’s behalf or at the seller’s direction.

809YC Effect of disapplying section 809Y

- (1) This section has effect if section 809Y(1) does not apply to property by virtue of section 809YA.
- (2) The property is to continue to be treated after the sale as not remitted to the United Kingdom even though it has ceased to be exempt property.
- (3) But nothing in subsection (2) prevents anything done in relation to any part of the sale proceeds after the part is taken offshore (or used to make a qualifying investment) from counting as a remittance of underlying income or gains to the United Kingdom at the time when the thing is done.
- (4) “Underlying income or gains” means the part (or all) of the individual’s foreign income and gains –
 - (a) of which the property consists or from which the property derives, and
 - (b) accordingly, from which the sale proceeds derive.
- (5) Where Condition E was met by using the sale proceeds to make a qualifying investment, sections 809VA to 809VK apply to the investment as if it had been made within the period specified in section 809VA(5).
- (6) Each of the following steps is to be treated for the purposes of section 809R(4) as if it were an offshore transfer –
 - (a) the sale of the property, and
 - (b) the taking offshore of any sale proceeds.”

Application of relief

- 10 The amendments made by this Part of this Schedule have effect in relation to exempt property that is sold on or after 6 April 2012.

PART 4

NOMINATED INCOME

Disapplication of ordering rules

- 11 (1) Section 809I of ITA 2007 (remittance basis charge: income and gains treated as remitted) is amended as follows.
- (2) In subsection (1) –
 - (a) omit “and” at the end of paragraph (a), and
 - (b) at the end of paragraph (b) insert “, and
 - (c) the £10 test is met for that year.”
 - (3) In subsection (3), after “earlier tax year” insert “(each such year for which the individual has made a nomination under that section being referred to as a “nomination year”)”.
 - (4) After subsection (4) insert –

- “(5) The £10 test is met for the tax year mentioned in subsection (1)(a) (“year X”) if, taking each nomination year separately, the cumulative total as respects at least one nomination year exceeds £10.
- (6) In relation to a nomination year –
- (a) “the cumulative total” means the sum, for all the tax years in aggregate up to and including year X, of the amounts of relevant income and gains remitted to the United Kingdom in those tax years from that nomination year, and
 - (b) “relevant income and gains” means the income and chargeable gains nominated by the individual under section 809C for that nomination year.”

Application of this Part

- 12 The amendments made by this Part of this Schedule have effect for determining whether section 809I of ITA 2007 applies for the tax year 2012-13 or any subsequent tax year.

EXPLANATORY NOTE

FOREIGN INCOME AND GAINS

SUMMARY

1. Clause 1 and Schedule 1 introduce changes to the remittance basis of taxation.

DETAILS OF THE SCHEDULE

Increased remittance basis charge

2. Part 1 of the Schedule introduces an increased remittance basis charge of £50,000 payable by individuals who claim the remittance basis of taxation and who have been resident in the UK in at least 12 of the 14 tax years preceding the tax year in which they make that claim.
3. Paragraph 2 of the Schedule amends section 809C of the Income Tax Act 2007 (ITA) and introduces the 12-year residence rule and the 7-year residence rule. An individual will meet the 12-year rule in any tax year in which they have been resident in the UK in at least 12 of the 14 tax years preceding that year and will meet the 7-year rule in any tax year in which they have been resident in the UK in at least 7 of the 9 tax years preceding that year. It also amends subsection 809C(4) to provide for two annual charges of £50,000 and £30,000.
4. Paragraph 3 of the Schedule amends section 809H ITA and provides that an individual will be liable to pay the £50,000 annual charge in a tax year in which they meet the 12-year test, and liable to pay the £30,000 annual charge in a tax year in which they meet the 7-year test. It also substitutes the term ‘the applicable amount’ for ‘£30,000’ each time it occurs in that section.
5. Paragraph 4 of the Schedule substitutes a new section 809V in ITA. It provides that, in cases where an individual uses their foreign income and gains to pay the £50,000 or the £30,000 annual charge, those income and gains will not be treated as having been remitted to the UK. It also provides that this rule will not apply where the income and gains are repaid by the Commissioners of HMRC.
6. Paragraph 5 of the Schedule provides for the amendments made by paragraphs 1 to 4 to have effect from the start of the 2012-13 tax year.

Remittance for Investment Purposes

7. Part 2 of the Schedule introduces a new tax relief for foreign income and gains which are brought to the UK for the purposes of making a qualifying investment.
8. Paragraph 6 of the Schedule introduces new sections 809VA to 809VK ITA.
9. New subsection 809VA(1) sets out the qualifying conditions for the relief. These are that a relevant event occurs which would otherwise be treated as a remittance of an individual's income and gains and that the individual makes a claim for the relief under this section.
10. New subsection 809VA(2) provides that, where the conditions set out in subsection 809VA(1) are met, the income and gains of the individual are treated as not remitted to the UK and therefore not liable to tax in the UK.
11. New subsection 809VA(3) defines a 'relevant event' for the purposes of subsection 809VA(1) as an event in which income and gains, or other property deriving from such income and gains, are either used by relevant person to make a qualifying investment or are brought to or received in the UK for the purpose of making such an investment.
12. New subsection 809VA(4) provides that the tax relief provided by subsection 809VA(2) does not apply where a relevant person makes a qualifying investment with property which is exempt property under section 809X and where that property is treated as having been remitted under section 809Y as a result of being used to make that investment.
13. New subsection 809VA(5) provides that, in order to qualify for the relief in cases where property is brought to or received in the UK for the purpose of making a qualifying investment, that investment must be made within a period of 45 days from the day on which that property is brought to or received in the UK.
14. New subsection 809VA(6) is an anti-avoidance provision which disallows the relief provided in subsection 809VA(2) in situations where a relevant event occurs, or an investment is made, as part of or as a result of any scheme or arrangement whose main purpose, or one of the main purposes, is tax avoidance.
15. New subsection 809VA(7) provides that an individual is required to make a claim for the relief within the time limits for the self assessment system. Such a claim needs to be made no later than 31 January of the tax year following the tax year in which the income and gains stipulated in subsection 809VA(1) would otherwise be treated as a remittance.
16. New subsection 809VA(8) provides that the term 'relevant person' has the same definition in this section as it does in section 809M ITA.

FINANCE BILL

17. New subsection 809VB defines a qualifying investment for the purposes of subsection 809VA(3).
18. New subsection 809VB(1) provides that an investment is made for the purpose of section 809VA where shares in a company are issued to a person or where a person makes a loan to a company.
19. New subsection 809VB(2) provides that a company for the purposes of this Part is referred to as 'the target company'.
20. New subsection 809VB(3) provides that a person's shares in or rights under a loan to a company, or a mixture of both, are referred to as 'the holding' for the purposes of this Part.
21. New subsection 809VB(4) provides that conditions A and B must be met at the time when the investment is made for that investment to be treated as a qualifying investment.
22. New subsection 809VB(5) provides that conditions A and B are defined in sections 809VC and 809VD.
23. New subsection 809VB(6) provides that any reference to shares in this section includes securities.
24. New subsection 809VB(7) provides that, where a company is authorised to draw down amounts of a loan under a loan agreement, the loan is treated as having been made when the company draws down the first such amount.
25. New section 809VC sets out condition A for the purposes of section 809VB.
26. New subsection 809VC(1) provides that condition A is met where the target company is either an eligible trading company or an eligible stakeholder company.
27. New subsection 809VC(2) defines an eligible trading company as a private limited company which carries on one or more commercial trades or is preparing to do so within 2 years of the date on which the investment is made and that such trades constitute all or substantially all of its total activities. Where a company has not commenced trading at the time of the investments, such trades should reasonably be expected to constitute all or substantially all of its total activities once it does commence trading.
28. New subsection 809VC(3) defines an eligible stakeholder company as a private limited company which exists wholly for the purpose of making investments in eligible trading companies (disregarding any incidental purposes) and which holds one or more such investments or is preparing to do so within 2 years of a qualifying investment being made.

FINANCE BILL

29. New subsection 809VC(4) defines a private limited company for the purposes of subsections 809VC(2) and (3) as a limited liability body corporate other than a limited liability partnership, none of whose shares are listed on a recognised stock exchange.
30. New subsection 809VC(5) provides that, for the purposes of this section, a trade includes anything treated as a trade for the purposes of corporation tax and a business generating income from land as defined in section 207 of the Corporation Tax Act 2009.
31. New subsection 809VC(6) defines a commercial trade as one conducted on a commercial basis with a view to generating profits.
32. New subsection 809VC(7) provides that research and development activities carried on with the intention of deriving a commercial trade will be treated as carrying on a commercial trade for the purposes of this Part.
33. New subsection 809VC(8) provides that preparing to carry out research and development activities will not be treated as carrying on a commercial trade for the purposes of this Part.
34. New subsection 809VC(9) defines the term ‘begins trading’ for the purposes of subsection 809VC(2) as beginning to carry on one or more commercial trades.
35. New subsection 809VC(10) provides that references to making an investment in this section have the same meaning as in subsection 809VB(1).
36. New section 809VD sets out condition B for the purposes of section 809VB.
37. New subsection 809VD(1) provides that condition B is met where no relevant person has obtained, become entitled to obtain any related benefit or expects to obtain such a benefit, whether directly or indirectly.
38. New subsection 809VD(2) defines a benefit as including anything which would not be provided to the relevant person, or would be provided but on less favourable terms, in the normal course of business but excluding anything provided to the relevant person in the normal course of business and on arm’s length terms.
39. New subsection 809VD(3) defines a ‘related benefit’ as one which is directly or indirectly attributable to making the investment, either before or after that investment is made, or one which it is reasonable to assume would not be available if the investment had not been made.
40. New subsection 809VD(4) provides that references to ‘the provision of anything’ in subsection 809VD(2) mean the provision of anything in

FINANCE BILL

money or money's worth and includes any arrangement which provides any enjoyment or benefit to a person, whether on a temporary or permanent basis.

41. New section 809VE sets out the circumstances in which income and gains are treated as remitted to the UK.
42. New subsection 809VE(1) provides that subsection 809VE(2) applies where
 - income and gains are treated as not remitted to the UK as a result of section 809VA;
 - a potentially chargeable event occurs; and
 - the appropriate mitigation steps are not taken within the grace period.
43. New subsection 809VE(2) provides that the affected income and gains are treated as being remitted to the UK immediately after the end of the grace period.
44. New subsection 809VE(3) defines 'affected income and gains' for the purpose of subsection 809VE(2) as such portion of the income and gains as reflects the portion of the investment affected by the potentially chargeable event.
45. New subsection 809VE(4) provides that the proportion of income and gains referred to in subsection 809VE(3) should be determined on a fair and reasonable basis. It also provides that this proportion may be all of the income and gains which are subject to subsection 809VA.
46. New subsection 809VE(5) provides that further rules set out in section 809VJ apply for the purposes of this section.
47. New section 809VF defines a 'potentially chargeable event' for the purposes of subsection 809VE(1).
48. New subsection 809VF(1) provides that a potentially chargeable event occurs where:
 - a target company ceases to be an eligible trading company or an eligible stakeholder company;
 - the relevant person who made the qualifying investment ceases to be a relevant person or disposes of all or part of their holding;
 - the extraction of value rule is breached or
 - the 2-year start-up rule is breached.

FINANCE BILL

49. New subsection 809VF(2) provides that the extraction of value rule is breached where value is received by or for the benefit of any relevant person from an involved company or from anyone else in circumstances directly or indirectly attributable to any investment made by a relevant person in an involved company and where that value is not related to a disposal of all or part of the holding.
50. New subsection 809VF(3) provides that the extraction of value rule is not breached where a relevant person receives value in circumstances in which that value is subject to income tax or corporation tax, or would be so subject if the relevant person were liable to income tax or corporation tax, and provided on arm's length terms in the normal course of business.
51. New subsection 809VF(4) defines 'an involved company' for the purposes of subsection 809VF(2) as any target company, any eligible trading company in which an eligible stakeholder company has made or intends to make an investment, and any company connected with such a company. Section 993 ITA sets out the circumstances in which a company is connected with another company.
52. New subsection 809VF(5) defines the 2-year start-up rule which applies where the target company is an eligible trading company. In such cases, the rule is breached where 2 years have passed since investment was made and the company has not commenced trading in that time.
53. New subsection 809VF(6) defines the 2-year start-up rule which applies where the target company is an eligible stakeholder company. In such cases, the rule is breached where 2 years have passed since the investment was made and in that time the company has not held any investments in any eligible trading companies or no eligible trading company in which the company has invested has carried on any commercial trade.
54. New subsection 809VF(7) provides that, where the consideration for any disposal is paid in instalments, each instalment is to be treated as a separate disposal, each of which gives rise to a separate potentially chargeable event.
55. New subsection 809VF(8) provides that any event referred to in subsection 809VF(1) is not treated as a potentially chargeable event if it occurs as a result of an insolvency step taken for commercial reasons. It also provides that this rule does not prevent the receipt of value arising from an insolvency step from being treated as a potentially chargeable event.
56. New subsection 809VF(9) defines an insolvency step for the purposes of subsection 809VF(8). An insolvency step occurs where a target company or an eligible trading company enters into administration or receivership, or is wound up or dissolved, or where a similar step occurs under the laws of a country or territory outside the UK.

FINANCE BILL

57. New section 809VG defines the grace period for the purposes of section 809VE.
58. New subsection 809VG(1) provides that, where all or part of the holding is disposed of, the grace period is 45 days beginning on the day a relevant person receives the proceeds of the disposal. Where the extraction of value rule is breached, it provides that the grace period is 45 days beginning on the day the value is received. In all other cases, it provides that the grace period is 45 days beginning on the day on which a relevant person became aware, or ought reasonably to have become aware, of the potentially chargeable event.
59. New subsection 809VG(2) provides that an officer of HMRC can agree to extend the grace period in exceptional circumstances.
60. New section 809VH defines an appropriate mitigation step for the purposes of subsection 809VE(1)(c).
61. New subsection 809VH(1) provides that, where the potentially chargeable event is a disposal of all or part of the holding, the appropriate mitigation steps are treated as having been taken when the proceeds arising from the disposal are either taken offshore or reinvested.
62. New subsection 809VH(2) provides that, for all other potentially chargeable events, the appropriate mitigation steps are treated as having been taken where a relevant person has disposed of the entire holding and taken the proceeds offshore, or reinvested them. It also provides that, where a relevant person has previously disposed of part of the holding, the appropriate mitigation steps will be treated as having been taken when the entire remainder of the holding is disposed of and the proceeds have been taken offshore or reinvested.
63. New subsection 809VH(3) provides that, in cases where the sale proceeds exceed amount X, subsections (1) and (2)(b) only apply to an amount of the sale proceeds which are equal to X.
64. New subsection 809VH(4) defines the amount 'X' for the purposes of subsection 809VH(3) as the difference between the income and gains which would have been treated as remitted to the UK in the absence of section 809VA and any amounts from the same investment which had previously been treated as remitted under subsection 809VE(2) or taken offshore or reinvested.
65. New subsection 809VH(5) defines when proceeds are treated as 'taken offshore' for the purposes of this section as being when they taken out of the UK in the same form as they were received such that no relevant person is able to use or enjoy those proceeds in the UK.
66. New subsection 809VH(6) provides that where proceeds have been taken offshore within the grace period, nothing will prevent the affected

FINANCE BILL

income and gains being treated as remitted to the UK on a subsequent occasion.

67. New subsection 809VH(7) defines when proceeds are treated as ‘reinvested’ for the purposes of this section as when they are used by a relevant person to make another qualifying investment under section 809VA.
68. New subsection 809VH(8) provides that section 809VE will apply to any proceeds which are reinvested during the grace period in the same way as it applies to the original investment.
69. New section 809VI defines ‘proceeds’ for the purposes of this Part.
70. New subsection 809VI(1) defines ‘proceeds’ for the purposes of section 809VH as the consideration for the disposal less any agency fees which are reasonably incurred by the relevant person who made the qualifying investment.
71. New subsection 809VI(2) provides for the rules in subsections 809(3) to (7) to apply when determining the consideration for the disposal.
72. New subsection 809VI(3) provides that, where the consideration is provided in a form other than money, that consideration will be the market value of whatever has been provided at the time of the disposal.
73. New subsection 809VI(4) provides that, where a disposal is not made on arm’s length terms, the consideration for that disposal will be treated as the market value of the holding at the time the disposal was made. It also provides that, where only a part of the holding is disposed of, and that part disposal is not made on arm’s length terms, the consideration will be treated as the market value of that part of the holding at the time it was disposed of.
74. New subsection 809VI(5) provides that, notwithstanding subsection 809VI(4), a disposal made to another relevant person or to a person connected with a relevant person is always treated as having been made on other than arm’s length terms and therefore that the consideration for the disposal will be treated as the market value of the holding at the time the disposal was made.
75. New subsection 809VI(6) defines ‘agency fees’ for the purposes of subsection 809VI(1) as any fees and other incidental costs of a disposal charged to a relevant person who has made a qualifying investment where they are charged by or through any person who effected the disposal. It also provides that ‘agency fees’ excludes any costs either charged by a relevant person or in any way applied for the benefit of a relevant person.

FINANCE BILL

76. New subsection 809VI(7) provides that ‘market value’ in this section has the same meaning as it does in the Taxation of Chargeable Gains Act 1992.
77. New section 809VJ provides rules which apply where there are multiple acquisitions and disposals and determine the order in which such disposals are treated as being made.
78. New subsection 809VJ(1) provides that subsection 809VJ(2) applies where income and gains of an individual are treated as not remitted to the UK under section 809VA in cases where:
- more than one qualifying investment is made in the same target company; or
 - a qualifying investment is made in an eligible trading company and in an eligible stakeholder company which makes or intends to make investments in a single eligible trading company.
79. New subsection 809VJ(2) provides that, where section 809VE applies to tax the disposal as a remittance, disposals of all or part of a holding are treated in the order in which the investments were originally (first in, first out).
80. New subsection 809VJ(3) provides that the rule in subsection 809VJ(2) applies whether or not the investments are made by the same relevant person.
81. New section 809VK provides for the application of the mixed fund rules in sections 809Q and 809R for the purposes of this Part.
82. New subsection 809VK(1) provides that section 809VK applies if income and gains would be treated as remitted to the UK in the absence of section 809VA and if the amount remitted in such cases would be determined by applying the mixed fund rules.
83. New section 809VE(2) provides that the following events are treated as an offshore transfer in line with section 809R(4):
- a relevant event;
 - the disposal of a holding, whether in whole or in part;
 - taking the proceeds of a disposal offshore; and
 - the reinvestment of the proceeds from a disposal.
84. New section 809VE(3) provides that section 809Q applies to determine the amount of income and gains which are treated as remitted to the UK under subsection 809VE(2).

FINANCE BILL

85. Paragraph 7 of the Schedule provides for sections 809VA to 809VK to apply to where a relevant event occurs on or after 6 April 2012.

Sales of Exempt Property

86. Part 3 of the Schedule introduces a tax exemption for sales of exempt property.
87. Paragraph 8 amends subsection 809Y(1). Paragraph 809Y provides that property which ceases to be exempt property is treated as remitted to the UK and sets out when such property will cease to be exempt property. Paragraph 8 provides that section 809Y is subject to new section 809YA.
88. Paragraph 9 introduces new subsections 809YA to 809YC ITA.
89. New subsection 809YA provides that, where exempt property is sold in the UK in situations in which conditions A to E are met, it will not be treated as a taxable remittance under section 809Y(1).
90. New subsections 809YA(2) to 809YA(6) set out conditions A to E for the purposes of subsection 809YA:
- Condition A is that the property is sold to a person who is not a relevant person;
 - Condition B is that the sale is made on arm's length terms;
 - Condition C is that no relevant person has any interest in or entitlement to benefit from the property after the sale has been completed, nor any right to acquire such an interest or entitlement;
 - Condition D is that the entire proceeds of the sale are paid to the seller of the property within 95 days of the sale having taken place, including cases where the proceeds are paid in a series of separate instalments; and
 - Condition E is that the entire sale proceeds are either taken offshore or used to make a qualifying investment within 45 days of the day on which the vendor is paid those proceeds, or, where the proceeds are paid in instalments, within 45 days of the day on which the vendor is paid the final instalment.
91. New subsection 809YA(7) provides that an officer of HM Revenue and Customs can extend the 45-day limit stipulated in Condition E in exceptional circumstances and when requested to do so by an individual whose income and gains would otherwise be treated as a taxable remittance.
92. New subsection 809YA(8) provides that the exemption for sales of exempt property does not apply in cases where such sales are made as

FINANCE BILL

part or as a result of a scheme whose main purpose or one of the main purposes of which is tax avoidance.

93. New subsection 809YA(9) provides that the term ‘relevant person’ in this section has the same meaning as that given in section 809M.
94. New section 809YB defines a number of terms used in section 809YA.
95. New subsection 809YB(2) defines ‘sale proceeds’ as the consideration for a sale less any agency fees which are deducted before being paid to the seller of the exempt property.
96. New subsection 809YB(3) defines ‘agency fees’ for the purposes of subsection 809YB(1) as any incidental costs of a sale charged to a seller of exempt property where they are charged by or through any person who effected the sale, but excluding any such costs which are either charged by a relevant person or applied for the benefit of a relevant person.
97. New subsection 809YB(4) provides that, for the purposes of Condition E, sale proceeds are ‘taken offshore’ where they are taken out of the UK in the same form in which they were paid to the seller such that they are no longer available for the use, enjoyment or benefit of any relevant person.
98. New subsection 809YB(5) provides that, for the purposes of Condition E, sale proceeds are ‘used to make a qualifying investment’ where they are used by a seller to make a qualifying investment as defined in section 809VB (as inserted by Part 2 of the Schedule).
99. New subsection 809YB(6) provides that any references in section 809YA to the payment of sale proceeds to the seller includes payments to any other person made on behalf of or at the discretion of the seller.
100. New section 809YC describes the effect of disapplying the rule in section 809Y(1) which would apply when property ceases to be exempt property in the absence of section 809YA.
101. New subsection 809YC(2) provides that the property will not be treated as having been remitted to the UK even though it is no longer exempt property as a result of being sold in the UK.
102. New subsection 809YC(3) provides that, notwithstanding subsection (2), nothing will prevent the underlying income and gains from being treated as remitted to the UK where anything is done with any part of the sale proceeds after they have been taken offshore or used to make a qualifying investment.
103. New subsection 809YC(4) defines ‘underlying income and gains’ for the purposes of subsection 809YA(3) as any part or all of the individual’s income and gains which were used to purchase the exempt

FINANCE BILL

property and therefore the income and gains from which the sale proceeds are derived.

104. New subsection 809YC(5) provides that where the proceeds of a sale of exempt property are used to make a qualifying investment in circumstances which meet Condition E, sections 809VA to 809VK as introduced by Part 2 of the Schedule apply to that investment in the same way as they would had the investment been made within the 45-day time period specified in section 809VA(5).
105. New subsection 809YC(6) provides that, for the purposes of this exemption, both a sale of exempt property and the taking of the proceeds offshore will be treated as an offshore transfer for purposes of section 809R(4).
106. Paragraph 10 of the Schedule provides that the exemption provided by paragraph 9 is available for all sales of exempt property sold on or after 6 April 2012.

Nominated Income

107. Part 4 of the Schedule amends the rules which determine the tax treatment of nominated income and gains remitted to the UK.
108. Paragraph 11 disapplies section 809I where the £10 test is not met.
109. Subparagraph 11(2) introduces the £10 test in subsection 809(1).
110. Subparagraph 11(3) defines a 'nomination year' for the purposes of section 809I as any year in which an individual has nominated income and gains under section 809C ITA.
111. Subparagraph 11(4) amends subsections 809I(5) and 809I(6) to introduce the £10 test. An individual will breach the £10 test in a tax year where they have remitted any of their nominated income and gains in that year and the amount of nominated income and gains from any one tax year which are remitted in that year exceeds £10. Provided an individual never nominates more than £10 of their foreign income or gains from a particular tax year, they will never breach the £10 test.
112. Paragraph 12 provides that the amendments to section 809I apply for the tax year 2012-13 or any subsequent tax year.

BACKGROUND NOTE

113. The remittance basis is an alternative basis of taxation which applies to foreign income and capital gains. It is available to UK residents who are either not ordinarily resident and/or not domiciled within the UK. Individuals who elect to be taxed on the remittance basis are liable to UK tax on all their income and capital gains which arise in the UK, but

FINANCE BILL

only liable to UK tax on their foreign income and capital gains to the extent that they are remitted to the UK.

114. The remittance basis rules were revised in Finance Act 2008. The main revisions were the introduction of a annual Remittance Basis Charge of £30,000 for individuals who had been resident in the UK for at least seven out of the preceding nine years and who wished to claim the remittance basis and a series of provisions to address a number of loopholes and anomalies in the previous remittance basis regime.
115. Further minor changes to the remittance basis were introduced in Finance Act 2009.
116. At Budget 2011, the Government announced a package of measure to reform the remittance basis with the aim of ensuring that non-domiciled individuals pay a fair tax contribution and encouraging them to invest in business. A number of technical simplifications to some aspects of the current rules to reduce undue administrative burdens were also announced.
117. On 17 June 2011, the Government published a consultation document, 'Reform of the taxation of non-domiciled individuals: a consultation' which sought views on the detailed design of the changes announced in the Budget. Consultation ended on 9 September 2011.
118. The main features of the proposed reforms were:
 - the introduction of a higher annual charge of £50,000 payable by individuals who claim the remittance basis and who have been resident in the UK for at least 12 of the 14 years prior to the year of claim;
 - a new relief to encourage investment by allowing remittance basis taxpayers to remit their foreign income and gains to the UK tax-free where they are used for the purpose of making a commercial investment in a company; and
 - a number of technical changes to simplify some aspects of the current remittance basis rules.
119. The Government published its response to the representations made during the consultation on 6 December.

Increased Remittance Basis Charge

120. Under section 809H ITA, individuals who have been resident in at least seven of the nine preceding tax years are required to pay an annual charge of £30,000 to access the remittance basis.
121. Part 1 of the Schedule introduces an increased annual charge of £50,000 payable by individuals who have been resident in the UK in at least 12

of the preceding 14 tax years. Those individuals who have been resident in the UK in at least seven of the nine preceding tax years and who claim the remittance basis will still be required to pay the annual charge of £30,000.

Remittance for Investment Purposes

122. Under the current remittance basis rules, individuals are liable to tax on the foreign income or capital gains which they remit to the UK, irrespective of the purpose for which those income and gains are used. This can discourage such individuals from making commercial investments in the UK. Part 2 of the Schedule seeks to remove this disincentive by providing a new tax relief which allows remittance basis taxpayers to bring their overseas income and gains to the UK without becoming liable to tax, provided they are brought to the UK for the purpose of making a qualifying investment.
123. To qualify for this exemption, the investment must be made in an eligible trading company or in an eligible stakeholder company.
124. To prevent abuse, there are a number of conditions to prevent an investor from using the exemption as a means of enjoying their overseas income and gains in the UK tax free.

Sales of Exempt Property

125. There are certain exceptions to the remittance basis rules in sections 809X to 809Z6 ITA whereby an individual can bring property purchased out of unremitted foreign income and gains to the UK without being taxed on the remittance. These exceptions are where the property is:
- a work of art, collectors' item or antique brought to the UK for the purposes of public display at an approved establishment;
 - an item of clothing, footwear, jewellery or watch for personal use;
 - brought to the UK for the purposes of repair or restoration;
 - imported into the UK temporarily for a period of no more than 275 days; or
 - worth less than £1,000.
126. Such property is defined as 'exempt property' in section 809X ITA. However, under section 809Y ITA, these exceptions are not available where the property is sold or otherwise converted into money whilst it is in the UK. This can be a disincentive to remittance basis taxpayers who wish to sell such property in the UK. The changes introduced by Part 3 of the Schedule seek to remove this disincentive by allowing exempt

FINANCE BILL

property to be sold in the UK without a tax liability arising when it is remitted.

127. The exemption for sales of exempt property is subject to the requirement that the sale proceeds are either taken out of the UK or used to make a qualifying investment within 45 days of the sale proceeds being paid to the seller.

Nominated Income

128. Under section 809H ITA, individuals who have been resident in at least seven of the nine preceding tax years are required to pay an annual charge of £30,000 to access the remittance basis. Part 1 of the Schedule introduces a further annual charge of £50,000 for individuals who have been resident in the UK in at least 12 of the preceding 14 tax years.
129. Under section 809C, individuals who claim the remittance basis are required to nominate some of their foreign income or gains each year in which they are liable to pay the annual remittance basis charge. This nominated amount forms the basis for calculating the charge.
130. Where such individuals remit the foreign income and gains which they have nominated under section 809C before any other unremitted foreign income and gains, the order in which income and gains are remitted is determined by sections 809I and 809J.
131. The amendments made by Part 4 of the Schedule allow such individuals to remit up to £10 each year of their income or gains which they have nominated without having to ensure they do not subsequently remit any part of that nominated amount into the UK.
132. An illustration of how the new rules work is set out below.
133. In year 1, an individual nominates £5 income and gains from that year which they remit to the UK. As the total amount of nominated income and gains remitted is less than £10, they do not meet the £10 test and section 809I does not apply.
134. In year 2, the individual nominates £20 from year 1, of which they remit £7. The amounts of nominated income and gains from year 1 exceeds £10, so section 809I will apply.
135. If you have any questions about this change, or comments on the draft legislation, please contact:

offshorepersonal.taxteam@hmrc.gsi.gov.uk