Information Note: Changes to the Remittance Basis

Information Note

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Introduction

This note provides information about proposed changes to the taxation of **resident**, **non-domiciled** and **not ordinarily resident** individuals who choose to be taxed on the **remittance basis** for the purpose of UK taxation. The changes are included in the Finance Bill and, subject to Parliamentary approval, will come into effect for the 2012-13 tax year. This note therefore cannot be relied upon as if it were HM Revenue & Customs' (HMRC) guidance on the final legislation as enacted by Parliament.

This Information Note is a simple introduction to the changes being made. If you require more detailed explanations, and wish to see references to the draft legislation, you should read the accompanying Guidance Note.

The Guidance Note and this Information Note, taken together, give you a comprehensive explanation of proposed changes to the taxation of non-domiciled individuals in the Finance Bill. If, having worked through them, you need clarification you can contact us. Our contact details are in Section 6.

Where we use a phrase that has a specific meaning or may require clarification, we have used **bold** text and you will find an explanation in the glossary at the end of this note.

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

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

This note applies to **you** if:

- you are **resident** in the UK but **non-domiciled** in the UK, or
- you are **resident** but **not ordinarily resident** in the UK

and you are thinking of claiming the **remittance basis** from the 2012-13 tax year for your foreign income or chargeable gains, or have claimed the remittance basis in the past. It explains changes to the remittance basis of taxation from 6 April 2012.

This note should be read together with the booklet Residence, Domicile and the Remittance Basis (HMRC6) and the Residence, Domicile and Remittance Basis Manual (RDRM) which explain the current rules.

Section 1

1 What changes are being made?

1.1 The Government is proposing the following changes:

- A higher **Remittance Basis** Charge of £50,000 for some **non-domiciled** individuals who have been UK **resident** for a long time and who choose to be taxed on the **remittance basis**.
- The introduction of a business investment relief for remittance basis users.
- A relief for sales of **exempt property** in the UK.
- Simplification of the remittance basis rules.

1.2 Further details of the changes in each of these areas are given in the following sections of this note:

- Higher Remittance Basis Charge – Section 2
- Business investment relief – Section 3
- Sales of exempt properties – Section 4
- Simplification of the existing remittance basis rules – Section 5

1.3 As mentioned in the Introduction, this note contains links to a more detailed explanation of the proposed changes in the Guidance Note. You should read this if you need in-depth guidance on what we say in this Information Note.

Section 2

2 Higher Remittance Basis Charge

2.1 From tax year 2012-13 a higher level annual Remittance Basis Charge of £50,000 is to be introduced if you:

- are **not domiciled** in the UK or **not ordinarily resident** in the UK
- are UK **resident** in a tax year
- make a claim to use the **remittance basis** in 2012-13 or in a later tax year; and
- have been resident in the UK in at least 12 of the 14 tax years before the year in which you make the claim.

2.2 The current £30,000 Remittance Basis Charge remains unchanged if you have been UK resident in at least seven of the previous nine tax years, but in less than 12 of the previous 14 tax years, you will not have to pay both charges in a tax year. The amount of the charge will be £30,000 or £50,000 depending on the length of your UK residence.

For more detail see our Guidance Note.

3 Business investment relief

Business investment relief for remittance basis users

3.1 If you are eligible and choose to pay tax on the **remittance basis**, you will not be liable to UK tax on your foreign income and gains which remain outside the UK. If you later bring your foreign income and gains to the UK, then a UK tax liability will arise on the remittance. However, a new relief for business investments by remittance basis users will allow **you** to use your foreign income or gains to make an investment without being treated as having made a remittance to the UK. 'You' includes any **relevant person** and is used in this context throughout this Information Note.

3.2 In order to qualify for the relief from UK tax a number of conditions must be met. In summary the main conditions are:

- you must make your investment (which may be in the form of shares or a loan) in a qualifying company that meets the eligibility conditions for the relief (referred to as a **target company**)
- your investment must be made within 45 days of your foreign income and gains being brought to the UK
- no **relevant person** is able to obtain benefits, either directly or indirectly, that are attributable to the investment
- you must make a claim for the relief from UK tax under this provision on your Self Assessment tax return for the year in which you make the investment
- when you dispose of the investment you must take the disposal proceeds (up to the amount of the investment) offshore or re-invest the proceeds in another qualifying investment within 45 days of the disposal.

The investment must not be made as part of a scheme or arrangement, the main purpose of which, or one of the main purposes of which, is tax avoidance.

3.3 If any of the conditions for this relief are breached, or certain other events occur (see paragraph 3.12), you will be treated as having remitted the amount of your investment to the UK and your remittance will be chargeable to UK tax, unless you take appropriate mitigation steps (see paragraph 3.13).

Money or other property used to make qualifying investments

3.4 This relief only applies if you were paying UK tax on the remittance basis in the tax year where the funds for making your qualifying investment arose. If you invest some of your foreign income and gains, the amount invested will be treated as not having been remitted to the UK, providing your investment meets Conditions A and B below.

Condition A

3.5 The company qualifies as a target company for business investment relief purposes if it is a private limited company which is an:

- eligible trading company, or
- eligible stakeholder company, or
- eligible holding company.

Other eligibility conditions apply to each of these companies - for more information on Condition A see Section 2 of the Guidance Note.

3.6 Any investment you make in non-corporate entities such as partnerships and sole proprietorships, or in companies which are not private limited companies or which are preparing to carry out research and development, will not qualify for the business investment relief.

Condition B

3.7 Neither you nor any other **relevant person** must have received or will receive any related benefit, or expect to do so, from your investment.

For more information on Condition B see Section 2 of the Guidance Note.

Investment time limit

3.8 You must make your investment in the target company within 45 days of bringing the money or property to the UK.

Example 1

Todd, a UK resident but non-UK domiciled individual, who is taxed on the remittance basis, agrees to invest £500,000 in an eligible trading company. On 6 April 2012 Todd transfers £500,000 of his foreign income and gains to his UK bank account.

On 1 May 2012, he makes his investment in the company. He is issued with shares in the company and he becomes a working director.

Todd is able to claim the business investment relief on the £500,000. The invested foreign income and gains are not taxed as a remittance to the UK.

Failure to invest within 45 days (abortive investments)

3.9 If you bring money or property into the UK, intending to make a qualifying investment, and the investment does not go ahead, you will not be treated as making a remittance provided you take the foreign income and gains back out of the UK within 45 days of the date they were brought in.

For more information see Section 2 of the Guidance Note

How do I claim this relief?

3.10 You must make a claim for business investment relief on your Self Assessment tax return. You should make the claim on or before the first anniversary of 31 January following the tax year in which you made the investment. We will provide more detail on making a claim in later guidance.

Example 2

Todd transferred his £500,000 foreign income and gains to the UK on 6 April 2012 (tax year 2012-13). The first 31 January after that tax year is 31 January 2014. The first anniversary of that is 31 January 2015.

Like most taxpayers, Todd will most likely make the claim when he submits his Self Assessment tax return for 2012-13 by the filing date of 31 January 2014.

Advance assurance for business investments

3.11 If you are considering making a commercial investment in a qualifying business, you may wish to ask HMRC for an opinion on whether your planned investment can be treated as a qualifying investment under the business investment relief provisions. The remittance basis user, or a person authorised to act on their behalf, may make this request using the CAP 1 service (How non-business customers or customers with a query about non-business activities get advice on HMRC's interpretation of recent tax legislation). You will be able to make these requests once the Finance Bill has received Royal Assent and we will update the CAP1 guidance to tell you what information to include in your request for an advance opinion and where to send it.

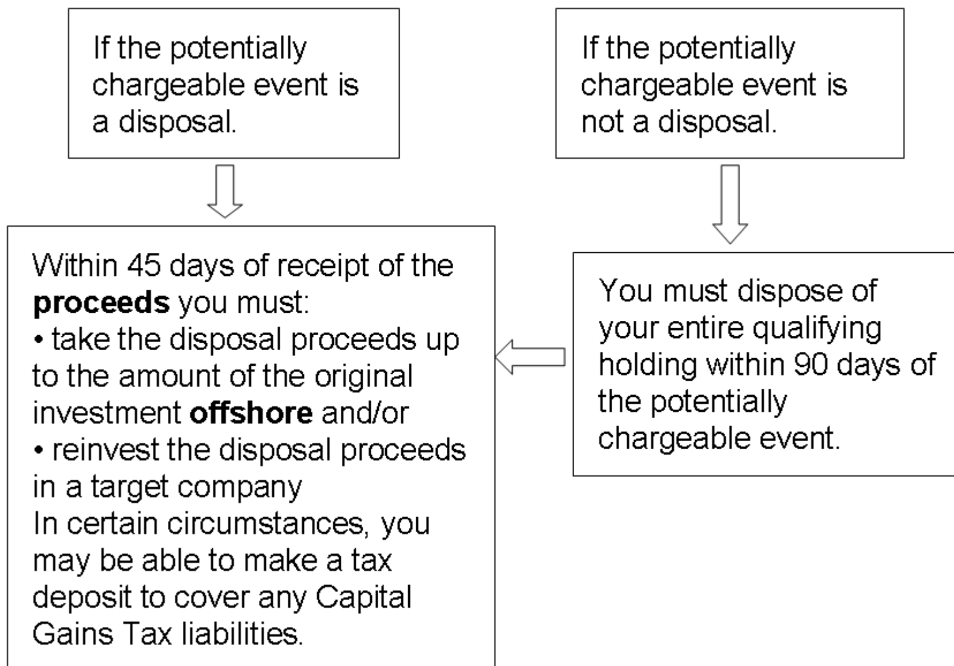
Income or gains treated as remitted following certain events

3.12 In certain circumstances, although the original investment qualifies for relief, subsequent events may result in some or all of this investment being treated as a remittance of your foreign income and gains to the UK. These are called potentially chargeable events and they occur when:

- you dispose of all or part of your investment
- the company in which you made your investment ceases to be a qualifying **target company**
- you breach the extraction of value rule
- you breach the 2-year start-up rule.

For more information see Section 2 of the Guidance Note.

3.13 Where there has been a potentially chargeable event, you will not be treated as having made a remittance, provided you take appropriate mitigation steps as set out in the diagram below.



For more information see Section 2 of the Guidance Note.

Example 3

In 2013 Todd decides to resign his directorship and dispose of his investment. On 27 March 2013 Todd sells all his shares in the company for £700,000 realising a gain of £200,000. The proceeds are paid into his UK bank account on 29 March 2013. On 19 April 2013 Todd arranges for £500,000 of the proceeds to be transferred to a new offshore bank account. The remaining £200,000 stays in his UK bank account to help finance the acquisition of a bungalow.

Todd has taken £500,000 (the full amount of his original investment) of the proceeds offshore within 45 days of receiving them and therefore can continue to treat this amount as not remitted to the UK. He must calculate his UK chargeable capital gain in the usual way, and declare it on his 2012-13 Self Assessment tax return.

3.14 In exceptional circumstances, HMRC may agree to extend the 45 day limit; see Section 2 of the Guidance Note.

What is the extraction of value rule?

3.15 The extraction of value rule means that if you receive any value, either in the form of money or in any other way, from anyone directly or indirectly linked to the investment, you are considered to have extracted value from the

company in which you have invested. Where this rule is breached, the investment will no longer qualify for the relief.

3.16 When the extraction of value rule is breached, you must dispose of your entire holding within 90 days of the day on which you extract the value. Once you have received the proceeds you have 45 days to take the proceeds offshore or use them to make a qualifying investment, otherwise you will be considered to have remitted your original investment to the UK.

3.17 An extraction of value does not occur where:

- you dispose of your holding, or
- where you receive something that is treated for income tax or corporation tax purposes as income or
- you are paid or provided with something in the ordinary course of business and on arm's length terms.

You can find full details on the extraction of value rule in Section 2 of the Guidance Note.

Example 4

Nelka sets up a trading company and she asks Luther to invest in her company. Luther is resident, but not domiciled, in the UK. He invests £1 million of his foreign income in the company and makes a valid claim to business investment relief on his Self Assessment tax return.

The company trades successfully and pays dividends to its shareholders, which Luther declares on his Self Assessment tax return. As the dividends are taxable in the UK, their receipt is not a potentially chargeable event.

Later, Nelka's company acquires an interest in a flat in Wimbledon and tickets for Centre Court, which it originally intended to use for marketing and publicity purposes. Instead, Luther and his family stay in the flat free of charge and use the tickets. This is an extraction of value by Luther.

If Luther does not carry out the mitigation steps, he will become taxable on the £1 million foreign income originally invested.

Example 5

If, in the previous example, Luther had paid a commercial rate for the use of the property and the Wimbledon tickets to Nelka's company, there would not be an extraction of value by Luther and he is not required to dispose of his investment.

For more information on the extraction of value rules see Section 2 of the Guidance Note.

2-year start-up rule

3.18 The 2-year start-up rule requires a target company to be operational within two years of you making a qualifying investment and to remain operational from then on. The 2-year start-up rule is breached if:

- immediately after the end of the period of two years, beginning with the day on which the investment was made, the target company is non-operational, or
- at any time after the end of the two years, the target company becomes non-operational.

For more information on breaching the 2-year start-up rule see Section 2 of the Guidance Note.

Insolvency

3.19 Certain insolvency steps which would otherwise trigger the potentially chargeable event provisions do not count as potentially chargeable events. For information about this please see Section 2 of the Guidance Note.

How much of the proceeds must I take offshore or reinvest?

3.20 The normal rule is that you must take **offshore** (remove from the UK) or reinvest an amount equal to your original investment. However, if the **proceeds** of the disposal are less than this, you only need to remove the amount you receive, less any agency fees.

Example 6

In May 2012 Constance invests £100,000 of her foreign income in Sparks Moore Limited, meeting all the conditions for relief. She will make a claim to the business investment relief in her 2012-13 Self Assessment tax return.

In February 2014, Constance decides to sell all her shares in the company. She receives £50,000 and takes these proceeds out of the UK within 45 days. Constance’s original claim to the relief for the £100,000 investment remains valid. She will also have a capital loss of £50,000 which she can claim against her UK gains.

3.21 If the proceeds exceed the amount of the original investment, then you only need remove the amount originally invested. Any gain you make on the investment is subject to normal UK Capital Gains Tax rules.

Example 7

Constance invests £100,000 in Sparks Moore Limited.

When she decides to sell all her shares in the company, she receives £115,000. Constance moves £100,000 of the proceeds out of the UK within 45 days of receiving the proceeds; her original claim to the business investment relief remains valid.

Constance will also have a capital gain of £15,000 which she will declare on her Self Assessment tax return.

For more information see Section 2 of Guidance Note.

Can I offset agency fees against the proceeds of my disposal?

3.22 Agency fees or incidental costs related to a disposal or part disposal of a qualifying investment, which are deducted from the consideration you receive, may be taken into account when calculating the amount you must take **offshore** or reinvest. Agency fees charged by a **relevant person** must relate to a service that is actually performed and be charged at commercial arm's length rates.

Example 8

Constance invests £100,000 in Sparks Moore Limited.

When she decides to sell all her shares in the company, Constance appoints a stockbroker. The stockbroker sells the shares for £100,000 and charges Constance fees of £3,000 which are deducted before they pay the proceeds to Constance's bank account. Constance takes £97,000 out of the UK within 45 days; her claim for the business investment relief remains valid.

For more information see Section 4 of Guidance Note.

Can I retain funds in the UK to pay Capital Gains Tax?

3.23 If you make a disposal or part disposal of your investment and make a capital gain, you can retain funds in the UK to pay the tax liability if the proceeds are less than the original investment. You can do this by making a tax deposit within 45 days of receiving the **proceeds,** under a modification of HMRC's **Certificate of Tax Deposit scheme.**

For more information see Section 2 of the Guidance Note.

What happens if I want to bring the proceeds back into the UK?

3.24 When you take the proceeds from the disposal of your investment **offshore** the proceeds will contain the same proportion of foreign income and gains you used to make the original investment. The normal remittance basis rules will apply to the foreign income and gains in the proceeds you have taken offshore.

Example 9

Continuing from Example 3, after Todd disposes of his investment and takes the entire £500,000 disposal proceeds offshore, he subsequently brings £250,000 back to the UK to purchase a holiday home.

The £250,000 is a taxable remittance of Todd's foreign income and gains.

What records should I keep if I claim this relief?

3.25 The onus of proof is on the person claiming the relief. If you claim business investment relief, you should keep appropriate evidence to:

- support your initial claim to the relief, and
- show that it continues to be a valid claim throughout the life of your investment.

For example, if you receive payments or other benefits from the company in which you have invested, you should be able to show that these occurred on arm's length terms.

Further advice on record keeping may be found on the HMRC website at Record keeping for tax - the basics.

4 Sales of exempt property

Sales of exempt property: Taxation of assets sold in the UK

4.1 **Exempt property** is property which has been purchased overseas using foreign income and gains and brought to the UK, where certain conditions are met.

4.2 If you bring exempt property to the UK and sell it (or otherwise convert it to money), for tax years up to and including 2011-12 the foreign income and gains are treated as having been remitted. For tax years 2012-13 onwards the original foreign income and gains will not be considered as remitted to the UK and the gain arising on the sale will not be treated as a UK gain, provided certain conditions are met.

4.3 The conditions are that:

- you must sell the exempt property to a person who is not a **relevant person**
- the sale must be by way of a bargain made at arm's length
- the proceeds of the sale must be received within 21 months of the end of the tax year in which the sale takes place
- once the sale is complete no relevant person;
  - has any interest in the property
  - is able to benefit in any way from the property or from anything derived from the property
  - is able to acquire any right (conditional or unconditional) to the property or to benefit from the property
- you need to take the entire sale proceeds offshore or invest them in a qualifying business investment within 45 days of receipt
- you must claim UK tax relief under this provision as part of your Self Assessment tax return, on or before 31 January following the end of the tax year in which the property was sold.

4.4 The sale must not be made as part of a scheme or arrangement, the main purpose of which, or one of the main purposes of which, is tax avoidance.

4.5 You must meet certain prescribed timescales in relation to:

- receipt of the sale proceeds,
- taking the proceeds of the sale offshore, or
- investing them (under the business investment relief provisions).

The example below illustrates the timescales and how the relief works. You can find full details in Section 3 of the Guidance Note.

Example 10

Mostyn is taxed on the remittance basis in 2012-13. During the course of the year he brought an antique vase to the UK which had been purchased using a mixture of his foreign income and gains; the vase is exempt property.

He sells the vase and receives £100,000 in the UK. Mostyn transfers this payment to an offshore account within 45 days of receipt of the payment, thus qualifying for the relief.

Had Mostyn decided instead to invest the proceeds in a qualifying company within 45 days (see Section 3) he would be eligible to claim business investment relief for the qualifying investment on his Self Assessment tax return in respect of the proceeds from the disposal.

What records should I keep if I claim this relief?

4.6 The onus of proof is on the person claiming relief from the UK tax. If you claim this relief, you should keep appropriate evidence to support your claim to the relief, such as evidence that the proceeds have been taken offshore within the time allowed.

4.7 Further advice on record keeping may be found on the HMRC website at Record keeping for tax - the basics.

5 Simplification of the remittance basis rules

5.1 There are two other changes which will simplify the **remittance basis** rules in the following areas:

- nominated income
- foreign currency bank accounts

Further detail on each of these changes is given below.

Nominated income

5.2 If you claim the remittance basis and are liable to pay the Remittance Basis Charge you are required to nominate some of your foreign income and gains on your Self Assessment tax return for that year.

5.3 The foreign income and gains you nominate cannot be treated as remitted to the UK before any other foreign income and gains your have overseas, and there are special ordering rules to ensure this is the case.

5.4 However from tax year 2012-13 onwards you can remit nominated income up to £10 for any tax year for which you made a nomination without becoming subject to the ordering rules. This means you will not need to keep detailed records of your nominated foreign income and gains in any tax year provided you nominate no more than £10 for that tax year.

For further information see Section 5 of the Guidance Note.

Foreign currency bank accounts

5.5 If you have bank accounts denominated in a currency other than sterling, for tax years up to and including 2011-12, any withdrawals from the account are part disposals of chargeable assets for Capital Gains Tax purposes. Because of fluctuations in international currency exchange rates, a capital gain or loss can arise every time a withdrawal is made from such accounts. This could create the need for a significant number of detailed Capital Gains Tax calculations in a tax year. From 6 April 2012 the proposed change removes your foreign currency bank accounts from the Capital Gains Tax charge and you will no longer need to make these complex calculations.

For further information see Section 5 of the Guidance Note.

Section 6

6 Additional information about the taxation of non-domiciled individuals

This is available in:

- Booklet HMRC6 - Residence, Domicile and the Remittance Basis explains the rules that apply to tax years up to 5 April 2012. This is available on the HMRC website at: http://www.hmrc.gov.uk/cnr/hmrc6.pdf
- The Residence, Domicile and Remittance Basis Manual - RDRM 20000. This is available on the HMRC website at: http://www.hmrc.gov.uk/manuals/rdrmmanual/RDRM20000.htm

We will update the booklet HMRC6 and the RDRM after these proposed changes become law.

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

General technical questions on the changes to the taxation of **non-domiciled** individuals covered by this information note can be sent to: offshorepersonal.taxteam@hmrc.gsi.gov.uk

Glossary

Certificate of Tax Deposit scheme

Under the Certificate of Tax Deposit scheme you can deposit money with HMRC and use it later to pay your liabilities for certain taxes. The business investment relief allows you to make tax deposits under this scheme to cover potential Capital Gains Tax liabilities on your qualifying investments in certain circumstances. Your tax deposits with HMRC attract interest on a daily basis for up to six years. Every time you make a tax deposit with HMRC, you will be issued with a Certificate of Tax Deposit. You must keep these certificates, as you will need them later to use your deposits to pay a tax liability or to withdraw them.

Eligible trading companies, eligible stakeholder companies and eligible holding companies

All these are target companies and you can make qualifying investments in them for the purpose of business investment relief. See Section 2 of the Guidance Note for further information.

Exempt property

Exempt property is property deriving wholly or partly from foreign income or gains which meet certain conditions. For further information see the Residence, Domicile and Remittance Basis Manual RDRM34070:

Nominated income or gains

These are your foreign income or gains of a tax year that, as a long-term **resident** remittance basis user, you nominate and on which you pay the Income Tax or Capital Gains Tax that will constitute the Remittance Basis Charge for that tax year. These must be reported on your Self Assessment tax return.

Non-domiciled

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

Offshore

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

Ordinarily resident

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

Proceeds

Broadly the consideration for the disposal less agency fees incurred. For further detail, see section 4 of the Guidance Note.

Relevant person

A relevant person is someone, for example family members, or other close associates or entities, who may remit an individual's foreign income and gains or benefit from or enjoy them in the UK. For further information see the Residence, Domicile and Remittance Basis Manual RDRM33030:

You will find more detail in our Guidance Note.

Remittance basis

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

If you use the remittance basis, your foreign income and foreign chargeable gains (where you are a non-UK domiciled individual) are subject to UK Income Tax or Capital Gains Tax only when remitted to the UK.

Resident

There is currently no legal definition of residence for tax purposes. The current rules are based on a mixture of legislation and case law. Residence, in part, depends on the amount of time an individual spends in the UK. However, other non-time factors can be significant, such as accommodation, family, economic interests and social ties. The booklet Residence, Domicile and the Remittance Basis (HMRC6) gives more detail.

Target company

This includes eligible trading companies, eligible stakeholder companies and eligible holding companies. There are a number of limitations around companies that you may invest in and these are discussed at paragraph 3.5 of this information note.

Tax deposit

See Certificate of Tax Deposit scheme definition above.

You

You, in this information note, should be read as also applying, where appropriate, to a **relevant person**.