TAXREP 16/12

(ICAEW REP 39/12)

ICAEW TAX REPRESENTATION

REFORM OF THE TAXATION OF NON-DOMICILED INDIVIDUALS

Comments submitted on 9 March 2012 by ICAEW Tax Faculty in response to HM Revenue and Customs consultation on Finance Bill 2012 – additional draft clauses issued on 24 February 2012

Contents

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the draft legislation on *Retention of funds to meet CGT liabilities* issued by HM Revenue & Customs (HMRC) on 24 February 2012.

2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

3. We are grateful to have had the opportunity to clarify aspects of the draft clauses with HMRC to better understand them before commenting thereon.

4. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

WHO WE ARE

5. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 136,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

6. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

7. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

KEY POINT SUMMARY

8. We welcome the opportunity to comment on the draft clauses. However, we found the two new sections of the draft legislation, sections 809VI and 809VL, difficult to understand and in parts otiose.

9. The policy intention, at para 2.19 of the consultation document *Reform of the taxation of non-domiciled individuals*, was that the investment incentive should be free of unnecessary restrictions and easy to use. These provisions, in connection with the retention of funds to meet capital gains tax (CGT) liabilities, fail on both counts.

10. We are unclear why it was deemed necessary for the funds to be deposited in a Certificate of Tax Deposit (CTD) rather than being retained in a UK bank account until the due date for payment. Any excess funds retained could then be required to be exported within a specified time, say 14 days, of the due date. If the funds were removed from the account at any time between sale and the tax payment date, other than for re-investment, a charge would arise. This would be far simpler for the investor and the paper trail is preserved.

11. We also consider it inequitable that, in effect, an investor is settling their CGT liability in advance of the due date for payment. A part disposal early in a tax year could have funds in

a CTD for a period of 21 months. As there is currently no interest paid on deposits of less than £100,000 this makes the proposal even less appealing to a prospective investor. If the investor wanted to withdraw funds from the CTD, perhaps for the purpose of re-investment, the process is particularly cumbersome and protracted. We note from HMRC's website that it is necessary to send the CTD, together with a written request, to HMRC and that a repayment will 'usually' be made within 12 working days.

12. We do not understand why the draft legislation on this matter could not be contained in one section. The failure to do so leads to unnecessary repetition, for example s 809VL (1), and could cause confusion. We set out below our detailed comments on the draft clauses.

DETAILED COMMENTS

13. Section 809VI (1)(a) – as the section can never apply where there is a disposal of all of a holding the words 'all or' should be removed. The implication of including these words is that there may be occasions when the provisions will apply to the disposal of all of a holding, which is misleading.

14. Section 809VI (1)(b) – we query when a part disposal will not qualify as 'a potentially chargeable event or is part of the appropriate mitigation steps taken in consequence of a potentially chargeable event'. The definition of a potentially chargeable event in s 809VF specifically includes a part disposal of the holding as such an event. We do not understand why it is deemed necessary to include this as a condition as it would be impossible for there to be a disposal and this condition not to be fulfilled.

15. Section 809VI (1)(c) – the words in brackets '(but not a loss)' are superfluous and should be removed. The section is headed retention of funds to meet CGT liabilities and s 809VI (1)(d) states that P is chargeable to capital gains tax on the gain. There can be no CGT liability if there is a loss.

16. Section 809VI (1)(d) – the words in brackets '(but not corporation tax)' are superfluous and should be removed. The sub-section has already specified that P is chargeable to capital gains tax and we cannot envisage any situation where P could be subject to corporation tax on the gain. Furthermore current CTDs cannot, in any event, be used to settle corporation tax liabilities.

17. Section 809VI (7)(a) – the legislation needs to specify to whom the notification is to be made. Is it the taxpayers own tax office or the CTD team? As most CTDs will be made by electronic transfer the notification will not be able to be made at the same time. We suggest that the legislation should include a time limit, say 14 days, for the notification to be made following the purchase of the CTDs.

18. Section 809VL (1) – this section merely repeats the provisions of s 809VI. We suggest that sections 809VI and 809VL are merged, excluding ss (1), so that all the provisions with respect to the CTD are in one place. This would greatly assist those reading the legislation.

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APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.

3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.

4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.

5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.

6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.

7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.

8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.

9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.

10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see icaew.com/en/technical/tax/tax-faculty/~/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)

APPENDIX 2

Section {j616a}

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 incidential 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 809VK 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 with the applicable day.

(2) The applicable day is—

(a) if the potentially chargeable event is a disposal of all or part of the holding, the day on which the proceeds are paid to a relevant person,

(b) if the potentially chargeable event is breach of the extraction of value rule, the day on which the value is received, and

(c) for any other case, the day on which a relevant person became aware or ought reasonably to have become aware of the potentially chargeable event.

(3) 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 case, 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.

(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, on previous occasions involving the same qualifying investment—

(i) been treated as remitted under section 809VE(2),

(ii) been taken offshore or re-invested by way of appropriate mitigation steps taken within the applicable grace period, or

(iii) been used to make a tax deposit without which the amount actually taken offshore or re-invested would not have been enough to satisfy subsection (1) or (2)(b) (see section 809VI).

(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) Subsections (1) and (2)(b) may be satisfied by taking the whole proceeds offshore or re-investing them, or by taking one part offshore and re-investing the other part.

(9) Where proceeds are re-invested within the grace period, section 809VE applies to the re-investment as it applies to the original investment.

809VI Retention of funds to meet CGT liabilities

(1) This section applies if—
  (a) there is a disposal of all or part of the holding,
  (b) the disposal counts as a potentially chargeable event or is part of the appropriate mitigation steps taken in consequence of a potentially chargeable event,
  (c) a chargeable gain (but not a loss) accrues to P on the disposal,
  (d) P is chargeable to capital gains tax (but not corporation tax) in respect of that gain, and
  (e) the proceeds are less than Y.

(2) The difference between the proceeds and Y is referred to in this section as "the shortfall".

(3) "Y" is the sum of—
  (a) the amount (if any) that would, but for this section, be required to be taken offshore or re-invested in order to satisfy section 809VH(1) or (2)(b), and
  (b) the amount found by applying the highest applicable CGT rate to the amount (computed in accordance with TCGA 1992) of the chargeable gain accruing to P on the disposal.

(4) The highest applicable CGT rate is—
  (a) if the chargeable gain accrues to P as the trustees of a settlement or accrues to the personal representatives of P, the rate specified in section 4(3) of TCGA 1992, and
  (b) otherwise, the rate specified in section 4(4) of that Act (regardless of the rate at which income tax is chargeable in respect of P's income).

(5) If this section applies, the amount that is required to be taken offshore or re-invested in order to satisfy section 809VH(1) or (2)(b) is reduced by the permitted amount.

(6) "The permitted amount" is so much of the shortfall as is used within the grace period (see section 809VG) to make a deposit in respect of which a certificate of tax deposit is issued to P under section 12 of the National Loans Act 1968.

(7) A reduction may not be made under subsection (5) unless—

(a) when the deposit is made, Her Majesty's Revenue and Customs is notified in writing that this section is intended to apply to the deposit, and

(b) the amount of the deposit is no greater than the shortfall.

809VJ The proceeds

(1) In sections 809VG to 809VI, in relation to a disposal of all or part of the holding, "the proceeds" means—

(a) the consideration for the disposal, less

(b) 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).

809VK 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.

809VL Cases involving tax deposits

(1) This section applies in a case where—

(a) section 809VE(2) did not apply to the case because the appropriate mitigation steps were taken within the grace period,

(b) the amount required to be taken offshore or re-invested in order to satisfy section 809VH(1) or (2)(b) had been reduced under section 809VI, and

(c) but for that reduction, the amount that was actually taken offshore or re-invested would not have been enough in that case to satisfy section 809VH(1) or (2)(b).

(2) Use of the tax deposit to pay the relevant tax liability does not count as remitting the underlying income or gains to the United Kingdom (and, accordingly, section 809VA(2) continues to apply to the income or gains).

(3) If any of the CTD conditions is breached, the underlying income or gains are to be treated as having been remitted to the United Kingdom immediately after the day on which the breach occurs.

(4) "The underlying income or gains" means such portion of the affected income or gains (within the meaning of section 809VE) as is—

(a) represented by the payment, in the case of subsection (2), or

(b) affected by the breach, in the case of subsection (3).

(5) That portion is to be determined on a just and reasonable basis.

(6) The CTD conditions are as follows—

(a) the tax deposit must not be used to pay a tax liability other than the relevant tax liability,

(b) if any of the tax deposit is withdrawn by the depositor, the amount withdrawn must be taken offshore or re-invested within the period of 45 days beginning with the day on which the withdrawal was made, and

(c) any part of the tax deposit that has been neither used to pay a tax liability nor withdrawn by the due date must be withdrawn by the depositor and taken offshore or re-invested within the period of 45 days beginning with that date.

(7) For the purposes of this section—

(a) "the tax deposit" means the tax deposit that gave rise to the reduction under section 809VI,

(b) "the relevant tax liability" means P's liability to capital gains tax for the tax year in which the disposal took place,

(c) "the due date" means the date by which the relevant tax liability is required to be paid, and

(d) references to withdrawal include repayment for whatever reason.

(8) Subsections (5) to (9) of section 809VH apply to the tax deposit as they apply to the proceeds, reading—

(a) references to the grace period as references to the 45-day period mentioned in subsection (6)(b) or (c) of this section, and

(b) the reference to subsection (1) or (2)(b) as a reference to subsection (6)(b) or (c) of this section.

809VM 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) use of any of the proceeds to make a deposit in respect of which a certificate of tax deposit is issued under section 12 of the National Loans Act 1968,

(d) the taking offshore of any of the proceeds or any of the tax deposit,

(e) the re-investment of any of the proceeds or any of the tax deposit,

(f) a withdrawal by the depositor of any of the tax deposit, and

(g) use of any of the tax deposit to pay a tax liability other than the relevant tax liability.

(3) Section 809Q applies in determining under section 809P the amount of income or gains treated under section 809VE(2) or 809VL(3) 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.