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## SCHEDULES

### SCHEDULE 7

Section 25

#### REMITTANCE BASIS

#### PART 1

#### MAIN PROVISIONS

##### *Remittance basis general*

- 1 In Part 14 of ITA 2007 (income tax liability: miscellaneous rules), before Chapter 1 insert—

#### “CHAPTER A1

#### REMITTANCE BASIS

##### *Introduction*

#### **Overview of Chapter**

- 809A This Chapter provides for an alternative basis of charge in the case of individuals who are not domiciled in the United Kingdom or are not ordinarily UK resident.

##### *Application of remittance basis*

#### **Claim for remittance basis to apply**

- 809B(1) This section applies to an individual for a tax year if the individual—
- (a) is UK resident in that year,
  - (b) is not domiciled in the United Kingdom in that year or is not ordinarily UK resident in that year, and
  - (c) makes a claim under this section for that year.
- (2) The claim must contain one or both of the following statements—
- (a) that the individual is not domiciled in the United Kingdom in that year;
  - (b) that the individual is not ordinarily UK resident in that year.
- (3) Sections 42 and 43 of TMA 1970 (procedure and time limit for making claims), except section 42(1A) of that Act, apply in relation to a claim under this section as they apply in relation to a claim for relief.

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### **Claim for remittance basis by long-term UK resident: nomination of foreign income and gains to which section 809H(2) is to apply**

- 809C) This section applies to an individual for a tax year if the individual—
- (a) is aged 18 or over in that year, and
  - (b) has been UK resident in at least 7 of the 9 tax years immediately preceding that year.
- (2) A claim under section 809B by the individual for that year must contain a nomination of the income or chargeable gains of the individual for that year to which section 809H(2) is to apply.
  - (3) The income or chargeable gains nominated must be part (or all) of the individual's foreign income and gains for that year.
  - (4) The income and chargeable gains nominated must be such that the relevant tax increase does not exceed £30,000.
  - (5) “The relevant tax increase” is—
    - (a) the total amount of income tax and capital gains tax payable by the individual for that year, minus
    - (b) the total amount of income tax and capital gains tax that would be payable by the individual for that year apart from section 809H(2).
  - (6) See section 809Z7 for the meaning of an individual's foreign income and gains for a tax year.

### **Application of remittance basis without claim where unremitted foreign income and gains under £2,000**

- 809D) This section applies to an individual for a tax year if—
- (a) the individual is UK resident in that year,
  - (b) the individual is not domiciled in the United Kingdom in that year or is not ordinarily UK resident in that year, and
  - (c) the amount of the individual's unremitted foreign income and gains for that year is less than £2,000.
- (2) The amount of an individual's “unremitted” foreign income and gains for a tax year is—
    - (a) the total amount of what would (if this section applied) be the individual's foreign income and gains for that year, minus
    - (b) the total amount of those income and gains that are remitted to the United Kingdom in that year.

### **Application of remittance basis without claim: other cases**

- 809E) This section applies to an individual for a tax year if—
- (a) the individual is UK resident in that year,
  - (b) the individual is not domiciled in the United Kingdom in that year or is not ordinarily UK resident in that year,
  - (c) the individual has no UK income or gains for that year,

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- (d) no relevant income or gains are remitted to the United Kingdom in that year, and
- (e) either—
  - (i) the individual has been UK resident in not more than 6 of the 9 tax years immediately preceding that year, or
  - (ii) the individual is under 18 throughout that year.
- (2) For the purposes of subsection (1)(c) the individual's UK income and gains for the tax year are the individual's income and chargeable gains for that year other than what would (if this section applied) be the individual's foreign income and gains for that year.
- (3) For the purposes of subsection (1)(d) relevant income and gains are—
  - (a) what would (if this section applied) be the individual's foreign income and gains for the tax year mentioned in subsection (1), and
  - (b) the individual's foreign income and gains for every other tax year for which section 809B or 809D or this section applies to the individual.

*Effect of section 809B, 809D or 809E applying*

#### **Effect on what is chargeable**

- 809(F) This section applies if section 809B, 809D or 809E applies to an individual for a tax year.
  - (2) The individual's relevant foreign earnings for that year are charged in accordance with section 22 or 26 of ITEPA 2003.
  - (3) The individual's relevant foreign income for that year is charged in accordance with section 832 of ITTOIA 2005.
  - (4) If the individual is not domiciled in the United Kingdom in that year, the individual's foreign chargeable gains for that year are charged in accordance with section 12 of TCGA 1992.
  - (5) For the effect on amounts which count as employment income of the individual under certain provisions of Part 7 of ITEPA 2003 (employment-related securities), see Chapter 5A of Part 2 of that Act.
  - (6) Nothing in this section applies in relation to nominated income or chargeable gains (see section 809H).

#### **Claim for remittance basis: effect on allowances etc**

- 809(G) This section applies if section 809B (claim for remittance basis to apply) applies to an individual for a tax year.
  - (2) For that year, the individual is not entitled to—
    - (a) any allowance under Chapter 2 of Part 3 (personal allowance and blind person's allowance),
    - (b) any tax reduction under Chapter 3 of that Part (tax reductions for married couples and civil partners), or

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- (c) any relief under section 457, 458 or 459 (payments for life insurance etc).
- (3) See also section 3(1A) of TCGA 1992 (no annual exempt amount for chargeable gains).

### **Claim for remittance basis by long-term UK resident: charge**

809H) This section applies if—

- (a) section 809B (claim for remittance basis to apply) applies to an individual for a tax year (“the relevant tax year”),
  - (b) the individual is aged 18 or over in the relevant tax year, and
  - (c) the individual has been UK resident in at least 7 of the 9 tax years immediately preceding the relevant tax year.
- (2) Income tax is charged on nominated income, and capital gains tax is charged on nominated chargeable gains, as if section 809B did not apply to the individual for the relevant tax year (and neither did section 809D).
- (3) “Nominated” income or chargeable gains means income or chargeable gains nominated under section 809C in the individual's claim under section 809B for the relevant tax year.
- (4) If the relevant tax increase would otherwise be less than £30,000, subsection (2) has effect as if—
- (a) in addition to the income and gains actually nominated under section 809C in the individual's claim under section 809B for the relevant tax year, an amount of income had been nominated so as to make the relevant tax increase equal to £30,000, and
  - (b) the individual's income for that year were such that such a nomination could have been made (if that is not the case).
- (5) “The relevant tax increase” is—
- (a) the total amount of income tax and capital gains tax payable by the individual for the relevant tax year, minus
  - (b) the total amount of income tax and capital gains tax that would be payable by the individual for the relevant tax year apart from subsection (2).
- (6) Nothing in subsection (4) affects what is regarded, for the purposes of section 809I or 809J, as nominated under section 809C.

### **Remittance basis charge: income and gains treated as remitted**

809I) This section applies if—

- (a) any of an individual's nominated income and gains is remitted to the United Kingdom in a tax year, and
  - (b) any of the individual's remittance basis income and gains has not been remitted to the United Kingdom in or before that year.
- (2) Income tax and capital gains tax are charged, for that year and subsequent tax years, as if the income and chargeable gains treated under section 809J as remitted to the United Kingdom by the individual in that tax year had been

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so remitted (and income and chargeable gains of the individual that were actually remitted in that year had not been).

- (3) An individual's "nominated income and gains" are the total income and chargeable gains nominated by the individual under section 809C for the tax year mentioned in subsection (1)(a) or any earlier tax year.
- (4) An individual's "remittance basis income and gains" are the foreign income and gains of the individual for all the tax years (up to and including the tax year mentioned in subsection (1)(a)) for which section 809B, 809D or 809E applies to the individual, apart from the individual's nominated income and gains.

### **Section 809I: order of remittances**

809I(1) If section 809I applies, the following steps are to be taken for the purpose of determining the income or gains treated in a tax year ("the relevant tax year") as remitted to the United Kingdom by the individual.

#### *Step 1*

Find the total amount of—

- (a) the individual's nominated income and gains, and
- (b) the individual's remittance basis income and gains,

that have been remitted to the United Kingdom in the relevant tax year.

This amount is "the relevant amount".

#### *Step 2*

Find the amount of foreign income and gains of the individual for the relevant tax year (other than income or chargeable gains nominated under section 809C) that is within each of the categories of income and gains in paragraphs (a) to (h) of subsection (2).

If none of sections 809B, 809D and 809E apply to the individual for that year, treat those amounts as nil (and accordingly go to step 6).

#### *Step 3*

Find the earliest paragraph for which the amount determined under step 2 is not nil.

If that amount does not exceed the relevant amount, treat the individual as having remitted the income or gains within that paragraph (and for that tax year).

Otherwise, treat the individual as having remitted the relevant proportion of each kind of income or gains within that paragraph (and for that tax year).

"The relevant proportion" is the relevant amount divided by the amount determined under step 2 for that paragraph.

#### *Step 4*

Reduce the relevant amount by the amount taken into account under step 3.

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### Step 5

If the relevant amount (as reduced under step 4) is not nil, start again at step 3.

In step 3, read the reference to the earliest paragraph of the kind mentioned there as a reference to the earliest such paragraph which has not previously been taken into account under that step.

### Step 6

If the relevant amount (as reduced) is not nil once steps 3 to 5 have been undertaken in relation to all paragraphs of subsection (2) for which the amount determined under step 2 is not nil, start again at step 2.

In step 2, read the reference to the foreign income and gains of the individual for the relevant tax year as a reference to such of the foreign income and gains of the individual for the appropriate tax year as had not been remitted by the beginning of the relevant tax year.

“The appropriate tax year” is the latest tax year which is—

- (a) before the last tax year for which step 2 has been undertaken, and
- (b) a tax year for which section 809B, 809D or 809E applies to the individual.

(2) The kinds of income and gains are—

- (a) relevant foreign earnings (other than those subject to a foreign tax),
- (b) foreign specific employment income (other than income subject to a foreign tax),
- (c) relevant foreign income (other than income subject to a foreign tax),
- (d) foreign chargeable gains (other than gains subject to a foreign tax),
- (e) relevant foreign earnings subject to a foreign tax,
- (f) foreign specific employment income subject to a foreign tax,
- (g) relevant foreign income subject to a foreign tax, and
- (h) foreign chargeable gains subject to a foreign tax.

(3) In this section the individual's “nominated income and gains” are the total income and chargeable gains nominated by the individual under section 809C for the relevant tax year or any earlier tax year.

(4) In step 1 of subsection (1) the individual's “remittance basis income and gains” are the foreign income and gains of the individual for all the tax years (up to and including the relevant tax year) for which section 809B, 809D or 809E applies to the individual, apart from the individual's nominated income and gains.

(5) In step 6 of subsection (1) the reference to income or gains being remitted is—

- (a) as respects any tax year before section 809I applies, to income or gains being remitted to the United Kingdom, and
- (b) as respects any tax year in relation to which that section applies, to income or gains treated under this section as so remitted.

(6) In subsection (2) “foreign tax” means any tax chargeable under the law of a territory outside the United Kingdom.

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### *Remittance of income and gains: introduction*

#### **Sections 809L to 809Z6: introduction**

809K1) Sections 809L to 809Z6 apply for the purposes of—

- (a) this Chapter,
- (b) sections 22 and 26 of ITEPA 2003 (relevant foreign earnings charged on remittance basis),
- (c) section 41A of that Act (specific employment income from securities etc charged on remittance basis),
- (d) section 832 of ITTOIA 2005 (relevant foreign income charged on remittance basis), and
- (e) section 12 of TCGA 1992 (foreign chargeable gains charged on remittance basis).

(2) Those sections—

- (a) explain what is meant by income or chargeable gains being “remitted to the United Kingdom” (sections 809L to 809O),
- (b) provide for the calculation of the amount remitted (section 809P),
- (c) contain rules for attributing transfers from mixed funds to particular kinds of income and capital (sections 809Q to 809S),
- (d) contain supplementary provision for certain cases (sections 809T and 809U), and
- (e) treat income or chargeable gains as not remitted to the United Kingdom in certain cases (sections 809V to 809Z6).

### *Remittance of income and gains: meaning of “remitted to the United Kingdom”*

#### **Meaning of “remitted to the United Kingdom”**

809L1) An individual's income is, or chargeable gains are, “remitted to the United Kingdom” if—

- (a) conditions A and B are met,
- (b) condition C is met, or
- (c) condition D is met.

(2) Condition A is that—

- (a) money or other property is brought to, or received or used in, the United Kingdom by or for the benefit of a relevant person, or
- (b) a service is provided in the United Kingdom to or for the benefit of a relevant person.

(3) Condition B is that—

- (a) the property, service or consideration for the service is (wholly or in part) the income or chargeable gains,
- (b) the property, service or consideration—
  - (i) derives (wholly or in part, and directly or indirectly) from the income or chargeable gains, and

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- (ii) in the case of property or consideration, is property of or consideration given by a relevant person,
  - (c) the income or chargeable gains are used outside the United Kingdom (directly or indirectly) in respect of a relevant debt, or
  - (d) anything deriving (wholly or in part, and directly or indirectly) from the income or chargeable gains is used as mentioned in paragraph (c).
- (4) Condition C is that qualifying property of a gift recipient—
- (a) is brought to, or received or used in, the United Kingdom, and is enjoyed by a relevant person,
  - (b) is consideration for a service that is enjoyed in the United Kingdom by a relevant person, or
  - (c) is used outside the United Kingdom (directly or indirectly) in respect of a relevant debt.
- (5) Condition D is that property of a person other than a relevant person (apart from qualifying property of a gift recipient)—
- (a) is brought to, or received or used in, the United Kingdom, and is enjoyed by a relevant person,
  - (b) is consideration for a service that is enjoyed in the United Kingdom by a relevant person, or
  - (c) is used outside the United Kingdom (directly or indirectly) in respect of a relevant debt,
- in circumstances where there is a connected operation.
- (6) In a case where subsection (4)(a) or (b) or (5)(a) or (b) applies to the importation or use of property, the income or chargeable gains are taken to be remitted at the time the property or service is first enjoyed by a relevant person by virtue of that importation or use.
- (7) In this section “relevant debt” means a debt that relates (wholly or in part, and directly or indirectly) to—
- (a) property falling within subsection (2)(a),
  - (b) a service falling within subsection (2)(b),
  - (c) qualifying property dealt with as mentioned in subsection (4)(a),
  - (d) a service falling within subsection (4)(b),
  - (e) qualifying property dealt with as mentioned in subsection (5)(a), or
  - (f) a service falling within subsection (5)(b).
- (8) For the purposes of this section, the reference to a debt that relates to property or a service includes a debt for interest on money lent, where the lending relates to the property or service.
- (9) The cases in which income or chargeable gains are used in respect of a debt include cases where income or chargeable gains are used to pay interest on the debt.
- (10) This section is subject to sections 809V to 809Z6 (property treated as not remitted to the United Kingdom).



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### Meaning of “relevant person”

809M) This section applies for the purposes of sections 809L, 809N and 809O.

- (2) A “relevant person” is—
- (a) the individual,
  - (b) the individual's husband or wife,
  - (c) the individual's civil partner,
  - (d) a child or grandchild of a person falling within any of paragraphs (a) to (c), if the child or grandchild has not reached the age of 18,
  - (e) a close company in which a person falling within any other paragraph of this subsection is a participator,
  - (f) a company in which a person falling within any other paragraph of this subsection is a participator, and which would be a close company if it were resident in the United Kingdom,
  - (g) the trustees of a settlement of which a person falling within any other paragraph of this subsection is a beneficiary, or
  - (h) a body connected with such a settlement.
- (3) For that purpose—
- (a) a man and woman living together as husband and wife are treated as if they were husband and wife,
  - (b) two people of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other,
  - (c) “close company” has the same meaning as in the Corporation Tax Acts (see sections 414 and 415 of ICTA),
  - (d) “settlement” and “settlor” have the same meaning as in Chapter 2 of Part 9,
  - (e) “beneficiary”, in relation to a settlement, means any person who receives, or may receive, any benefit under or by virtue of the settlement,
  - (f) “trustee” has the same meaning as in section 993 (see, in particular, section 994(3)), and
  - (g) a body is “connected with” a settlement if the body falls within section 993(3)(c), (d), (e) or (f) as regards the settlement.

### Section 809L: gift recipients, qualifying property and enjoyment

809N) This section applies for the purposes of determining whether or not income or chargeable gains of an individual are remitted to the United Kingdom by virtue of condition C in section 809L.

- (2) A “gift recipient” means a person, other than a relevant person, to whom the individual makes a gift of money or other property that—
- (a) is income or chargeable gains of the individual, or
  - (b) derives (wholly or in part, and directly or indirectly) from income or chargeable gains of the individual.

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- (3) The question of whether or not a person is a relevant person is to be determined by reference to the time when a gift is made.
- (4) But, if a person to whom a gift is made subsequently becomes a relevant person, the person ceases to be a gift recipient.
- (5) The individual “makes a gift of” property if the individual disposes of the property—
- (a) for no consideration, or
  - (b) for consideration less than the full consideration in money or money's worth that would be given if the disposal were by way of a bargain made at arm's length;
- but, in a case falling in paragraph (b), the individual is to be taken to make a gift of only so much of the property as exceeds the consideration actually given.
- (6) A reference to the individual making a gift of property includes a case where—
- (a) the individual retains an interest in the property, or
  - (b) an interest, right or arrangement enables or entitles the individual to benefit from the property.
- (7) “Qualifying property”, in relation to a gift recipient, is—
- (a) the property that the individual gave to the gift recipient,
  - (b) anything that derives (wholly or in part, and directly or indirectly) from that property, or
  - (c) any other property, but only if it is dealt with as mentioned in section 809L(4)(a), (b) or (c) by virtue of an operation which is effected—
    - (i) with reference to the gift of the property to the gift recipient, or
    - (ii) with a view to enabling or facilitating the gift of the property to the gift recipient to be made.
- (8) In subsection (7)—
- (a) the reference in paragraph (b) to anything deriving from property, and
  - (b) the reference in paragraph (c) to other property,
- includes a thing, or property, that does not belong to the individual but which the individual is enabled or entitled to benefit from by virtue of any interest, right or arrangement.
- (9) Enjoyment by a relevant person of property or a service is to be disregarded in any of these cases—
- (a) if the property or service is enjoyed virtually to the entire exclusion of all relevant persons,
  - (b) if full consideration in money or money's worth is given by a relevant person for the enjoyment, or
  - (c) if the property or service is enjoyed by relevant persons in the same way, and on the same terms, as it may be enjoyed by the general public or by a section of the general public.

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### **Section 809L: dealings where there is a connected operation**

- 809L(1) This section applies for the purposes of determining whether or not income or chargeable gains of an individual are remitted to the United Kingdom by virtue of condition D in section 809L.
- (2) For the purposes of section 809L(5), the question of whether or not the person whose property is dealt with as mentioned in paragraph (a), (b) or (c) of section 809L(5) is a relevant person is to be determined by reference to the time when the property is so dealt with.
- (3) A “connected operation”, in relation to property dealt with as mentioned in section 809L(5)(a), (b) or (c), means an operation which is effected—
- with reference to a qualifying disposition, or
  - with a view to enabling or facilitating a qualifying disposition.
- (4) A “qualifying disposition” is a disposition that—
- is made by a relevant person,
  - is made to, or for the benefit of, the person whose property is dealt with as mentioned in section 809L(5)(a), (b) or (c), and
  - is a disposition of money or other property that is, or derives (wholly or in part, and directly or indirectly) from, income or chargeable gains of the individual.
- (5) But a disposition of property is not a qualifying disposition if the disposition is, or is part of, the giving of full consideration in money or money's worth for the dealing that falls within section 809L(5)(a), (b) or (c).
- (6) Enjoyment by a relevant person of property or a service is to be disregarded in any of these cases—
- if the property or service is enjoyed virtually to the entire exclusion of all relevant persons,
  - if full consideration in money or money's worth is given by a relevant person for the enjoyment, or
  - if the property or service is enjoyed by relevant persons in the same way, and on the same terms, as it may be enjoyed by the general public or by a section of the general public.

*Remittance of income and gains: amount remitted*

### **Section 809L: amount remitted**

- 809L(1) The amount of income or chargeable gains remitted to the United Kingdom is to be determined as follows.
- (2) If the property, service or consideration is the income or chargeable gains, the amount remitted is equal to the amount of the income or chargeable gains.
- (3) If the property, service or consideration derives from the income or chargeable gains, the amount remitted is equal to the amount of income or chargeable gains from which the property, service or consideration derives.

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- (4) If the income or chargeable gains are used as mentioned in section 809L(3)(c), the amount remitted is equal to the amount of income or chargeable gains used; but this is subject to subsection (10).
- (5) If anything deriving from the income or chargeable gains is used as mentioned in section 809L(3)(c), the amount remitted is equal to the amount of income or chargeable gains from which what is used derives; but this is subject to subsection (10).
- (6) In a case falling within section 809L(4)(a) or (b), the amount remitted is equal to the amount of the relevant income or chargeable gains.
- (7) In a case falling within section 809L(4)(c), the amount remitted is equal to the amount of the relevant income or chargeable gains; but this is subject to subsection (10).
- (8) In a case falling within section 809L(5)(a) or (b), the amount remitted is equal to the amount of the income or chargeable gains referred to in section 809O(4)(c).
- (9) In a case falling within section 809L(5)(c), the amount remitted is equal to the amount of the income or chargeable gains referred to in section 809O(4)(c); but this is subject to subsection (10).
- (10) If the debt is only partly in respect of the property or service, the amount remitted is (if it would otherwise be greater) limited to the amount the debt would be if it were wholly in respect of the property or service.
- (11) In subsections (6) and (7) “relevant income or chargeable gains” means—
  - (a) if the qualifying property falls within section 809N(7)(a), the income or gains—
    - (i) of which the qualifying property consists, or
    - (ii) from which the qualifying property derives;
  - (b) if the qualifying property falls within section 809N(7)(b), the income or gains—
    - (i) of which the property given to the gift recipient consisted, or
    - (ii) from which that property derived;
  - (c) if the qualifying property falls within section 809N(7)(c), the income or gains—
    - (i) of which the property given to the gift recipient consists, or
    - (ii) from which that property derives.
- (12) If the amount remitted (taken together with any amount previously remitted) would otherwise exceed the amount of the income or chargeable gains, the amount remitted is limited to the amount which (when taken together with any amount previously remitted) is equal to the amount of the income or chargeable gains.

*Status: Point in time view as at 01/12/2009.*

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*Remittance of income and gains: transfers from mixed funds*

**Sections 809L and 809P: transfers from mixed funds**

809Q(1) This section applies for the purposes mentioned in subsection (2) where condition A in section 809L is met and—

- (a) the property or consideration for the service is (wholly or in part), or derives (wholly or in part, and directly or indirectly) from, a transfer from a mixed fund, or
  - (b) a transfer from a mixed fund, or anything deriving (wholly or in part, and directly or indirectly) from such a transfer, is used as mentioned in section 809L(3)(c).
- (2) The purposes referred to in subsection (1) are—
- (a) determining whether condition B in section 809L is met, and
  - (b) if it is met, determining (under section 809P) the amount of income or chargeable gains remitted.
- (3) The extent to which the transfer is of the individual's income or chargeable gains is to be determined as follows.

*Step 1*

For each of the categories of income and capital in paragraphs (a) to (i) of subsection (4), find (applying section 809R) the amount of income or capital of the individual for the relevant tax year in the mixed fund immediately before the transfer.

“The relevant tax year” is the tax year in which the transfer occurs.

*Step 2*

Find the earliest paragraph for which the amount determined under step 1 is not nil.

If that amount does not exceed the amount of the transfer, treat the transfer as containing the income or capital within that paragraph (and for that tax year).

Otherwise, treat the transfer as containing the relevant proportion of each kind of income or capital within that paragraph (and for that tax year).

“The relevant proportion” is the amount of the transfer divided by the amount determined under step 1 for that paragraph.

*Step 3*

Treat the amount of the transfer as reduced by the amount taken into account under step 2.

*Step 4*

If the amount of the transfer (as reduced under step 3) is not nil, start again at step 2.

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In step 2, read the reference to the earliest paragraph of the kind mentioned there as a reference to the earliest such paragraph which has not previously been taken into account under that step in relation to the transfer.

*Step 5*

If the amount of the transfer (as reduced under step 3) is not nil once steps 2 and 3 have been undertaken in relation to all paragraphs of subsection (4) for which the amount determined under step 1 is not nil, start again at step 1.

In step 1, read the reference to the relevant tax year as a reference to the tax year immediately before the last tax year for which step 1 has been undertaken in relation to the transfer.

- (4) The kinds of income and capital are—
- (a) employment income (other than income within paragraph (b), (c) or (f)),
  - (b) relevant foreign earnings (other than income within paragraph (f)),
  - (c) foreign specific employment income (other than income within paragraph (f)),
  - (d) relevant foreign income (other than income within paragraph (g)),
  - (e) foreign chargeable gains (other than chargeable gains within paragraph (h)),
  - (f) employment income subject to a foreign tax,
  - (g) relevant foreign income subject to a foreign tax,
  - (h) foreign chargeable gains subject to a foreign tax, and
  - (i) income or capital not within another paragraph of this subsection.
- (5) In subsection (4) “foreign tax” means any tax chargeable under the law of a territory outside the United Kingdom.
- (6) In this section “mixed fund” means money or other property which, immediately before the transfer, contains or derives from—
- (a) more than one of the kinds of income and capital mentioned in subsection (4), or
  - (b) income or capital for more than one tax year.
- (7) References in this section to the amount of the transfer include the market value of it.
- (8) References in this section and section 809R to anything deriving from income or capital within paragraph (i) of subsection (4) do not include—
- (a) income or gains within any of paragraphs (a) to (h) of that subsection, or
  - (b) anything deriving from such income or gains.

**Section 809Q: composition of mixed fund**

809R) This section applies for the purposes of step 1 of section 809Q(3) (composition of mixed fund).

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- (2) Treat property which derives wholly or in part (and directly or indirectly) from an individual's income or capital for a tax year as consisting of or containing that income or capital.
- (3) If a debt relating (wholly or in part, and directly or indirectly) to property is at any time satisfied (wholly or in part) by—
  - (a) an individual's income or capital for a tax year, or
  - (b) anything deriving (directly or indirectly) from such income or capital,from that time treat the property as consisting of or containing the income or capital if and to the extent that it is just and reasonable to do so.
- (4) Treat an offshore transfer from a mixed fund as containing the appropriate proportion of each kind of income or capital in the fund immediately before the transfer.

“The appropriate proportion” means the amount (or market value) of the transfer divided by the market value of the mixed fund immediately before the transfer.
- (5) A transfer from a mixed fund is an “offshore transfer” for the purposes of subsection (4) if and to the extent that section 809Q does not apply in relation to it.
- (6) Treat a transfer from a mixed fund as an “offshore transfer” (and section 809Q as not applying in relation to it, if it otherwise would do) if and to the extent that, at the end of a tax year in which it is made—
  - (a) section 809Q does not apply in relation to it, and
  - (b) on the basis of the best estimate that can reasonably be made at that time, section 809Q will not apply in relation to it.
- (7) In this section ‘mixed fund’ means money or other property containing or deriving from—
  - (a) more than one of the kinds of income and capital mentioned in section 809Q(4), or
  - (b) income or capital for more than one tax year.
- (8) If section 809Q applies in relation to part of a transfer, apply that section in relation to that part before applying subsection (4) in relation to the rest of the transfer.
- (9) If section 809Q applies in relation to more than one transfer from a mixed fund, when undertaking step 1 in relation to the second or any subsequent transfer take into account the effect of step 2 of section 809Q(3) (composition of transfer) as it applied in relation to each earlier transfer.

#### **Section 809Q: anti-avoidance**

- 809Q(S) This section applies if, by reason of an arrangement the main purpose (or one of the main purposes) of which is to secure an income tax advantage or capital gains tax advantage, a mixed fund would otherwise be regarded as containing income or capital within any of paragraphs (f) to (i) of section 809Q(4).

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- (2) Treat the mixed fund as containing so much (if any) of the income or capital as is just and reasonable.
- (3) “Arrangement” includes any scheme, understanding, transaction or series or transactions (whether or not enforceable).
- (4) “Income tax advantage” has the meaning given by section 683.
- (5) “Capital gains tax advantage” means—
  - (a) a relief from capital gains tax or increased relief from capital gains tax,
  - (b) a repayment of capital gains tax or increased repayment of capital gains tax,
  - (c) the avoidance or reduction of a charge to capital gains tax or an assessment to capital gains tax, or
  - (d) the avoidance of a possible assessment to capital gains tax.

*Remittance of income and gains: supplementary*

**Foreign chargeable gains accruing on disposal made other than for full consideration**

809(I) This section applies if—

- (a) foreign chargeable gains accrue to an individual on the disposal of an asset, and
  - (b) the individual does not receive consideration for the disposal of an amount equal to the market value of the asset.
- (2) For the purposes of this Chapter treat the asset as deriving from the chargeable gains.

**Deemed income or gains not to be regarded as remitted before time when they are treated as arising or accruing**

809U Where—

- (a) income or foreign chargeable gains are treated as arising or accruing, and
- (b) by virtue of anything done in relation to anything regarded as deriving from the income or chargeable gains, the income or chargeable gains would otherwise be regarded as remitted to the United Kingdom before the time when they are treated as arising or accruing,

treat the income or chargeable gains as remitted to the United Kingdom at that time.



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*Remittance of income and gains: property treated as not remitted*

**Money paid to the Commissioners**

- 809W) Money that is brought to the United Kingdom by way of one or more direct payments to the Commissioners is to be treated as not remitted to the United Kingdom—
- (a) if the payments are made in relation to a tax year to which section 809H applies, and
  - (b) if, or to the extent that, the payments do not exceed £30,000.
- (2) Subsection (1) does not apply to a payment if, or to the extent that, it is repaid by the Commissioners.

**Consideration for certain services**

- 809W) This section applies to income or chargeable gains if—
- (a) the income or gains would (but for subsection (2)) be regarded as remitted to the United Kingdom because conditions A and B in section 809L are met,
  - (b) condition A in section 809L is met because a service is provided in the United Kingdom (“the relevant UK service”), and
  - (c) condition B in section 809L is met because section 809L(3)(a) or (b) applies to the consideration for the relevant UK service (“the relevant consideration”).
- (2) The income or chargeable gains are to be treated as not remitted to the United Kingdom if the following conditions are met; but this is subject to subsection (5).
- (3) Condition A is that the relevant UK service relates wholly or mainly to property situated outside the United Kingdom.
- (4) Condition B is that the whole of the relevant consideration is given by way of one or more payments to one or more bank accounts held outside the United Kingdom by or on behalf of the person who provides the relevant UK service.
- (5) Subsection (2) does not apply if the relevant UK service relates (to any extent) to the provision in the United Kingdom of—
- (a) a benefit that is treated as deriving from the income by virtue of section 735, or
  - (b) a relevant benefit within the meaning of section 87B of TCGA 1992 that is treated as deriving from the chargeable gains by virtue of that section.
- (6) Sections 275 to 275C of TCGA 1992 (location of assets) apply for the purposes of subsection (3) as they apply for the purposes of TCGA 1992.

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### **Exempt property**

- 809X1) Exempt property which is brought to, or received or used in, the United Kingdom in circumstances in which section 809L(2)(a) applies is to be treated as not remitted to the United Kingdom.
- (2) Subsections (3) to (5) set out the cases in which property is exempt property.
- (3) Property is exempt property if it meets the public access rule (see sections 809Z and 809Z1).
- (4) Clothing, footwear, jewellery and watches that derive from relevant foreign income are exempt property if they meet the personal use rule (see section 809Z2).
- (5) Property of any description that derives from relevant foreign income is exempt property if—
- (a) the property meets the repair rule (see section 809Z3),
  - (b) the property meets the temporary importation rule (see section 809Z4), or
  - (c) the notional remitted amount (see section 809Z5) is less than £1,000.

### **Property that ceases to be exempt property treated as remitted**

- 809Y1) Property that ceases to be exempt property is to be treated as having been remitted to the United Kingdom at the time it ceases to be exempt property.
- (2) Property ceases to be exempt property in either of the following cases.
- (3) The first case is where the whole or part of the exempt property is sold, or otherwise converted into money, whilst it is in the United Kingdom.
- (4) The second case is where the property—
- (a) is exempt property only because it meets one or more of the relevant rules,
  - (b) ceases to meet that rule, or all of those rules, whilst it is in the United Kingdom, and
  - (c) does not meet any other relevant rule.
- (5) In this section—
- “money” includes—
- (a) a traveller's cheque,
  - (b) a promissory note,
  - (c) a bill of exchange, and
  - (d) any other—
    - (i) instrument that is evidence of a debt, or
    - (ii) voucher, stamp or similar token or document which is capable of being exchanged for money, goods or services, and
- “relevant rule” means—
- (a) the public access rule,
  - (b) the personal use rule,

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- (c) the repair rule, and
- (d) the temporary importation rule.

### **Public access rule: general**

809Z1) Property meets the public access rule if conditions A to D are met.

- (2) Condition A is that the property is—
  - (a) a work of art,
  - (b) a collectors' item, or
  - (c) an antique,within the meaning of Council Directive [2006/112/EC](#) (see, in particular, Annex IX to that Directive).
- (3) Condition B is that—
  - (a) the property is available for public access at an approved establishment,
  - (b) the property is to be available for public access at an approved establishment and, in connection with its being so available, is in transit to, or in storage at, public access rule premises, or
  - (c) the property has been available for public access at an approved establishment and, in connection with its having been so available, is in transit from, or in storage at, public access rule premises.
- (4) Property is “available for public access” at an approved establishment if the property is—
  - (a) on public display at the establishment,
  - (b) held by the establishment and made available to the public on request for viewing or for educational use, or
  - (c) held by the establishment for public exhibition in connection with the sale of the property.
- (5) An “approved establishment” is—
  - (a) an approved museum, gallery or other institution within the meaning of Group 9 of Schedule 2 to the Value Added Tax (Imported Goods) Relief Order 1984, or
  - (b) any other person, premises or institution designated (or of a description designated) by the Commissioners.
- (6) “Public access rule premises” are—
  - (a) premises in the United Kingdom at which the property is to be, or has been, available for public access, or
  - (b) other commercial premises in the United Kingdom used by the approved establishment for the storage of property in advance of its being, or after its having been, available for public access at the approved establishment.
- (7) Condition C is that, during the relevant period, the property meets condition B for no more than—
  - (a) two years, or
  - (b) such longer period as the Commissioners may specify.

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- (8) “The relevant period” means the period—
- (a) beginning with the importation of the property, and
  - (b) ending when it ceases to be in the United Kingdom after that importation.
- (9) “Importation” means the property being brought to, or received or used in, the United Kingdom in circumstances in which section 809L(2)(a) applies.
- (10) Condition D is that the property attracts a relevant VAT relief (see section 809Z1).

### **Public access rule: relevant VAT relief**

809Z(1) Property “attracts a relevant VAT relief” if any of conditions 1 to 4 is met.

- (2) Condition 1 is that article 5(1) of the Value Added Tax (Imported Goods) Relief Order 1984 applies in relation to the importation of the property by virtue of Group 9 of Schedule 2 to that Order (importation of works of art or collectors' pieces by museums etc).
- (3) Condition 2 is that article 5(1) would so apply if the following requirements were disregarded—
  - (a) the requirement that the importation be from a third country, and
  - (b) the requirement that the purpose of the importation be a purpose other than sale.
- (4) Condition 3 is that article 576(3)(a) of Commission Regulation ([EEC](#)) No 2454/93 (relief from import duties for works of art etc imported for the purposes of exhibition, with a view to possible sale) applies in relation to the importation of the property.
- (5) Condition 4 is that article 576(3)(a) would so apply if the requirement that the importation be from a third country were disregarded.
- (6) Where the property does not meet condition B in section 809Z at the time of its importation it is to be assumed for the purposes of this section that the property was imported on the day during the relevant period when the property first meets that condition.
- (7) “The relevant period” and “importation” have the same meaning as in section 809Z and “imported” is to be read accordingly.

### **Personal use rule**

809Z(2) Clothing, footwear, jewellery or watches meet the personal use rule if they—

- (a) are property of a relevant person, and
  - (b) are for the personal use of a relevant individual.
- (2) In this section—
- (a) “relevant person” has the meaning given by section 809M, and
  - (b) “relevant individual” means an individual who is a relevant person by virtue of section 809M(2)(a), (b), (c) or (d) (the individual with income or gains, or a husband, wife, civil partner, child or grandchild).

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### **Repair rule**

- 809Z(1) Property meets the repair rule for the whole of the relevant period if, during the whole of that period, the property meets the repair conditions.
- (2) Property meets the repair rule for a part of the relevant period if—
- (a) during the whole of that part of that period, the property meets the repair conditions, and
  - (b) during the whole of the other part of that period, or the whole of each other part of that period, the property meets the repair conditions or the public access rule.
- (3) Property meets the repair conditions if the property—
- (a) is under repair or restoration,
  - (b) is in transit from a place outside the United Kingdom to repair rule premises, in transit between such premises, or in storage at such premises, in advance of repair or restoration, or
  - (c) is in storage at such premises, in transit between such premises, or in transit from such premises to a place outside the United Kingdom, following repair or restoration.
- (4) “Repair rule premises” means—
- (a) premises in the United Kingdom that are to be used, or have been used, for the repair or restoration referred to in subsection (3)(b) or (c), or
  - (b) other commercial premises in the United Kingdom used by the restorer for the storage of property in advance of, or following, repair or restoration of property by the restorer.
- (5) “Restorer” means the person who is to carry out, or has carried out, the repair or restoration referred to in subsection (3)(b) or (c).
- (6) Property meets the repair conditions, or the public access rule, during the whole of a period, or the whole of part of a period, if the property meets those conditions or that rule—
- (a) on the whole of, or on part of, the first day of that period or part period,
  - (b) on the whole of, or on part of, the last day of that period or part period, and
  - (c) on the whole of each other day of that period or part period.
- (7) “The relevant period” has the same meaning as in section 809Z.

### **Temporary importation rule**

- 809Z(1) Property meets the temporary importation rule if the total number of countable days is 275 or fewer.
- (2) A “countable day” is a day on which, or on part of which, the property is in the United Kingdom by virtue of being brought to, or received or used in, the United Kingdom in circumstances in which section 809L(2)(a) applies

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(whether the current case, or a past case, when the property was so brought, received or used).

- (3) A day is not a countable day if, on that day or any part of that day—
- (a) the property meets the personal use rule,
  - (b) the property meets the repair rule, or
  - (c) the notional remitted amount in relation to the property is less than £1,000.
- (4) A day on which, or on part of which, the property meets the public access rule (the “relevant day”) is not a countable day if any of conditions A to C is met.
- (5) Condition A is that the property meets the public access rule during the whole of the period of importation in which the relevant day falls.
- (6) Condition B is that—
- (a) the property does not meet the public access rule during the whole of the period of importation in which the relevant day falls, and
  - (b) that period of importation—
    - (i) begins with a period of no public access, and
    - (ii) ends with a period of public access which immediately follows that period of no public access.
- (7) Condition C is that—
- (a) the property does not meet the public access rule during the whole of the period of importation in which the relevant day falls, and
  - (b) during the parts, or each of the parts of the period of importation during which the property does not meet the public access rule it meets the repair conditions.
- (8) Section 809Z3(6) applies for the purposes of this section.
- (9) “Period of importation” means a period that—
- (a) begins when property is brought to, or received or used in, the United Kingdom in circumstances in which section 809L(2)(a) applies, and
  - (b) ends when the property ceases to be in the United Kingdom after having been so brought, received or used.
- (10) “Period of no public access” means a period which is not a period of public access and “period of public access” means a period during the whole of which property meets the public access rule.

### **Notional remitted amount**

- 809Z5(1) The “notional remitted amount”, in relation to property, is the amount of income that would be taken to be remitted to the United Kingdom in relation to the property (if section 809X did not apply in relation to the property).
- (2) If—
- (a) property forms part of a set, and
  - (b) only part of the set is in the United Kingdom,

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the notional remitted amount is such part of the amount specified in subsection (3) as is just and reasonable having regard to the part of the set that actually is in the United Kingdom.

- (3) That amount is the amount that would be taken to be remitted to the United Kingdom if the complete set had been brought to, or received or used in, the United Kingdom, at the same time as the part in question.

### **Exempt property: other interpretation**

809Z(6) This section applies for the purposes of sections 809X to 809Z5.

- (2) “Property” does not include money.
- (3) In subsection (2) “money” includes—
- (a) a traveller's cheque,
  - (b) a promissory note,
  - (c) a bill of exchange, and
  - (d) any other—
    - (i) instrument that is evidence of a debt, or
    - (ii) voucher, stamp or similar token or document which is capable of being exchanged for money, goods or services.
- (4) References to property being in the United Kingdom are references to the property—
- (a) being in the United Kingdom after being brought to, or received in, the United Kingdom in circumstances in which section 809L(2)(a) applies, or
  - (b) being used in the United Kingdom in circumstances in which section 809L(2)(a) applies.

### *Interpretation of Chapter*

### **Interpretation of Chapter**

809Z(7) This section applies for the purposes of this Chapter.

- (2) An individual's “foreign income and gains” for a tax year are—
- (a) the individual's relevant foreign earnings for that year,
  - (b) the individual's foreign specific employment income for that year,
  - (c) the individual's relevant foreign income for that year, and
  - (d) if the individual is not domiciled in the United Kingdom in that year, the individual's foreign chargeable gains for that year.
- (3) An individual's “relevant foreign earnings” for a tax year are—
- (a) if the individual is ordinarily UK resident in that year, the individual's chargeable overseas earnings for that year, and
  - (b) otherwise, the individual's general earnings within section 26(1) of ITEPA 2003 for that year (non-UK earnings).

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- (4) An individual's "foreign specific employment income" for a tax year is such of the individual's specific employment income for that year as is foreign securities income for the purposes of section 41A of ITEPA 2003.
- (5) An individual's "foreign chargeable gains" for a tax year are the foreign chargeable gains (within the meaning of section 12(4) of TCGA 1992) accruing to the individual in that year.
- (6) In subsection (3)(a) "chargeable overseas earnings" has the same meaning as in section 22 of ITEPA 2003 (see section 23 of that Act).
- (7) "The Commissioners" means the Commissioners for Her Majesty's Revenue and Customs."

#### *Employment income*

- 2 ITEPA 2003 is amended as follows.
- 3 (1) Section 6 (nature of charge to tax on employment income) is amended as follows.
  - (2) In subsection (3), omit the "and" at the end of paragraph (a), and after that paragraph insert—
    - “(aa) whether section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to an employee for a tax year, and”.
  - (3) After that subsection insert—
    - “(3A) The rules in Chapter 5A, which are concerned with the matters mentioned in subsection (3)(a) to (b), apply for the purposes of the charge to tax on certain specific employment income arising under Part 7 (securities etc).”
- 4 (1) Section 10 (meaning of "taxable earnings" etc) is amended as follows.
  - (2) In subsection (2), for the words after "with" substitute " Chapters 4 and 5 of this Part ”.
  - (3) After subsection (3) insert—
    - “(4) Subsection (3) is subject to Chapter 5A of this Part (certain specific employment income under Part 7: individuals to whom to remittance basis applies).”
- 5 (1) Section 13 (person liable to tax) is amended as follows.
  - (2) After subsection (4) insert—
    - “(4A) If the tax is on specific employment income received, or remitted to the United Kingdom, after the death of the person in relation to whom the income is, by virtue of Part 7, to count as employment income, the person's personal representatives are liable for the tax.”
  - (3) In subsection (5), for "In that event" substitute " If subsection (4) or (4A) applies, ”.
- 6 For the heading of Chapter 4 of Part 2 substitute " TAXABLE EARNINGS: UK RESIDENT EMPLOYEES ”.
- 7 In section 14(1) (taxable earnings under Chapter 4: introduction), for "resident, ordinarily resident and domiciled in UK" substitute " UK resident ”.



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- 8 For the heading before section 15 substitute “ UK resident employees ”.
- 9 (1) Section 15 (earnings for year when employee resident, ordinarily resident and domiciled in UK) is amended as follows.
- (2) In subsection (1), for the words from “resident”, in the first place, to the end substitute “ UK resident. ”
- (3) For subsection (3) substitute—
- “(3) Subsection (2) applies whether or not the employment is held when the earnings are received.”
- (4) Accordingly, in the heading, for “**resident, ordinarily resident and domiciled in UK**” substitute “ **UK resident** ”.
- 10 For the title to Chapter 5 of Part 2 substitute “ Taxable earnings: remittance basis rules and rules for non-uk resident employees ”.
- 11 (1) Section 20 (taxable earnings under Chapter 5: introduction) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) This Chapter—
- (a) contains provision for calculating what are taxable earnings from certain kinds of employment in a tax year for which section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee, and
- (b) sets out what are taxable earnings from an employment in a tax year in which the employee is non-UK resident.”
- (3) In subsection (2), omit paragraphs (b) and (c).
- (4) In subsection (3), for “the sections listed in subsection (1)” substitute “ sections 22, 26 and 27 ”.
- 12 For the heading before section 21 substitute “ *Remittance basis rules for UK ordinarily resident employees* ”.
- 13 Omit section 21 (earnings for year when employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings).
- 14 (1) Section 22 (chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK) is amended as follows.
- (2) In subsection (1), for the words from “in which” to the end substitute “, to the extent that they are chargeable overseas earnings for that year, if—
- (a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee for that year, and
- (b) the employee is ordinarily UK resident in that year.”
- (3) For subsection (3) substitute—
- “(3) Subsection (2) applies whether or not the employment is held when the earnings are remitted.”
- (4) In subsection (4), omit the words after “year”.
- (5) In subsection (5)(b), for “section 21” substitute “ section 15 ”.

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- (6) After subsection (5) insert—
- “(6) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.
- (7) General earnings for the employee for the tax year fall within section 15(1) to the extent that they do not fall within subsection (1).”
- (7) Accordingly, in the heading, for the words from “employee” to the end substitute “**remittance basis applies and employee ordinarily UK resident**”.
- 15 (1) Section 23 (calculation of chargeable overseas earnings) is amended as follows.
- (2) In subsection (1), for “sections 21 and” substitute “ section ”.
- (3) In subsection (2), for paragraph (a) substitute—
- “(a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee for that year,
- (aa) the employee is ordinarily UK resident in that year.”.
- 16 In section 24(7) (limit on chargeable overseas earnings where duties of associated employment performed in UK), for “section 21(1)” substitute “ section 15(1) ”.
- 17 For the heading before section 25 substitute “ *Remittance basis rules: employees not UK ordinarily resident* ”.
- 18 Omit section 25 (UK-based earnings for year when employee resident, but not ordinarily resident, in UK).
- 19 (1) Section 26 (foreign earnings for year when employee resident, but not ordinarily resident, in UK) is amended as follows.
- (2) In subsection (1), for the words from “in which” to “they” substitute “ where section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee for that year and the employee is not ordinarily UK resident in that year, if the general earnings ”.
- (3) For subsection (3) substitute—
- “(3) Subsection (2) applies whether or not the employment is held when the earnings are remitted.”
- (4) After subsection (4) insert—
- “(5) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.
- (6) General earnings for the employee for the tax year fall within section 15(1) if they do not fall within subsection (1).”
- (5) Accordingly, in the heading, for the words from “employee” to the end substitute “**remittance basis applies and employee not ordinarily UK resident**”.
- 20 (1) Section 27 (UK-based earnings for year when employee non-UK resident) is amended as follows.
- (2) For subsection (3) substitute—

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“(3) Subsection (2) applies whether or not the employment is held when the earnings are received.”

(3) After subsection (4) insert—

“(5) Sections 18 and 19 (time when earnings are received) apply for the purposes of this section.”

21 Omit sections 31 to 37 (and the heading before section 31).

22 After section 41 insert—

## “CHAPTER 5A

### TAXABLE SPECIFIC INCOME: EFFECT OF REMITTANCE BASIS

#### **41A Taxable specific income from employment-related securities: effect of remittance basis**

- (1) This section applies if—
  - (a) an amount within subsection (2) counts as employment income of an individual for a tax year in respect of an employment (“the securities income”), and
  - (b) any part of the relevant period (see section 41B) is within a tax year for which section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual.
- (2) An amount is within this subsection if it counts as employment income under any provision of any of Chapters 2, 3 and 3C to 5 of Part 7 (employment-related securities etc) except section 446UA.
- (3) The reference in subsection (2) to an amount that counts as employment income under any of the provisions mentioned there does not include an amount which counts as employment income by virtue of any provision of Chapter 3A or 3B of Part 7.
- (4) An amount equal to—

#### SI – FSI

is an amount of “taxable specific income” from the employment for the tax year mentioned in subsection (1)(a).

- (5) In subsection (4)—
  - (a) SI is the amount of the securities income, and
  - (b) FSI is the amount of the securities income that is “foreign” (see sections 41C to 41E).
- (6) The full amount of any of the foreign securities income which is remitted to the United Kingdom in a tax year is an amount of “taxable specific income” from the employment for that year.
- (7) Subsection (6) applies whether or not the employment is held when the foreign securities income is remitted.

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- (8) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis), treat the relevant securities or securities option as deriving from the foreign securities income.
- (9) But where—
- (a) the chargeable event is the disposal of the relevant securities or the assignment or release of the relevant securities option, and
  - (b) the individual receives consideration for the disposal, assignment or release of an amount equal to or exceeding the market value of the relevant securities or securities option,
- for the purposes of that Chapter treat the consideration (and not the relevant securities or securities option) as deriving from the foreign securities income.
- (10) In this section and section 41B—
- “the chargeable event” means the event giving rise to the securities income, and
- “the relevant securities” or “the relevant securities option” means the employment-related securities or employment-related securities option by virtue of which the amount mentioned in subsection (1) (a) counts as employment income.
- (11) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.

#### **41B Section 41A: the relevant period**

- (1) “The relevant period” is to be determined as follows.
- (2) In the case of an amount that counts as employment income by virtue of Chapter 2 (restricted securities) or Chapter 3 (convertible securities), the relevant period—
- (a) begins with the day of the acquisition, and
  - (b) ends with the day of the chargeable event.
- (3) In the case of an amount that counts as employment income by virtue of section 446U (securities acquired for less than market value: discharge of notional loan)—
- (a) if the relevant securities were acquired by virtue of the exercise of a securities option (“the option”), the relevant period—
    - (i) begins with the day of the acquisition of the option, and
    - (ii) ends with the day the option vests, and
  - (b) otherwise, the relevant period is—
    - (i) the tax year in which the notional loan (within the meaning of Chapter 3C) is treated as made, or
    - (ii) if the chargeable event occurs in that year, the period beginning at the beginning of that year and ending with the day of that event.
- (4) In the case of an amount that counts as employment income by virtue of—
- (a) Chapter 3D (securities disposed of for more than market value), or
  - (b) Chapter 4 (post-acquisition benefits from securities),

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the relevant period is the tax year in which the chargeable event occurs.

- (5) In the case of an amount that counts as employment income by virtue of Chapter 5 (employment-related securities options), the relevant period—
  - (a) begins with the day of the acquisition, and
  - (b) ends with the day of the chargeable event or, if earlier, the day the relevant securities option vests.
- (6) In this section “the acquisition” has the same meaning as in Chapters 2 to 4 or Chapter 5 (see section 421B or 471).
- (7) For the purposes of this section an option “vests” when it is first capable of being exercised.
- (8) References in this section to a Chapter are to a Chapter of Part 7.

#### **41C Section 41A: foreign securities income**

- (1) The extent to which the securities income is “foreign” is to be determined as follows.
- (2) Treat an equal amount of the securities income as accruing on each day of the relevant period.
- (3) If any part of the relevant period is within a tax year to which subsection (4) applies, the securities income treated as accruing in that part of the relevant period is “foreign”.

This is subject to section 41D (limit where duties of associated employment performed in UK).

- (4) This subsection applies to a tax year if—
  - (a) section 809B, 809D or 809E of ITA 2007 applies to the individual for the year,
  - (b) the individual is ordinarily UK resident in the year,
  - (c) the employment is with a foreign employer, and
  - (d) the duties of the employment are performed wholly outside the United Kingdom.
- (5) If any part of the relevant period is within a tax year to which subsection (6) applies—
  - (a) if the duties of the employment are performed wholly outside the United Kingdom, the securities income treated as accruing in that part of the relevant period is “foreign”, and
  - (b) if some but not all of those duties are performed outside the United Kingdom—
    - (i) the securities income mentioned in paragraph (a) is to be apportioned (on a just and reasonable basis) between duties performed in the United Kingdom and duties performed outside the United Kingdom, and
    - (ii) the income apportioned in respect of duties performed outside the United Kingdom is “foreign”.
- (6) This subsection applies to a tax year if—

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- (a) section 809B, 809D or 809E of ITA 2007 applies to the individual for the year,
  - (b) the individual is not ordinarily UK resident in the year, and
  - (c) some or all of the duties of the employment are performed outside the United Kingdom.
- (7) If the individual is not resident in the United Kingdom in a tax year, for the purposes of this section treat section 809B of ITA 2007 as applying to the individual for that year.
- (8) This section is subject to section 41E (foreign securities income: just and reasonable apportionment).

#### **41D Limit on foreign securities income where duties of associated employment performed in UK**

- (1) This section imposes a limit on the extent to which section 41C(3) applies in relation to a period when—
- (a) the individual holds associated employments as well as the employment in relation to which section 41C(4) applies, and
  - (b) the duties of the associated employments are not performed wholly outside the United Kingdom.
- (2) The amount of the securities income for the period that is to be regarded as “foreign” is limited to such amount as is just and reasonable, having regard to—
- (a) the employment income for the period from all the employments mentioned in subsection (1)(a),
  - (b) the proportion of that income that is general earnings to which section 22 applies (chargeable overseas earnings),
  - (c) the nature of and time devoted to the duties performed outside the United Kingdom, and those performed in the United Kingdom, in the period, and
  - (d) all other relevant circumstances.
- (3) In this section “associated employments” means employments with the same employer or with associated employers.
- (4) Section 24(5) and (6) (meaning of “associated employer”) apply for the purposes of this section.

#### **41E Foreign securities income: just and reasonable apportionment**

- (1) This section applies if the proportion of the securities income that would otherwise be regarded as “foreign” is not, having regard to all the circumstances, one that is just and reasonable.
- (2) The amount of the securities income that is “foreign” is such amount as is just and reasonable (rather than the amount calculated in accordance with section 41C).”

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- 24 In section 225 (payments for restrictive undertakings), for subsections (6) and (7) substitute—
- “(6) This section applies only if—
- (a) section 15 applies to any general earnings from the employment, and would apply even if the individual made a claim under section 809B of ITA 2007 (claim for remittance basis) for the tax year mentioned in subsection (3), or
  - (b) section 27 (UK-based earnings of non-UK resident employee) applies to any general earnings from the employment.”
- 25 In section 271(2) (limited exemption of removal benefits and expenses: general)—
- (a) in paragraph (a), for the words from “employee” to “UK” substitute “remittance basis applies and employee ordinarily UK resident”, and
  - (b) in paragraph (b), for the words from “employee” to “UK” substitute “remittance basis applies and employee not ordinarily UK resident”.
- 26 In section 335(4) (application of deductions provisions), omit “, 21, 25”.
- 27 (1) Section 370 (travel costs and expenses where duties performed abroad) is amended as follows.
- (2) In subsection (1), for the words from “taxable” to “UK)” substitute “relevant taxable earnings”.
- (3) After subsection (5) insert—
- “(6) In this section “relevant taxable earnings” means general earnings for a tax year in which the employee is ordinarily UK resident that—
- (a) are taxable earnings under section 15, and
  - (b) would be taxable earnings under section 15 even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year.”
- 28 (1) Section 371 (travel costs and expenses where duties performed abroad: spouse's travel etc) is amended as follows.
- (2) In subsection (1), for the words from “taxable” to “UK)” substitute “relevant taxable earnings”.
- (3) After subsection (7) insert—
- “(8) In this section “relevant taxable earnings” has the meaning given by section 370(6).”
- 29 (1) Section 378 (deduction from seafarer's earnings: eligibility) is amended as follows.
- (2) In subsection (1)(a), for the words from “taxable” to the end substitute “relevant taxable earnings, ”.
- (3) After subsection (4) insert—
- “(5) In this section “relevant taxable earnings” means general earnings for a tax year in which the employee is ordinarily UK resident that—
- (a) are taxable earnings under section 15, and

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- (b) would be taxable earnings under section 15 even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year.”
- 30 (1) Section 413 (exception in certain cases of foreign service) is amended as follows.
- (2) In subsection (3), for paragraph (a) substitute—
- “ (a) any earnings from the employment would not be relevant earnings, or”
- (3) After that subsection insert—
- “ (3A) In subsection (3)(a) “relevant earnings” means—
- (a) for service in or after the tax year 2008-09, earnings—
- (i) which are for a tax year in which the employee is ordinarily UK resident,
- (ii) to which section 15 applies, and
- (iii) to which that section would apply, even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year, and
- (b) for service before the tax year 2008-09, general earnings to which section 15 or 21 as originally enacted applies.”
- 31 In section 421E(1) (income relating to securities: exclusions), for the words from “or 21” to the end substitute “, 22 or 26 applies (earnings for year when employee UK resident). ”.
- 32 In section 446N (securities subject to restriction during relevant period), after subsection (6) insert—
- “ (7) If any of the employment income arising under section 426 by virtue of the chargeable event is foreign securities income within the meaning of section 41C, reduce the taxable amount mentioned in subsection (5) by the amount of the foreign securities income.
- (8) If any of the employment income that would have arisen (if the non-commercial interests mentioned in subsection (6) had been disregarded) under section 426 by virtue of the chargeable event would have been foreign securities income (within that meaning), reduce the taxable amount mentioned in subsection (6) by the amount of the foreign securities income.”
- 33 In section 474(1) (securities options: exclusions), for the words from “or 21” to the end substitute “, 22 or 26 applies (earnings for year when employee UK resident). ”
- 34 In section 540(2) (EMI: taxable benefits), for the words from “or 21” to the end substitute “ applies (earnings for year when employee UK resident).& ”
- 35 In section 690 (PAYE: employee non-UK resident etc), after subsection (2) insert—
- “ (2A) For the purposes of subsection (2) as it applies in relation to an employee who is UK resident but not ordinarily UK resident in a tax year, the officer may treat section 809B of ITA 2007 (remittance basis) as applying to the employee for that year, even if no claim under that section has been made.”
- 36 In section 698 (PAYE: special charges on employment-related securities), after subsection (7) insert—



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- 37 “(8) This section is subject to section 700A (employment-related securities etc: remittance basis).”
- In section 700 (PAYE: gains from securities options), after subsection (6) insert—
- 38 “(7) This section is subject to section 700A (employment-related securities etc: remittance basis).”
- After that section insert—

#### **“700A Employment-related securities etc: remittance basis**

- (1) This section applies if—
- (a) section 698 or 700 applies, and
  - (b) part or all of the amount that counts as employment income is foreign securities income or is likely to be foreign securities income.
- (2) The amount of the payment treated under section 696 as made is limited to—
- (a) the amount that, on the basis of the best estimate that can reasonably be made, is likely to count as employment income, minus
  - (b) the amount that, on the basis of such an estimate, is likely to be foreign securities income.
- (3) References in this section to “foreign securities income” are to income that is foreign securities income for the purposes of section 41A.”
- 39 In section 721(1) (other definitions), for the definition of “foreign employer” substitute—
- ““foreign employer” means an individual, partnership or body of persons resident outside, and not resident in, the United Kingdom.”
- 40 In Schedule 1 (index of defined expressions), omit the entries relating to—
- (a) receipt of money earnings (in Chapter 5 of Part 2), and
  - (b) receipt of non-money earnings (in Chapter 5 of Part 2).
- 41 In paragraph 8 of Schedule 2 (approved share incentive plans: all-employee nature of plan), for sub-paragraph (2) substitute—
- “(2) An employee is a UK resident taxpayer if—
- (a) the employee's earnings from the employment by reference to which the employee meets the employment requirement are (or would be if there were any) general earnings to which section 15 applies (earnings for year when employee UK resident), and
  - (b) those general earnings are (or would be if there were any) earnings for a tax year in which the employee is ordinarily resident in the United Kingdom.”
- 42 In paragraph 6(2) of Schedule 3 (approved SAYE option schemes: all-employee nature of scheme), for paragraph (c) substitute—
- “(c) E's earnings from the office or employment within paragraph (a) are (or would be if there were any) general earnings to which section 15 applies (earnings for year when employee UK resident),

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- (ca) those general earnings are (or would be if there were any) earnings for a tax year in which E is ordinarily resident in the United Kingdom, and”.
- 43 In paragraph 27(2) of Schedule 5 (enterprise management incentives: meaning of “working time”)—
- (a) in paragraph (a), for the words from “or 21” to “Kingdom)” substitute “applies (earnings for year when employee UK resident)”, and
- (b) in paragraph (b), for the words from “resident and” to the end substitute “UK resident (and none of sections 809B, 809D and 809E of ITA 2007 (remittance basis) applied to the employee).”
- 44 In Schedule 7 (transitionals and savings), omit paragraphs 9 to 12.

*Relevant foreign income*

- 45 In section 575 of ITEPA 2003 (foreign pensions: taxable pension income), omit subsection (4).
- 46 ITTOIA 2005 is amended as follows.
- 47 In section 260(1) (overview of Part 3)—
- (a) at the end of paragraph (d) insert “ and ”, and
- (b) omit paragraph (f) (and the “and” before it).
- 48 In section 269 (territorial scope of charge to tax), omit subsections (3) and (4).
- 49 Omit Chapter 11 of Part 3 (overseas property income).
- 50 In section 829 (overview of Part 8), for paragraph (a) substitute—
- “(a) the charging of relevant foreign income of a person to whom section 809B, 809D or 809E of ITA 2007 applies (remittance basis).”
- 51 (1) Section 830 (meaning of “relevant foreign income”) is amended as follows.
- (2) In subsection (1), for the words from “which” to the end substitute “which—
- (a) arises from a source outside the United Kingdom, and
- (b) is chargeable under any of the provisions specified in subsection (2) (or would be so chargeable if section 832 did not apply to it).”
- (3) In subsection (2), omit paragraph (d).
- 52 Omit section 831 (claims for relevant foreign income to be charged on remittance basis).
- 53 For section 832 substitute—

**“832 Relevant foreign income charged on remittance basis**

- (1) This section applies to an individual's relevant foreign income for a tax year (“the relevant foreign income”) if section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year.
- (2) For any tax year in which—
- (a) the individual is UK resident, and

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- (b) any of the relevant foreign income is remitted to the United Kingdom,  
income tax is charged on the full amount of the relevant foreign income so remitted in that year.
- (3) Subsection (2) applies whether or not the source of the income exists when the income is remitted.
- (4) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.

### **832A Section 832: temporary non-residents**

- (1) This section applies if—
  - (a) an individual satisfies the residence requirements for any tax year (“the year of return”),
  - (b) the individual did not satisfy those requirements for one or more tax years immediately before the year of return but did satisfy those requirements for an earlier tax year,
  - (c) there are fewer than 5 tax years between—
    - (i) the last tax year before the year of return for which the individual satisfied those requirements (“the year of departure”), and
    - (ii) the year of return, and
  - (d) the individual satisfied those requirements for at least 4 out of the 7 tax years immediately before the year of departure.
- (2) Treat any of the individual's relevant foreign income within subsection (3) which is remitted to the United Kingdom after the year of departure and before the year of return as remitted to the United Kingdom in the year of return.
- (3) Relevant foreign income is within this subsection if—
  - (a) it is for the year of departure or any earlier tax year, and
  - (b) section 832 applies to it.
- (4) For the purposes of subsection (1) an individual “satisfies the residence requirements” for a tax year if—
  - (a) at any time in that year, the individual is UK resident and not Treaty non-resident, or
  - (b) the individual is ordinarily UK resident, and is not Treaty non-resident, for that year.
- (5) For the purposes of subsection (4) an individual is “Treaty non-resident” at any time if, at that time, he is regarded as resident in a territory outside the United Kingdom for the purposes of double taxation relief arrangements having effect at that time.
- (6) In subsection (5) “double taxation relief arrangements” means arrangements specified in an Order in Council making any such provisions as are referred to in section 788 of ICTA.

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### **832B Section 832: deductions from remitted income**

(1) The only case in which deductions are allowed from the income mentioned in section 832(2) is where the income is from a trade, profession or vocation carried on outside the United Kingdom.

(2) In that case the same deductions are allowed as are allowed under the Income Tax Acts where the trade, profession or vocation is carried on in the United Kingdom.”

54 Omit sections 833 to 837.

### *Chargeable gains*

55 TCGA 1992 is amended as follows.

56 (1) Section 3 (annual exempt amount) is amended as follows.

(2) After subsection (1) insert—

“(1A) Subsection (1) does not apply to an individual for a tax year if section 809B of ITA 2007 (claim for remittance basis to apply) applies to the individual for that year.”

(3) In subsection (5C)—

(a) after paragraph (a) insert—

“(aa) if section 16ZB (certain chargeable gains charged on remittance basis) applies for that year, deducting the amount of the relevant gains (within the meaning of that section),”  
and

(b) in paragraph (b), after “deducting” insert “ (from the amount mentioned in paragraph (a), as reduced under paragraph (aa)) ” .

57 In section 3A (reporting limits), after subsection (5) insert—

“(5A) Subsection (1) does not apply to an individual for a tax year if—

(a) section 809B of ITA 2007 (claim for remittance basis to apply), or

(b) section 16ZB below (certain chargeable gains charged on remittance basis),

applies to the individual for that year.”

58 In section 9 (residence etc), omit subsection (2).

59 In section 10A (temporary non-residents), after subsection (9) insert—

“(9ZA) If—

(a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the taxpayer for the year of return, and

(b) the taxpayer is not domiciled in the United Kingdom in that year, any foreign chargeable gains falling within subsection (2)(a) which were remitted in an intervening year are treated as remitted in the year of return.

For this purpose “foreign chargeable gains” has the meaning given by section 12(4).”

*Status: Point in time view as at 01/12/2009.*

*Changes to legislation: Finance Act 2008, SCHEDULE 7 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

60 For section 12 substitute—

**“12 Non-UK domiciled individuals to whom remittance basis applies**

- (1) This section applies to foreign chargeable gains accruing to an individual in a tax year (“the foreign chargeable gains”) if—
  - (a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year, and
  - (b) the individual is not domiciled in the United Kingdom in that year.
- (2) Chargeable gains are treated as accruing to the individual in any tax year in which any of the foreign chargeable gains are remitted to the United Kingdom.
- (3) The amount of chargeable gains treated as accruing is equal to the full amount of the foreign chargeable gains so remitted in that year.
- (4) In this section “foreign chargeable gains” means chargeable gains accruing from the disposal of an asset which is situated outside the United Kingdom.
- (5) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.”

61 In section 16 (computation of losses), omit subsection (4).

62 After that section insert—

**“16ZA Losses: non-UK domiciled individuals**

- (1) In this section “the relevant tax year”, in relation to an individual, means the first tax year for which—
  - (a) section 809B of ITA 2007 (claim for remittance basis) applies to the individual, and
  - (b) the individual is not domiciled in the United Kingdom.
- (2) An individual may make an election under this section for the relevant tax year (in which case sections 16ZB and 16ZC have effect in relation to the individual for the relevant tax year and all subsequent tax years).
- (3) If an individual does not make such an election, foreign losses accruing to the individual in—
  - (a) the relevant tax year, or
  - (b) any subsequent tax year except one in which the individual is domiciled in the United Kingdom,are not allowable losses.
- (4) Sections 42 and 43 of the Management Act (procedure and time limit for making claims), except section 42(1A) of that Act, apply in relation to an election under this section as they apply in relation to a claim for relief.
- (5) An election under this section is irrevocable.
- (6) In this section “foreign loss” means a loss accruing from the disposal of an asset situated outside the United Kingdom.

*Status: Point in time view as at 01/12/2009.*

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### **16ZB Individual who has made election under section 16ZA: foreign chargeable gains remitted in tax year after tax year in which accrue**

- (1) This section applies to an individual for a tax year (“the applicable tax year”) if—
  - (a) the individual has made an election under section 16ZA,
  - (b) foreign chargeable gains accrued to the individual in or after the relevant tax year (within the meaning of section 16ZA) but before the applicable tax year, and
  - (c) by reason of the remission of any of the foreign chargeable gains to the United Kingdom, chargeable gains are treated under section 12 as accruing to the individual in the applicable tax year (“the relevant gains”).
- (2) Section 2(2) or (4) has effect for the applicable tax year as if the relevant gains had not accrued.
- (3) The amount on which the individual is charged to capital gains tax for the applicable tax year is (instead of the amount given by section 2(2) or (4)(b), as reduced under section 3) the sum of—
  - (a) the adjusted taxable amount, and
  - (b) the amount of the relevant gains.
- (4) “The adjusted taxable amount” is—
  - (a) if section 3(1) (annual exempt amount) does not apply to the individual for the applicable tax year, the amount given by section 2(2) or (4)(b) as it has effect by virtue of subsection (2), and
  - (b) otherwise, so much of that amount as exceeds the exempt amount for the applicable tax year (within the meaning of section 3).
- (5) In subsection (1) “foreign chargeable gains” has the meaning given by section 12(4).
- (6) For the purposes of subsection (1)(c) foreign chargeable gains are remitted to the United Kingdom if they are regarded as so remitted for the purposes of section 12.

### **16ZC Individual who has made election under section 16ZA and to whom remittance basis applies**

- (1) This section applies to an individual for a tax year if—
  - (a) the individual has made an election under section 16ZA for the tax year or any earlier tax year,
  - (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the tax year, and
  - (c) the individual is not domiciled in the United Kingdom in the tax year.
- (2) The following steps apply for the purpose of calculating the amount on which the individual is to be charged to capital gains tax for the tax year.

*Step 1*

*Status: Point in time view as at 01/12/2009.*

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Deduct any relevant allowable losses from the chargeable gains referred to in subsection (3) in the order in which they appear there (starting with paragraph (a) of that subsection).

If allowable losses are deductible from the chargeable gains referred to in subsection (3)(b) but are not enough to exhaust them all—

- (a) those chargeable gains are to be ordered according to the day on which they accrued,
- (b) the losses are to be deducted from those gains in reverse chronological order (starting with the last chargeable gain to accrue), and
- (c) if allowable losses are deductible from chargeable gains that accrued on a particular day but are not enough to exhaust all of the chargeable gains that accrued on that day, the amount deducted from each of those chargeable gains is the appropriate proportion of the losses.

In paragraph (c) “the appropriate proportion”, in relation to a chargeable gain, is the amount of that gain divided by the total amount of the chargeable gains that accrued on the day in question.

#### *Step 2*

Treat the amount referred to in section 2(2) or (4)(a) or 16ZB(3)(a) as being equal to—

- (a) the amount it would be if there were no relevant allowable losses, minus
  - (b) the total amount deducted under Step 1 from chargeable gains within subsection (3)(a) or (c).
- (3) The chargeable gains are—
- (a) foreign chargeable gains accruing to the individual in the tax year, to the extent that they are remitted to the United Kingdom in that year,
  - (b) foreign chargeable gains accruing to the individual in that year, to the extent that they are not so remitted in that year, and
  - (c) chargeable gains accruing to the individual in that year (other than foreign chargeable gains).
- (4) Chargeable gains treated as accruing under section 87 or 89(2) (read, where appropriate, with section 10A) are not within any paragraph of subsection (3).
- (5) Chargeable gains treated as accruing under section 12 are not within subsection (3)(c).
- (6) For the purposes of subsection (3) foreign chargeable gains are remitted to the United Kingdom if they are regarded as so remitted for the purposes of section 12.
- (7) In this section—
- “relevant allowable losses” means the allowable losses that section 2(2) provides may be deducted from chargeable gains accruing to the individual in the tax year, and

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“foreign chargeable gains” has the meaning given by section 12(4).

**16ZD Section 16ZC: supplementary**

- (1) This section applies if section 16ZC applies to an individual for a tax year.
- (2) Any allowable loss deducted under step 1 of section 16ZC(2) is to be regarded (for the purposes of section 2(2)(b)) as allowed as a deduction from chargeable gains accruing to the individual in the tax year.
- (3) If a deduction is made under step 1 of section 16ZC(2) from a foreign chargeable gain within section 16ZC(3)(b), the amount of the foreign chargeable gain is reduced by the amount deducted.”

63 In section 119A (increase in expenditure by reference to tax charged in relation to employment-related securities), after subsection (5) insert—

“(5A) See also section 119B (unremitted foreign securities income).”

64 After that section insert—

**“119B Section 119A: unremitted foreign securities income**

- (1) For the purposes of section 119A reduce the amount that counts as employment income by so much of that amount (if any) as is unremitted foreign securities income.
- (2) In this section “unremitted foreign securities income” means income that—
  - (a) is foreign securities income for the purposes of section 41A of ITEPA 2003 (employment income from ERS charged on remittance basis), and
  - (b) has not been remitted to the United Kingdom by the end of the tax year in which the disposal mentioned in section 119A(1) occurs.
- (3) The following provisions apply if any of the unremitted foreign securities income is remitted to the United Kingdom after the end of the tax year referred to in subsection (2)(b).
- (4) The person liable for the capital gains tax on any chargeable gains arising on the disposal may make a claim for section 119A(2) to have effect as if the remitted income had been remitted before the end of that tax year.
- (5) All adjustments (by way of repayment of tax, assessment or otherwise) are to be made which are necessary to give effect to a claim under subsection (4).
- (6) Those adjustments may be made at any time, despite anything to the contrary in any enactment relating to capital gains tax.”

*Minor and consequential amendments*

65 In section 33(2A) of TMA 1970 (error or mistake)—

- (a) omit the “or” at the end of paragraph (a), and
- (b) at the end of paragraph (b) insert “, or



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- (c) an error or mistake consisting of the making of a claim under section 809B of ITA 2007 (claim for remittance basis).”

66 ITTOIA 2005 is amended as follows.

67 In section 839 (annual payments payable out of relevant foreign income), omit subsection (6).

68 In section 840 (relief for backdated pensions charged on arising basis), omit subsection (4) (application of section 837).

69 After that section insert—

**“840A Claims under section 840**

(1) A claim under section 840 must be made on or before the fifth anniversary of the normal self-assessment filing date for the tax year for which the relief is claimed.

(2) All adjustments (by way of repayment of tax, assessment or otherwise) are to be made which are necessary to give effect to section 840.

(3) Those adjustments may be made at any time, despite anything to the contrary in the Income Tax Acts.

(4) A person's personal representatives may make any claim under section 840 which the person might have made.

(5) If a person dies—

(a) any tax paid by the person and repayable because of a claim under section 840 is to be repaid to the personal representatives, and

(b) the person's personal representatives are liable for any additional tax which arises because of a claim under that section.

(6) If subsection (5)(b) applies, the additional tax—

(a) is to be assessed on the personal representatives, and

(b) is a debt due and payable out of the estate.”

70 (1) Section 857 (partners to whom the remittance basis may apply) is amended as follows.

(2) In subsection (1), for paragraph (c) substitute—

“(c) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to a partner for a tax year.”

(3) In subsection (3), omit “for the purposes of this Act (see Part 8)”.

(4) Accordingly, in the heading, for “**may apply**” substitute “**applies**”.

71 In section 878 (definitions), omit subsection (2).

72 In Schedule 2 (transitional provision etc), omit paragraphs 150 and 151.

73 In Part 2 of Schedule 4 (index of defined expressions), omit the entry for “person to whom the remittance basis applies”.

74 ITA 2007 is amended as follows.

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- 75 In section 2(14) (overview of Act), before paragraph (a) insert—  
“(za) an alternative basis for charge (the remittance basis) for certain income and gains of certain individuals (Chapter A1).”
- 76 In section 34 (personal allowances etc: introduction), after subsection (2) insert—  
“(3) For the effect of section 809B (claim for remittance basis to apply) applying to an individual for a tax year, see section 809G (no entitlement to personal allowance or blind person's allowance).”
- 77 In section 42 (tax reductions for married couples etc: introduction), after subsection (4) insert—  
“(5) For the effect of section 809B (claim for remittance basis to apply) applying to an individual for a tax year, see section 809G (no entitlement to tax reduction).”
- 78 In section 460 (residence etc of claimants for relief for life insurance payments etc), after subsection (3) insert—  
“(4) For the effect of section 809B (claim for remittance basis to apply) applying to an individual for a tax year, see section 809G (no entitlement under section 457, 458 or 459).”
- 79 In consequence of the amendments made by this Part of this Schedule, omit—  
(a) in ITEPA 2003, paragraph 208 of Schedule 6,  
(b) in ITTOIA 2005, paragraph 429 of Schedule 1, and  
(c) in CRCA 2005, paragraphs 102(3)(b) to (d) and 104 of Schedule 4.

#### *Commencement*

- 80 The amendments made by paragraphs 3(3), 4(3), 5(2), 22, 31 to 33, 38 and 64 have effect in relation to employment-related securities and employment-related securities options where the date of the acquisition is on or after 6 April 2008 (except employment-related securities acquired pursuant to a securities option acquired before 6 April 2008).
- 81 The other amendments made by this Part of this Schedule have effect for the tax year 2008-09 and subsequent tax years.

#### *Transitional provision*

- 82 (1) This paragraph applies in relation to an individual's general earnings for the tax year 2007-08 or any earlier tax year (“the relevant tax year”) if the individual—  
(a) was UK resident in that year, but  
(b) was not domiciled in the United Kingdom, or was not ordinarily UK resident, in that year.
- (2) Section 22 or 26 of ITEPA 2003 (as amended by this Part of this Schedule) applies in relation to the general earnings as if—  
(a) section 809B of ITA 2007 (claim for remittance basis to apply) applied to the individual for the relevant tax year, and  
(b) section 22(7) or 26(6) of ITEPA 2003 were omitted.

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- (3) In relation to the general earnings, the definition of “foreign employer” in section 721(1) of ITEPA 2003 has effect as if at the end there were inserted “ and not resident in the Republic of Ireland ”.
- 83 (1) This paragraph applies to an individual's relevant foreign income for the tax year 2007-08 or any earlier tax year (“the relevant tax year”) if—
- (a) the individual made a claim under section 831 of ITTOIA 2005 for the relevant tax year, or
  - (b) section 65(5) of ICTA (or any earlier superseded enactment corresponding to that provision) applied in relation to the individual for the relevant tax year.
- (2) Section 832 of ITTOIA 2005 (as amended by this Part of this Schedule) applies in relation to the relevant foreign income as if section 809B of ITA 2007 (claim for remittance basis to apply) applied to the individual for the relevant tax year.
- (3) But nothing in section 832 of ITTOIA 2005 applies in relation to any of the relevant foreign income that arose in the Republic of Ireland.
- (4) Nothing in section 832A of that Act applies in relation to anything remitted to the United Kingdom in the tax year 2007-08 or any earlier tax year.
- 84 (1) This paragraph applies if section 12 of TCGA 1992 (or any corresponding superseded enactment) applied in relation to a gain accruing to an individual in the tax year 2007-08 or any earlier tax year (“the relevant tax year”).
- (2) Section 12 of TCGA 1992 (as amended by this Part of this Schedule) applies in relation to that gain as if section 809B of ITA 2007 (claim for remittance basis to apply) applied to the individual for the relevant tax year.
- (3) Nothing in section 10A of TCGA 1992 applies in relation to any part of the gain remitted to the United Kingdom in the tax year 2007-08 or any earlier tax year.
- 85 (1) In section 809E(3)(b) of ITA 2007, the reference to a tax year for which section 809B, 809D or 809E of that Act applies to an individual includes a tax year (not later than the tax year 2007-08) in which the individual—
- (a) was UK resident, but
  - (b) was not domiciled in the United Kingdom or was not ordinarily UK resident.
- (2) In relation to such a tax year, the reference there to the individual's foreign income and gains includes the individual's relevant foreign income if (and only if)—
- (a) the individual made a claim under section 831 of ITTOIA 2005 for the year, or
  - (b) section 65(5) of ICTA (or any earlier superseded enactment corresponding to that provision) applied in relation to the individual for the year.
- 86 (1) Section 809L of ITA 2007 (meaning of “remitted to the United Kingdom”) has effect subject to this paragraph.
- (2) If, before 6 April 2008, property (including money) consisting of or deriving from an individual's relevant foreign income was brought to or received or used in the United Kingdom by or for the benefit of a relevant person, treat the relevant foreign income as not remitted to the United Kingdom on or after that date (if it otherwise would be regarded as so remitted).
- (3) If, before 12 March 2008, property (other than money) consisting of or deriving from an individual's relevant foreign income was acquired by a relevant person, treat the

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relevant foreign income as not remitted to the United Kingdom on or after 6 April 2008 (if it otherwise would be regarded as so remitted).

(4) Subject to sub-paragraphs (2) and (3), in relation to an individual's income and chargeable gains for the tax year 2007-08 or any earlier tax year, section 809L has effect as if the references to a relevant person were to the individual.

[<sup>F1</sup>(4A) For the purposes of sub-paragraph (4), section 648(2) to (5) of ITTOIA 2005 (and corresponding earlier enactments) do not apply (so that relevant foreign income which arose under a settlement in the tax year 2007-08 or any earlier tax year is to be treated as income for the tax year in which it arose).]

(5) “Money” has the same meaning as in section 809Y of ITA 2007.

#### Textual Amendments

**F1** Sch. 7 para. 86(4A) inserted (with effect in accordance with Sch. 27 para. 15(1) of the amending Act) by Finance Act 2009 (c. 10), Sch. 27 para. 14

- 87 Section 809N of ITA 2007 (section 809L: gift recipients, qualifying property and enjoyment) has effect in relation to an individual's income and chargeable gains for the tax year 2007-08 or any earlier tax year as if—
- (a) the reference in subsection (2) to a relevant person were to the individual,
  - (b) subsections (3) and (4) were omitted, and
  - (c) the references in subsection (9) to a relevant person, all relevant persons, or relevant persons were to the individual.
- 88 Section 809O of ITA 2007 (section 809L: dealings where there is a connected operation) has effect in relation to an individual's income and chargeable gains for the tax year 2007-08 or any earlier tax year as if—
- (a) subsection (2) were omitted, and
  - (b) the references in subsections (4) and (6) to a relevant person, all relevant persons, or relevant persons were to the individual.
- 89 Sections 809Q to 809S of ITA 2007 (transfers from mixed funds) do not apply for the purposes of determining whether income or chargeable gains for the tax year 2007-08 or any earlier tax year are remitted to the United Kingdom (or the amount of any such income or chargeable gains so remitted).
- 90 (1) This paragraph applies if—
- (a) before 12 March 2008, money was lent to an individual outside the United Kingdom,
  - (b) the loan was made for the purpose of enabling the individual to acquire an interest in residential property in the United Kingdom (and for no other purpose), and
  - (c) before 6 April 2008—
    - (i) the money was received in the United Kingdom,
    - (ii) the individual used the money to acquire an interest in residential property in the United Kingdom (“the interest”), and
    - (iii) repayment of the debt for the money (“the debt”), or of payments made under a guarantee of that repayment (“the guarantee”), was secured on the interest.

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- (2) Relevant foreign income of the individual used outside the United Kingdom before 6 April 2028 to pay interest on the debt is treated as not remitted to the United Kingdom.
  - (3) If, at any time on or after 12 March 2008—
    - (a) any term upon which the loan was made, or any term of the guarantee, is varied or waived,
    - (b) repayment of the debt, or of payments made under the guarantee, ceases to be secured on the interest,
    - (c) repayment of any other debt is secured on the interest or is guaranteed by the guarantee, or
    - (d) the interest ceases to be owned by the individual,sub-paragraph (2) does not apply in relation to relevant foreign income used as mentioned there after that time.
  - (4) If—
    - (a) before 12 March 2008, money was lent to the individual outside the United Kingdom (“the subsequent loan”),
    - (b) the subsequent loan was made for the purpose of enabling the individual to repay—
      - (i) the loan mentioned in sub-paragraph (1), or
      - (ii) another loan in relation to which sub-paragraphs (2) and (3) apply (by virtue of this sub-paragraph),and for no other purpose, and
    - (c) before 6 April 2008—
      - (i) the individual used the money to repay the loan referred to in paragraph (b)(i) or (ii), and
      - (ii) repayment of the subsequent loan, or of payments made under a guarantee of that repayment, was secured on the interest,sub-paragraphs (2) and (3) apply in relation to the subsequent loan (and for this purpose references there to the debt or the loan are to be read as references to the subsequent loan).
  - (5) In this paragraph “residential property” has the same meaning as in Part 4 of FA 2003 (see section 116 of that Act).
  - (6) In this paragraph “guarantee” includes an indemnity, and “guaranteed” is to be read accordingly.
- 91
- (1) This paragraph applies in relation to employment-related securities if—
    - (a) the date of the acquisition is on or after 6 April 2008 and on or before 31 July 2008, and
    - (b) Chapter 2 of Part 7 of ITEPA 2003 (restricted securities) applies in relation to the securities by virtue only of amendments made by this Schedule.
  - (2) Section 431 of ITEPA 2003 (election for full or partial disapplication of Chapter) has effect in relation to the employment-related securities as if in subsection (5)(b) for “more than 14 days after the acquisition” there were substituted “ after 14 August 2008 ”.

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## PART 2

### NON-RESIDENT COMPANIES AND TRUSTS ETC

#### *Offshore income gains*

F292 .....

#### Textual Amendments

**F2** Sch. 7 paras. 92-96 repealed (with effect in accordance with reg. 1(2)(3), Sch. 1 of the amending S.I.) by The Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), reg. 1(1), **Sch. 2**

F293 .....

#### Textual Amendments

**F2** Sch. 7 paras. 92-96 repealed (with effect in accordance with reg. 1(2)(3), Sch. 1 of the amending S.I.) by The Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), reg. 1(1), **Sch. 2**

F294 .....

#### Textual Amendments

**F2** Sch. 7 paras. 92-96 repealed (with effect in accordance with reg. 1(2)(3), Sch. 1 of the amending S.I.) by The Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), reg. 1(1), **Sch. 2**

F295 .....

#### Textual Amendments

**F2** Sch. 7 paras. 92-96 repealed (with effect in accordance with reg. 1(2)(3), Sch. 1 of the amending S.I.) by The Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), reg. 1(1), **Sch. 2**

F296 .....

#### Textual Amendments

**F2** Sch. 7 paras. 92-96 repealed (with effect in accordance with reg. 1(2)(3), Sch. 1 of the amending S.I.) by The Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), reg. 1(1), **Sch. 2**

97 In section 734 of ITA 2007 (reduction in amount charged: previous capital gains tax charge), after subsection (4) insert—

“(5) References in this section to chargeable gains treated as accruing to an individual include offshore income gains treated as arising to the individual (see section 762 of ICTA).”

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*Offshore income gains: commencement etc*

- 98 The amendments made by paragraphs 92 to 97 have effect for the tax year 2008-09 and subsequent tax years.
- 99 Paragraphs 120 and 121 apply in relation to offshore income gains as if—
- (a) references to section 2(2) amounts were to OIG amounts,
  - (b) references to chargeable gains were to offshore income gains, and
  - (c) Step 1 of paragraph 120(2) provided that OIG amounts are to be calculated in accordance with—
    - (i) section 762(2) of ICTA (the reference in the second sentence of that Step to section 87(4) of TCGA 1992 being read as a reference to section 762(2) of ICTA), or
    - (ii) section 87(5) of TCGA 1992 as applied by section 762(3) of ICTA.
- 100 (1) This paragraph applies if—
- (a) by virtue of section 87 or 89(2) of, or Schedule 4C to, TCGA 1992 as applied by [<sup>F3</sup>regulation 20 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001)], income is treated under [<sup>F4</sup>such regulations (regulation 17 of those Regulations)] as arising to an individual in the tax year 2008-09 or any subsequent tax year, and
  - (b) the individual is not domiciled in the United Kingdom in that year.
- (2) The individual is not charged to income tax on the income if and to the extent that it is treated as arising by reason of—
- (a) a capital payment received (or treated as received) by the individual before 6 April 2008, or
  - (b) the matching of any capital payment with the OIG amount for the tax year 2007-08 or any earlier tax year.

**Textual Amendments**

- F3** Words in [Sch. 7 para. 100\(1\)\(a\)](#) substituted (with effect in accordance with reg. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\), 130\(2\)\(a\)](#)
- F4** Words in [Sch. 7 para. 100\(1\)\(a\)](#) substituted (with effect in accordance with reg. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\), 130\(2\)\(b\)](#)

- 101 (1) This paragraph applies if—
- (a) the trustees of a settlement have made an election under paragraph 126(1) (re-basing election),
  - (b) income is treated under [<sup>F5</sup>regulation 17 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001)] as arising to an individual in the tax year 2008-09 or any subsequent tax year (“the relevant tax year”) by reason of the matching, under section 87A of TCGA 1992 as applied by [<sup>F6</sup>regulation 20 of those Regulations], of an OIG amount with a capital payment received by the individual from the trustees, and
  - (c) the individual is resident or ordinarily resident, but not domiciled, in the United Kingdom in the relevant tax year.
- (2) The individual is not charged to income tax on so much of the income as exceeds the relevant proportion of that income.

*Status: Point in time view as at 01/12/2009.*

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- (3) Sub-paragraphs (9) to (18) of paragraph 126 (meaning of “the relevant proportion”) apply for the purposes of sub-paragraph (2) above as if—
- (a) references to section 2(2) amounts were to OIG amounts,
  - (b) references to chargeable gains were to offshore income gains,
  - (c) references to allowable losses were omitted, and
  - (d) references to anything accruing were to it arising (and similar references were read accordingly).

#### Textual Amendments

- F5** Words in [Sch. 7 para. 101\(1\)\(b\)](#) substituted (with effect in accordance with reg. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **130(3)(a)**
- F6** Words in [Sch. 7 para. 101\(1\)\(b\)](#) substituted (with effect in accordance with reg. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **130(3)(b)**

- 102 (1) This paragraph applies if—
- (a) in the tax year 2008-09 or any subsequent tax year, the trustees of a settlement (“the transferor settlement”) transfer all or part of the settled property to the trustees of another settlement (“the transferee settlement”),
  - (b) section 90 of TCGA 1992 applies in relation to the transfer,
  - (c) the trustees of the transferor settlement have made an election under paragraph 126(1),
  - (d) by virtue of the matching (under section 87A of TCGA 1992 as applied by [<sup>F7</sup>regulation 20 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001)]) of a capital payment with an OIG amount of the transferee settlement, income is treated under [<sup>F8</sup>such regulations (regulation 17 of those Regulations)] as arising to an individual in a tax year (“the relevant tax year”), and
  - (e) the individual is resident or ordinarily resident, but not domiciled, in the United Kingdom in the relevant tax year.
- (2) If paragraph 101 applies in relation to the transferee settlement, paragraph 126(9) as applied by paragraph 101(3) has effect as if the reference there to relevant assets included relevant assets within the meaning of paragraph 127(4) (as modified by sub-paragraph (4)(b) below).
- (3) If paragraph 101 does not apply in relation to the transferee settlement, the individual is not charged to income tax on so much of the income mentioned in sub-paragraph (1)(d) above as exceeds the relevant proportion of that income.
- (4) Sub-paragraphs (4) to (7) of paragraph 127 (meaning of “the relevant proportion”) apply for the purposes of sub-paragraph (3) above as if—
- (a) references section 2(2) amounts were to OIG amounts,
  - (b) references to chargeable gains were to offshore income gains, and
  - (c) references to anything accruing were to it arising.

#### Textual Amendments

- F7** Words in [Sch. 7 para. 102\(1\)\(d\)](#) substituted (with effect in accordance with reg. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **130(4)(a)**



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- F8** Words in Sch. 7 para. 102(1)(d) substituted (with effect in accordance with reg. 1(2)(3), Sch. 1 of the amending S.I.) by The Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), regs. 1(1), 130(4)(b)

*Attribution of gains to members of non-resident companies*

103 In section 13(2) of TCGA 1992 (attribution of gains to members of non-resident companies), for the words from “, who, if” to “and who” substitute “ and ”.

104 After section 14 of that Act insert—

**“14A Section 13: non-UK domiciled individuals**

- (1) This section applies if—
- (a) by virtue of section 13, part of a chargeable gain that accrues to a company on the disposal of an asset is treated as accruing to an individual in a tax year, and
  - (b) the individual is not domiciled in the United Kingdom in that year.
- (2) The part of the chargeable gain treated as accruing to the individual (“the deemed chargeable gain”) is a foreign chargeable gain within the meaning of section 12 if (and only if) the asset is situated outside the United Kingdom.
- (3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis)—
- (a) treat any consideration obtained by the company on the disposal of the asset as deriving from the deemed chargeable gain, and
  - (b) unless the consideration so obtained is of an amount equal to the market value of the asset, treat the asset as deriving from the deemed chargeable gain.
- (4) If—
- (a) the deemed chargeable gain is a foreign chargeable gain (within the meaning of section 12),
  - (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the year mentioned in subsection (1), and
  - (c) any of the deemed chargeable gain is remitted to the United Kingdom in a tax year after that year,
- the chargeable gain treated under section 12(2) as accruing may not be reduced or extinguished under section 13(8).”

105 The amendments made by paragraphs 103 and 104 have effect in relation to chargeable gains accruing on or after 6 April 2008.

*Attribution of gains to beneficiaries*

106 TCGA 1992 is amended as follows.

107 In section 85(11) (disposal of interests in non-resident settlements), for the words from “there would” to the end substitute “ chargeable gains would be treated under section 89(2) or paragraph 8 of Schedule 4C as accruing in the following year of assessment to a beneficiary who received a capital payment from the trustees of the settlement in that year. ”

108 For section 87 substitute—

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### **“87 Non-UK resident settlements: attribution of gains to beneficiaries**

- (1) This section applies to a settlement for a tax year (“the relevant tax year”) if the trustees are neither resident nor ordinarily resident in the United Kingdom in that year.
- (2) Chargeable gains are treated as accruing in the relevant tax year to a beneficiary of the settlement who has received a capital payment from the trustees in the relevant tax year or any earlier tax year if all or part of the capital payment is matched (under section 87A as it applies for the relevant tax year) with the section 2(2) amount for the relevant tax year or any earlier tax year.
- (3) The amount of chargeable gains treated as accruing is equal to—
  - (a) the amount of the capital payment, or
  - (b) if only part of the capital payment is matched, the amount of that part.
- (4) The section 2(2) amount for a settlement for a tax year for which this section applies to the settlement is—
  - (a) the amount upon which the trustees of the settlement would be chargeable to tax under section 2(2) for that year if they were resident and ordinarily resident in the United Kingdom in that year, or
  - (b) if section 86 applies to the settlement for that year, the amount mentioned in paragraph (a) minus the total amount of chargeable gains treated under that section as accruing in that year.
- (5) The section 2(2) amount for a settlement for a tax year for which this section does not apply to the settlement is nil.
- (6) For the purposes of this section a settlement arising under a will or intestacy is treated as made by the testator or intestate at the time of death.

### **87A Section 87: matching**

- (1) This section supplements section 87.
- (2) The following steps are to be taken for the purposes of matching capital payments with section 2(2) amounts.

#### *Step 1*

Find the section 2(2) amount for the relevant tax year.

#### *Step 2*

Find the total amount of capital payments received by the beneficiaries from the trustees in the relevant tax year.

#### *Step 3*

The section 2(2) amount for the relevant tax year is matched with—

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- (a) if the total amount of capital payments received in the relevant tax year does not exceed the section 2(2) amount for the relevant tax year, each capital payment so received, and
- (b) otherwise, the relevant proportion of each of those capital payments.

“The relevant proportion” is the section 2(2) amount for the relevant tax year divided by the total amount of capital payments received in the relevant tax year.

#### *Step 4*

If paragraph (a) of Step 3 applies—

- (a) reduce the section 2(2) amount for the relevant tax year by the total amount of capital payments referred to there, and
- (b) reduce the amount of those capital payments to nil.

If paragraph (b) of that Step applies—

- (a) reduce the section 2(2) amount for the relevant tax year to nil, and
- (b) reduce the amount of each of the capital payments referred to there by the relevant proportion of that capital payment.

#### *Step 5*

Start again at Step 1 (unless subsection (3) applies).

If the section 2(2) amount for the relevant tax year (as reduced under Step 4) is not nil, read references to capital payments received in the relevant tax year as references to capital payments received in the latest tax year which—

- (a) is before the last tax year for which Steps 1 to 4 have been undertaken, and
- (b) is a tax year in which capital payments (the amounts of which have not been reduced to nil) were received by beneficiaries.

If the section 2(2) amount for the relevant tax year (as so reduced) is nil, read references to the section 2(2) amount for the relevant tax year as the section 2(2) amount for the latest tax year—

- (a) which is before the last tax year for which Steps 1 to 4 have been undertaken, and
- (b) for which the section 2(2) amount is not nil.

(3) This subsection applies if—

- (a) all of the capital payments received by beneficiaries from the trustees in the relevant tax year or any earlier tax year have been reduced to nil, or
- (b) the section 2(2) amounts for the relevant tax year and all earlier tax years have been reduced to nil.

(4) The effect of any reduction under Step 4 of subsection (2) is to be taken into account in any subsequent application of this section.

### **87B Section 87: remittance basis**

(1) This section applies if—

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- (a) chargeable gains are treated under section 87 as accruing to an individual in a tax year,
  - (b) section 809B, 809D or 809E (remittance basis) applies to the individual for that year, and
  - (c) the individual is not domiciled in the United Kingdom in that year.
- (2) The chargeable gains are foreign chargeable gains within the meaning of section 12 (non-UK domiciled beneficiaries to whom remittance basis applies).
- (3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis) treat relevant property or benefits as deriving from the chargeable gains.
- (4) For the purposes of subsection (3) property or a benefit is “relevant” if the capital payment by reason of which the chargeable gains are treated as accruing consists of—
- (a) the payment or transfer of the property or its becoming property to which section 60 applies, or
  - (b) the conferring of the benefit.

#### **87C Sections 87 and 87A: disregard of certain capital payments**

- (1) For the purposes of sections 87 and 87A as they apply in relation to a settlement, no account is to be taken of a capital payment (or a part of a capital payment) within subsection (2).
- (2) A capital payment is within this subsection if (and to the extent that) it is received (or treated as received) in a tax year from the trustees of the settlement by a company that—
- (a) is not resident in the United Kingdom in that year, and
  - (b) would be a close company if it were resident in the United Kingdom, (and is not treated under any of subsections (3) to (5) of section 96 as received by another person).”

109 (1) Section 88 (gains of dual resident settlements) is amended as follows.

(2) For subsection (2) substitute—

“(2) The section 2(2) amount for a tax year for which section 87 applies by virtue of this section is what it would be if the amount mentioned in section 87(4) (a) were the assumed chargeable amount.”

(3) Omit subsection (7).

110 (1) Section 89 (migrant settlements) is amended as follows.

(2) In subsection (1), for “section 87 if” substitute “ sections 87 and 87A if”.

(3) For subsections (2) and (3) substitute—

“(1A) Subsection (2) applies to a settlement if—

- (a) a non-resident period is succeeded by a resident period, and
- (b) in relation to the last tax year in the non-resident period (“the last non-resident tax year”), section 87A(3) applied by virtue of paragraph (a) of that provision (exhaustion of capital payments).

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- (2) Chargeable gains are treated as accruing in a tax year (in the resident period) to a beneficiary of the settlement who receives a capital payment from the trustees in that year if all or part of the capital payment is matched (under section 87A as it applies for that year) with the section 2(2) amount for the last non-resident tax year or any earlier tax year.
- (3) Section 87(3) and (4) and sections 87A to 87C apply for the purposes of subsection (2) as if the relevant tax year were the tax year mentioned in subsection (2).
- (4) Section 87B (remittance basis) applies in relation to chargeable gains treated under subsection (2) as accruing as it applies in relation to chargeable gains treated under section 87 as accruing.”

111 For section 90 substitute—

**“90 Sections 87 and 89(2): transfers between settlements**

- (1) This section applies if the trustees of a settlement (“the transferor settlement”) transfer all or part of the settled property to the trustees of another settlement (“the transferee settlement”).
- (2) In this section “the year of transfer” means the tax year in which the transfer occurs.
- (3) Treat the section 2(2) amount for the transferee settlement for any tax year (not later than the year of transfer) as increased by—
  - (a) the section 2(2) amount for the transferor settlement for that year (as reduced under section 87A as it applies in relation to that settlement for the year of transfer and all earlier tax years), or
  - (b) if part only of the settled property is transferred, the relevant proportion of the amount mentioned in paragraph (a).
- (4) “The relevant proportion” is—
  - (a) the market value of the property transferred, divided by
  - (b) the market value of the property comprised in the transferor settlement immediately before the transfer.
- (5) Treat the section 2(2) amount for the transferor settlement for any tax year as reduced by the amount by which the section 2(2) amount for the transferee settlement for that year is increased under subsection (3).
- (6) If neither section 87 nor section 89(2) would otherwise apply to the transferee settlement for the year of transfer—
  - (a) section 89(2) to (4) apply to the settlement for that year (and subsequent tax years), and
  - (b) for this purpose, references there to the last non-resident tax year are to be read as the year of transfer.
- (7) The increase under subsection (3) has effect for the year of transfer and subsequent tax years.
- (8) The reduction under subsection (5) has effect for tax years after the year of transfer.

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- (9) When calculating the market value of property for the purposes of this section or section 90A in a case where the property is subject to a debt, reduce the market value by the amount of the debt.
- (10) This section does not apply to—
  - (a) a transfer to which Schedule 4B applies, or
  - (b) any section 2(2) amount that is in a Schedule 4C pool (see paragraph 1 of Schedule 4C).

**90A Section 90: transfers made for consideration in money or money's worth**

- (1) Section 90 does not apply to a transfer of settled property made for consideration in money or money's worth if the amount (or value) of that consideration is equal to or exceeds the market value of the property transferred.
- (2) The following provisions apply if—
  - (a) section 90 applies to a transfer of settled property made for consideration in money or money's worth, and
  - (b) the amount (or value) of that consideration is less than the market value of the property transferred.
- (3) If the transfer is of all of the settled property, for the purposes of section 90 treat the transfer as being of part only of the settled property.
- (4) Deduct the amount (or value) of the consideration from the amount of the market value referred to in section 90(4)(a)."

112 (1) Section 91 (increase in tax payable under section 87 or 89(2)) is amended as follows.

(2) For subsection (1) substitute—

“(1) This section applies if—

- (a) chargeable gains are treated under section 87 or 89(2) as accruing to a beneficiary by virtue of the matching (under section 87A) of all or part of a capital payment with the section 2(2) amount for a tax year (“the relevant tax year”),
- (b) the beneficiary is charged to tax by virtue of that matching, and
- (c) the capital payment was made more than one year after the end of the relevant tax year.

(1A) Where part of a capital payment is matched, references in subsections (2) and (3) to the capital payment are to the part matched.”

(3) In subsection (5)(a), for the words from “year” to the end (excluding the “and”) substitute “ tax year immediately after the relevant tax year, ”.

(4) Omit subsection (8).

113 Omit sections 92 to 95 (matching).

114 Omit—

- (a) in FA 1998, section 130(1) and (4), and paragraph 6(3) and (4) of Schedule 21,
- (b) in FA 2002, paragraph 6 of Schedule 11,

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- (c) in FA 2003, section 163(3), and
- (d) in FA 2006, paragraphs 34(2)(d) and 36(2)(a) of Schedule 12.

*Attribution of gains to beneficiaries: commencement etc*

- 115 The amendments made by paragraphs 106 to 114 have effect for the tax year 2008-09 and subsequent tax years.
- 116 For the purposes of sections 87 and 87A of TCGA 1992, no account is to be taken of—
- (a) any capital payment received before 10 March 1981, or
  - (b) any capital payment received on or after that date but before 6 April 1984, so far as it represents a chargeable gain which accrued to the trustees before 6 April 1981.
- 117 In the application of section 87 of TCGA 1992 for a tax year by virtue of section 88, no account is to be taken of any capital payment received before 6 April 1991.
- 118 (1) This paragraph applies if—
- (a) section 87 of TCGA 1992 applies to a settlement for the tax year 2008-09 or any subsequent tax year (“the tax year”),
  - (b) the settlement was made before 17 March 1998,
  - (c) none of the settlors fulfilled the residence requirements when the settlement was made, and
  - (d) none of the settlors fulfils the residence requirements in the tax year.
- (2) For the purposes of that section as it applies to the settlement for the tax year, no account is to be taken of—
- (a) any gains or losses accruing to the trustees of the settlement before 17 March 1998, or
  - (b) any capital payments received before that date.
- (3) A settlor “fulfils the residence requirements” when the settlor is—
- (a) resident or ordinarily resident in the United Kingdom, and
  - (b) domiciled in any part of the United Kingdom.
- 119 Section 87C of TCGA 1992 does not apply in relation to any capital payment received before 6 April 2008.
- 120 (1) This paragraph applies to a settlement if section 87 or 89(2) of TCGA 1992 applied to it for the tax year 2007-08 or any earlier tax year.
- (2) The following steps are to be taken for the purposes of calculating the section 2(2) amount for the settlement for the tax year 2007-08 and earlier tax years.

*Step 1*

Calculate (in accordance with section 87 and, where appropriate, section 88) the section 2(2) amount for the settlement for the tax year 2007-08 and earlier tax years.

For this purpose, references in section 87(4) and (5) of TCGA 1992 (as substituted) to section 87 of that Act applying to a settlement for a tax year are to be read as references to section 87 of that Act (as it had effect before that substitution) applying to a settlement for a tax year.

*Step 2*

*Status: Point in time view as at 01/12/2009.*

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Find the total amount of chargeable gains treated under section 87 or 89(2) as accruing to beneficiaries of the settlement in the tax year 2007-08 or any earlier tax year (“the total deemed gains”).

*Step 3*

Find the earliest tax year for which the section 2(2) amount is not nil.

If the section 2(2) amount for that year is less than or equal to the total deemed gains, reduce that section 2(2) amount to nil.

Otherwise, reduce that section 2(2) amount by the amount of the total deemed gains.

*Step 4*

Reduce the total deemed gains by the amount by which the section 2(2) amount was reduced under Step 3.

*Step 5*

If the total deemed gains is not nil, start again at Step 3.

For this purpose, read references to the earliest tax year for which the section 2(2) amount is not nil as references to the earliest tax year—

- (a) which is after the last tax year for which Steps 3 and 4 have been undertaken, and
- (b) for which the section 2(2) amount is not nil.

(3) If, before 6 April 2008, the trustees of the settlement made a transfer of value to which Schedule 4B to TCGA 1992 applied, sub-paragraph (2) has effect subject to such modifications as are just and reasonable on account of Schedule 4C to that Act having applied in relation to the settlement.

(4) This paragraph does not apply if section 90 of TCGA 1992 applied to a transfer of settled property by or to the trustees of the settlement that was made before 6 April 2008 (see paragraph 121).

121 (1) If section 90 of TCGA 1992 (as originally enacted) applied to a transfer of settled property made before 6 April 2008, this paragraph applies in relation to the transferor settlement and the transferee settlement.

(2) In this paragraph “the year of transfer” means the tax year in which the transfer occurred.

(3) The following steps are to be taken for the purpose of calculating the section 2(2) amount for the transferor and transferee settlements for the tax year 2007-08 and earlier tax years.

*Step 1*

Take the steps in paragraph 120(2) for the purpose of calculating the section 2(2) amount (at the end of the year of transfer) for the transferor settlement for the year of transfer and earlier tax years.

For this purpose, read references there to the tax year 2007-08 as references to the year of transfer.

*Step 2*



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Take the steps in paragraph 120(2) for the purpose of calculating the section 2(2) amount (before the year of transfer) for the transferee settlement for the tax year before the year of transfer and earlier tax years.

For this purpose, read references there to the tax year 2007-08 as references to the tax year before the year of transfer.

*Step 3*

Calculate the section 2(2) amount for the transferee settlement for the year of transfer.

*Step 4*

Treat the section 2(2) amount for the transferee settlement for the year of transfer or any earlier tax year (as calculated under Step 2 or 3) as increased by—

- (a) the section 2(2) amount for the transferor settlement for that year (as calculated under Step 1), or
- (b) if part only of the settled property was transferred, the relevant proportion of the amount mentioned in paragraph (a).

“The relevant proportion” here has the same meaning as in section 90(4) of TCGA 1992 (as substituted by this Schedule).

*Step 5*

Treat the section 2(2) amount for the transferor settlement for any tax year as reduced by the amount by which the section 2(2) amount for the transferee settlement for that year is increased under Step 4.

*Step 6*

Take the steps in paragraph 120(2) for the purpose of calculating the section 2(2) amount for the transferor settlement for the tax year 2007-08 and earlier tax years.

For this purpose—

- (a) treat the section 2(2) amount for the year of transfer or any earlier tax year as the amount calculated by taking Steps 1 and 5 above, and
- (b) reduce the total deemed gains by the amount of the total deemed gains calculated by taking Step 1 above.

*Step 7*

Take the steps in paragraph 120(2) for the purpose of calculating the section 2(2) amount for the transferee settlement for the tax year 2007-08 and earlier tax years.

For this purpose—

- (a) treat the section 2(2) amount for the year of transfer or any earlier tax year as the amount calculated by taking Steps 2 to 4 above, and
- (b) reduce the total deemed gains by the amount of the total deemed gains calculated by taking Step 2 above.

(4) This paragraph applies with any necessary modifications in relation to a settlement as respects which more than one relevant transfer was made.

(5) In sub-paragraph (4) “relevant transfer” means a transfer—

- (a) made before 6 April 2008, and

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- (b) to which section 90 of TCGA 1992 applied.
- (6) If, before 6 April 2008, the trustees of the transferor or transferee settlement made a transfer of value to which Schedule 4B to TCGA 1992 applied, this paragraph has effect subject to such modifications as are just and reasonable on account of Schedule 4C to that Act having applied in relation to the settlement.
- 122 (1) If all of a capital payment would (in the tax year 2008-09) have been left out of account by virtue of section 87(6) of TCGA 1992 as originally enacted, the amount of that capital payment is reduced to nil.
- (2) If part of a capital payment would (in the tax year 2008-09) have been left out of account by virtue of section 87(6) of TCGA 1992 as originally enacted, the amount of that capital payment is reduced by the amount of that part.
- (3) If—
- (a) chargeable gains were treated under section 87 or 89(2) of, or paragraph 8 of Schedule 4C to, TCGA 1992 as accruing in the tax year 2007-08 or any earlier tax year to a beneficiary,
  - (b) more than one capital payment that the beneficiary had received was taken into account for the purposes of determining the amount of chargeable gains treated as accruing to the beneficiary, and
  - (c) the amount of those chargeable gains was less than the total amount of capital payments taken into account,
- for the purposes of this paragraph treat section 87(6) of TCGA 1992 as originally enacted as having effect in relation to earlier capital payments before later ones.
- (4) References in this paragraph to section 87(6) of TCGA 1992 include that provision as it would (but for the amendments made by this Schedule) have applied by virtue of section 762(3) of ICTA (offshore income gains).
- (5) References in this paragraph to chargeable gains include offshore income gains.
- 123 Section 89(2) of TCGA 1992 as substituted applies to a settlement for the tax year 2008-09 (and subsequent tax years) if section 89(2) of that Act as originally enacted would (but for the amendments made by this Schedule) have applied to the settlement for the tax year 2008-09.
- 124 (1) This paragraph applies if—
- (a) chargeable gains are treated under section 87 or 89(2) of TCGA 1992 as accruing to an individual in the tax year 2008-09 or any subsequent tax year, and
  - (b) the individual is not domiciled in the United Kingdom in that year.
- (2) The individual is not charged to capital gains tax on the chargeable gains if and to the extent that they are treated as accruing by reason of—
- (a) a capital payment received (or treated as received) by the individual before 6 April 2008, or
  - (b) the matching of any capital payment with the section 2(2) amount for the tax year 2007-08 or any earlier tax year.
- 125 (1) This paragraph applies in relation to a settlement for the tax year 2008-09 or any subsequent tax year (“the relevant tax year”) if—
- (a) an individual who was resident or ordinarily resident, but not domiciled, in the United Kingdom in the tax year 2007-08 received a capital payment from

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- the trustees of the settlement on or after 12 March 2008 but before 6 April 2008, and
- (b) the individual is resident or ordinarily resident, but not domiciled, in the United Kingdom in the relevant tax year.
- (2) For the purposes of sections 87 to 89 of TCGA 1992 as they apply in relation to the settlement for the relevant tax year, no account is to be taken of the capital payment.
- 126 (1) The following provisions apply to a settlement if—
- (a) section 87 applies to the settlement for the tax year 2008-09, and
- (b) the trustees of the settlement have made an election under this sub-paragraph.
- (2) An election under sub-paragraph (1) may only be made on or before the first 31 January to occur after the end of the first tax year (beginning with the tax year 2008-09) in which an event within either of the following paragraphs occurs—
- (a) a capital payment is received (or treated as received) by a beneficiary of the settlement, and the beneficiary is resident in the United Kingdom in the tax year in which it is received, and
- (b) the trustees transfer all or part of the settled property to the trustees of another settlement, and section 90 of TCGA 1992 applies in relation to the transfer.
- (3) For a tax year as respects which the settlement has a Schedule 4C pool, the reference in sub-paragraph (2)(a) above to a capital payment received (or treated as received) by a beneficiary of the settlement is to be read as a capital payment received (or treated as received) by a beneficiary of a relevant settlement from the trustees of a relevant settlement.
- (4) Paragraph 8A of that Schedule (relevant settlements) applies for the purposes of sub-paragraph (3) above.
- (5) An election under sub-paragraph (1) is irrevocable.
- (6) An election under that sub-paragraph must be made in the way and form specified by the Commissioners for Her Majesty's Revenue and Customs.
- (7) Sub-paragraph (8) applies if—
- (a) by virtue of the matching of a capital payment with the section 2(2) amount for the settlement for the tax year 2008-09 or any subsequent tax year (“the relevant tax year”), chargeable gains are treated under section 87 or 89(2) of, or paragraph 8 of Schedule 4C to, TCGA 1992 as accruing to an individual in a tax year, and
- (b) the individual is resident, but not domiciled, in the United Kingdom in that year.
- (8) The individual is not charged to capital gains tax on so much of the chargeable gains as exceeds the relevant proportion of those gains.
- (9) The relevant proportion is—

$$\frac{A}{B}$$

where—

A is what would be the section 2(2) amount for the settlement for the relevant tax year, if immediately before 6 April 2008 every relevant asset had been sold by the

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trustees (or the company concerned) and immediately re-acquired by them (or it) at the market value at that time, and

B is the section 2(2) amount for the settlement for the relevant tax year.

- (10) For the purposes of sub-paragraph (9) an asset is a “relevant asset” if—
- (a) by reason of the asset, a chargeable gain or allowable loss accrues to the trustees in the relevant tax year, and
  - (b) the asset has been comprised in the settlement from the beginning of 6 April 2008 until the time of the event giving rise to the chargeable gain or allowable loss.
- (11) For those purposes, an asset is also a “relevant asset” if—
- (a) by reason of the asset, chargeable gains are treated under section 13 of TCGA 1992 as accruing to the trustees in the relevant tax year,
  - (b) the company to which the chargeable gains actually accrue has owned the asset from the beginning of 6 April 2008 until the time of the event giving rise to those chargeable gains, and
  - (c) had the company disposed of the asset at any time in the relevant period, part of the chargeable gains (if any) accruing on the disposal would have been treated under section 13 of TCGA 1992 as accruing to the trustees.
- (12) In sub-paragraph (11)(c) “the relevant period” means the period beginning at the beginning of 6 April 2008 and ending immediately before the event giving rise to the chargeable gains.
- (13) If—
- (a) by reason of an asset which would not otherwise be a relevant asset (“the new asset”), chargeable gains or allowable losses accrue, or are treated under section 13 as accruing, to the trustees in the relevant tax year,
  - (b) the value of the new asset derives wholly or in part from another asset (“the original asset”), and
  - (c) section 43 of TCGA 1992 applies in relation to the calculation of the chargeable gains or allowable losses,
- the new asset (or part of that asset) is a “relevant asset” if the condition in sub-paragraph (10)(b) or the conditions in sub-paragraph (11)(b) and (c) would be met were the references there to the asset to be read as references to the new asset or the original asset.
- (14) If—
- (a) on or after 6 April 2008, a company (“company A”) disposes of an asset to another company (“company B”), and
  - (b) section 171 of TCGA (transfers within groups) (as applied by section 14(2) of that Act) applies in relation to the disposal,
- for the purposes of sub-paragraph (11) (and this sub-paragraph) treat company B as having owned the asset throughout the period when company A owned it.
- (15) If an asset is a relevant asset by virtue of sub-paragraph (14), for the purposes of sub-paragraph (9)—
- (a) treat the chargeable gains as having accrued to the company which owned the asset at the beginning of 6 April 2008, and

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- (b) treat the proportion of those chargeable gains attributable under section 13 of TCGA 1992 to the trustees as being the proportion of the chargeable gains actually accruing that are so attributable.
- (16) If—
- (a) an asset would otherwise be a “relevant asset” within sub-paragraph (11), and
- (b) the proportion of chargeable gains treated under section 13 of TCGA 1992 as accruing to the trustees by reason of the asset (“the relevant proportion”) is greater than the minimum proportion,
- for the purposes of sub-paragraph (9) treat the appropriate proportion of the asset as a relevant asset and the rest of the asset as if it were not a relevant asset.
- (17) “The minimum proportion” is the smallest proportion of chargeable gains (if any) that would have been attributable to the trustees on a disposal of the asset at any time in the relevant period (as defined by sub-paragraph (12)).
- (18) “The appropriate proportion” is the minimum proportion divided by the relevant proportion.
- 127 (1) This paragraph applies if—
- (a) in the tax year 2008-09 or any subsequent tax year, the trustees of a settlement (“the transferor settlement”) transfer all or part of the settled property to the trustees of another settlement (“the transferee settlement”),
- (b) section 90 of TCGA 1992 applies in relation to the transfer,
- (c) the trustees of the transferor settlement have made an election under paragraph 126(1),
- (d) by virtue of the matching of a capital payment with the section 2(2) amount for the transferee settlement for the tax year 2008-09 or any subsequent tax year (“the relevant tax year”), chargeable gains are treated under section 87 or 89(2) of, or paragraph 8 of Schedule 4C to, TCGA 1992 as accruing to an individual in a tax year, and
- (e) the individual is resident, but not domiciled, in the United Kingdom in that year.
- (2) If the trustees of the transferee settlement have made an election under paragraph 126(1), paragraph 126(7) to (9) have effect in relation to the transferee settlement for that year as if the reference in paragraph 126(9) to relevant assets included relevant assets within the meaning of this paragraph.
- (3) If the trustees of the transferee settlement have not made an election under paragraph 126(1), the individual is not charged to capital gains tax on so much of the chargeable gains mentioned in sub-paragraph (1)(d) above as exceeds the relevant proportion of those gains.
- (4) The relevant proportion is—

$$\frac{A}{B}$$

where—

A is what would be the section 2(2) amount for the transferee settlement for the relevant tax year, if immediately before 6 April 2008 every relevant asset had been

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sold by the company concerned and immediately re-acquired by it at the market value at that time, and

B is the section 2(2) amount for the transferee settlement for the relevant tax year.

- (5) For the purposes of this paragraph an asset is a “relevant asset” if—
- (a) by reason of the asset, chargeable gains are treated under section 13 of TCGA 1992 as accruing to the trustees of the transferee settlement in the relevant tax year,
  - (b) the company to which the chargeable gains actually accrue has owned the asset from the beginning of 6 April 2008 until the time of the event giving rise to those chargeable gains,
  - (c) had the company disposed of the asset at any time in the relevant period, part of the chargeable gains (if any) accruing on the disposal would have been treated under section 13 of TCGA 1992 as accruing to—
    - (i) the trustees of the transferor settlement (if the disposal had been made before the transfer), or
    - (ii) the trustees of the transferee settlement (if it had not).
- (6) In sub-paragraph (5)(c) “the relevant period” means the period beginning at the beginning of 6 April 2008 and ending immediately before the event giving rise to the chargeable gains.
- (7) Sub-paragraphs (13) to (18) of paragraph 126 apply for the purposes of this paragraph (with such modifications as are necessary) as they apply for the purposes of that paragraph.

*Attribution of gains to beneficiaries: cases involving transfers of value*

128 TCGA 1992 is amended as follows.

129 (1) Section 85A (transfers of value: attribution of gains to beneficiaries and treatment of losses) is amended as follows.

(2) After subsection (2) insert—

“(2A) For the purposes of sections 87 to 89, no account is to be taken of any section 2(2) amount in a Schedule 4C pool (see paragraph 1 of Schedule 4C).”

(3) For subsection (3) substitute—

“(3) When calculating the section 2(2) amount for a settlement for a tax year (within the meaning of section 87), no account is to be taken of any chargeable gains or allowable losses accruing by virtue of Schedule 4B.

Nothing in this subsection affects any increase in a section 2(2) amount by virtue of paragraph 1(3A) or 7B(2)(b) of Schedule 4C.”

130 In paragraph 3 of Schedule 4B (transfers of value by trustees linked with trustee borrowing: settlements), for sub-paragraph (4) substitute—

“(4) A settlement is “within section 87” for a tax year if—

- (a) section 87 applies to the settlement for that year, or
- (b) chargeable gains would be treated under section 89(2) as accruing in that year to a beneficiary who received a capital payment from the trustees of the settlement in that year.

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- (5) The reference in subsection (4)(b) to chargeable gains treated as accruing includes offshore income gains treated as arising.”
- 131 Schedule 4C (transfers of value: attribution of gains to beneficiaries) is amended as follows.
- 132 In paragraph 1, for sub-paragraphs (2) and (3) substitute—
- “(2) The transferor settlement is regarded for the purposes of this Schedule as having a “Schedule 4C pool”.
- (3) The Schedule 4C pool contains the section 2(2) amounts for the settlement that are outstanding at the end of the tax year in which the original transfer is made (see paragraph 1A).
- (3A) The section 2(2) amount for that tax year is increased by—
- (a) the amount of Schedule 4B trust gains accruing by virtue of the original transfer (see paragraphs 3 to 7), and
- (b) the total amount of any further Schedule 4B trust gains accruing by virtue of any further transfers of value to which that Schedule applies that are made by the trustees in that tax year.”
- 133 After that paragraph insert—

*“Outstanding section 2(2) amounts*

- 1A (1) The following steps are to be taken for the purpose of calculating the section 2(2) amounts for a settlement that are outstanding at the end of a tax year (“the relevant tax year”).

*Step 1*

Find the section 2(2) amount for the settlement for the relevant tax year and earlier tax years, as reduced under section 87A as it applies for the relevant tax year and earlier tax years.

*Step 2*

This Step applies if, by virtue of the matching of the section 2(2) amount for the settlement for a tax year (“the applicable year”) with a capital payment, chargeable gains are treated under section 87 or 89(2) as accruing in the relevant tax year to a beneficiary who is not chargeable to tax for that year.

Increase the section 2(2) amount for the applicable year (found under Step 1) by the amount of the chargeable gains.

- (2) For the purposes of Step 1 of sub-paragraph (1) take into account the effect of section 90 in relation to any transfer of settled property from or to the trustees of the settlement made in or before the relevant tax year.
- (3) For the purposes of this Schedule a beneficiary is “chargeable to tax” for a tax year if the beneficiary is resident or ordinarily resident in the United Kingdom in that year.”
- 134 In paragraph 4(2) (chargeable amount: non-resident settlement), at the end insert “(and had made the disposals which Schedule 4B treats them as having made) ”.

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- 135 In paragraph 5(2)(a) (chargeable amount: dual resident settlement), after “apply”  
insert “ (and the disposals which Schedule 4B treats them as having made were  
made) ”.
- 136 Omit paragraph 7A (and the heading before it).
- 137 For paragraph 7B substitute—
- “7B (1) This paragraph applies if the trustees of the transferor settlement make a  
further transfer of value to which Schedule 4B applies in a tax year (“the  
year of the transfer”) after the tax year mentioned in paragraph 1(3).
- (2) If the settlement has a Schedule 4C pool at the beginning of the year of the  
transfer—
- (a) the section 2(2) amounts in the Schedule 4C pool are increased by  
the section 2(2) amounts for the settlement that are outstanding at  
the end of the year of the transfer, and
  - (b) the section 2(2) amount in the pool for the year of transfer is  
increased (or further increased) by the amount of Schedule 4B trust  
gains accruing by virtue of the further transfer.
- (3) If the settlement does not have a Schedule 4C pool at the beginning of the  
year of the transfer, this Schedule applies in relation to the further transfer  
as it applied in relation to the original transfer.
- (4) For the purposes of this paragraph a settlement has a Schedule 4C pool until  
the end of the tax year in which all section 2(2) amounts in the pool have  
been reduced to nil.”
- 138 For paragraph 8 substitute—
- “8 (1) Chargeable gains are treated as accruing in a tax year (“the relevant tax year”)  
to a beneficiary who has received a capital payment from the trustees of a  
relevant settlement in the relevant tax year or any earlier tax year if all or  
part of the capital payment is matched (under section 87A as it applies for  
the relevant tax year) with the section 2(2) amount in the Schedule 4C pool  
for the relevant tax year or any earlier tax year.
- (2) The amount of chargeable gains treated as accruing is equal to—
- (a) the amount of the capital payment, or
  - (b) if only part of the capital payment is matched, the amount of that  
part.
- (3) Section 87A applies for a tax year for the purposes of matching  
capital payments received from the trustees of a relevant settlement with  
section 2(2) amounts in the Schedule 4C pool as if—
- (a) references to section 2(2) amounts were to section 2(2) amounts in  
the Schedule 4C pool,
  - (b) references to a capital payment received from the trustees by a  
beneficiary were to a capital payment received from the trustees of  
a relevant settlement by a beneficiary who is chargeable to tax for  
that year, and
  - (c) for section 87A(3)(b) there were substituted—  
“(b) all section 2(2) amounts in the Schedule 4C pool  
have been reduced to nil.”



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(4) Section 87A applies for a tax year by virtue of this paragraph before it applies for that year otherwise than by virtue of this paragraph; but this is subject to sub-paragraph (5).

(5) If section 87A applies for a tax year by virtue of section 762(3) of the Taxes Act (offshore income gains), it applies for that year by virtue of that provision before it applies for that year by virtue of this paragraph.”

139 After paragraph 8A insert—

*“Attribution of gains: remittance basis*

8AA Section 87B (remittance basis) applies in relation to chargeable gains treated under paragraph 8 as accruing as it applies in relation to chargeable gains treated under section 87 as accruing.”

140 Omit paragraphs 8B and 8C (including the heading before paragraph 8B).

141 For paragraph 9 (and the heading before it) substitute—

*“Attribution of gains: disregard of certain capital payments*

9 (1) For the purposes of paragraph 8 (and section 87A as it applies for the purposes of that paragraph), no account is to be taken of a capital payment to which any of sub-paragraphs (2) to (4) applies (or a part of a capital payment to which sub-paragraph (4) applies).

(2) This sub-paragraph applies to a capital payment received before the tax year preceding the tax year in which the original transfer is made.

(3) This sub-paragraph applies to a capital payment that—

(a) is received by a beneficiary of a settlement from the trustees in a tax year during the whole of which the trustees—

(i) are resident and ordinarily resident in the United Kingdom, and

(ii) are not Treaty non-resident,

(b) was made before any transfer of value to which Schedule 4B applies was made, and

(c) was not made in anticipation of the making of any such transfer of value or of chargeable gains accruing under that Schedule.

(4) This sub-paragraph applies to a capital payment if (and to the extent that) it is received (or treated as received) in a tax year from the trustees by a company that—

(a) is not resident in the United Kingdom in that year, and

(b) would be a close company if it were resident in the United Kingdom, (and is not treated under any of subsections (3) to (5) of section 96 as received by another person).”

142 In paragraph 10 (residence of trustees from whom capital payment received)—

(a) in sub-paragraph (1), for “sub-paragraph (2) below” substitute “ paragraph 9(3) ”, and

(b) omit sub-paragraphs (2) and (3).

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143 (1) Paragraph 12 (attribution of gains to settlor in section 10A cases) is amended as follows.

(2) For sub-paragraphs (1) to (3) substitute—

“(1) This paragraph applies if—

- (a) by virtue of section 10A, an amount of chargeable gains within section 86(1)(e) that accrued in an intervening year to the trustees of a settlement would be treated as accruing to a person (“the settlor”) in the year of return, and
- (b) after paragraph 8 has applied for the year of return, the section 2(2) amount for the intervening year that is in the Schedule 4C pool for the settlement is less than the amount mentioned in paragraph (a).

(2) The amount of chargeable gains treated as mentioned in sub-paragraph (1) (a) as accruing to the settlor in the year of return is limited to the section 2(2) amount referred to in sub-paragraph (1)(b).”

144 In paragraph 12A(3), for “87(4)” substitute “ 87(2) ”.

145 (1) Paragraph 13 (increase in tax payable under this Schedule) is amended as follows.

(2) For sub-paragraph (1) substitute—

“(1) This paragraph applies if—

- (a) chargeable gains are treated under paragraph 8 as accruing to a beneficiary by virtue of the matching (under section 87A) of all or part of a capital payment with the section 2(2) amount for a tax year (“the relevant tax year”), and
- (b) the beneficiary is charged to tax by virtue of the matching.

(1A) Where part of a capital payment is matched, references in sub-paragraphs (2) and (3) to the capital payment are to the part matched.”

(3) In sub-paragraph (5)(a), for the words from “year of assessment” to the end (excluding the “and”) substitute “ tax year immediately after the relevant tax year, ”.

146 Omit paragraph 3 and 6(2) and (3) of Schedule 29 to FA 2003.

*Attribution of gains to beneficiaries in cases involving transfers of value: commencement etc*

147 The amendments made by paragraphs 128 to 146 have effect in relation to transfers of value to which Schedule 4B to TCGA 1992 applies that are made on or after 6 April 2008.

148 For the purposes of paragraph 8 of Schedule 4C to TCGA 1992 (and section 87A of that Act as it applies for the purposes of that paragraph), no account is to be taken of any capital payment received before 21 March 2000.

149 A capital payment received before 6 April 2008 is not within paragraph 9(4) of Schedule 4C to TCGA 1992 (if it otherwise would be).

150 Paragraph 124 applies in relation to chargeable gains treated under paragraph 8 of Schedule 4C to TCGA 1992 as accruing as it applies in relation to chargeable gains treated under section 87 as accruing.

151 (1) This paragraph applies for the tax year 2008-09 or any subsequent tax year (“the relevant tax year”) if—

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- (a) an individual who was resident or ordinarily resident, but not domiciled, in the United Kingdom in the tax year 2007-08 received a capital payment from the trustees of a settlement on or after 12 March 2008 but before 6 April 2008, and
  - (b) the individual is resident or ordinarily resident, but not domiciled, in the United Kingdom in the relevant tax year.
- (2) For the purposes of paragraph 8 of Schedule 4C to TCGA 1992 as it applies for the relevant tax year (and section 87A of that Act as it applies for those purposes), no account is to be taken of the capital payment.

*Attribution of gains to beneficiaries: existing Schedule 4C pools*

152 Schedule 4C to TCGA 1992 (as it has effect without the amendments made by paragraphs 128 to 146) applies for the tax year 2008-09 and subsequent tax years in relation to Schedule 4C pools created before 6 April 2008 (“existing Schedule 4C pools”) as if paragraphs 7B and 9(2) were omitted.

153 Any reduction in the amount of a capital payment has effect for the purposes of Schedule 4C to TCGA 1992 as it applies in relation to existing Schedule 4C pools (as well as for other purposes).

154 (1) If all of a capital payment ceases (in the tax year 2008-09 or any subsequent tax year) to be available, the amount of the capital payment is reduced to nil.

(2) If part of a capital payment ceases (in the tax year 2008-09 or any subsequent tax year) to be available, the amount of the capital payment is reduced by the amount of that part.

(3) A capital payment “ceases to be available” in a tax year if and to the extent that, by reason of the capital payment, chargeable gains are treated under paragraph 8 of Schedule 4C to TCGA 1992 (as it has effect in relation to existing Schedule 4C pools) as accruing in that year to the recipient.

(4) If—

(a) chargeable gains are treated under paragraph 8 of Schedule 4C to TCGA 1992 (as it has effect in relation to existing Schedule 4C pools) as accruing in a tax year,

(b) more than one capital payment that the beneficiary has received is taken into account for the purposes of determining the amount of chargeable gains treated as accruing to the beneficiary, and

(c) the amount of the chargeable gains is less than the total amount of capital payments taken into account,

sub-paragraph (3) applies in relation to earlier capital payments before later ones.

155 In any tax year—

(a) Schedule 4C to TCGA 1992 (as amended by paragraphs 128 to 146) applies in relation to a settlement before that Schedule (as it has effect without those amendments) applies in relation to the settlement, and

(b) that Schedule (as it has effect without those amendments) applies in relation to the settlement before section 87 or 89(2) of that Act applies in relation to the settlement.

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*Transfers of securities: accrued income profits*

- 156 In section 830(4) of ITTOIA 2005 (meaning of “relevant foreign income”)—
- (a) omit the “and” at the end of paragraph (f), and
- (b) at the end of paragraph (g) insert—
- “(h) section 670A of ITA 2007 (accrued income profits).”
- 157 In section 617 of ITA 2007 (accrued income profits: income charged), after subsection (6) insert—
- “(7) Subsection (1) is subject to section 832 of ITTOIA 2005 (relevant foreign income charged on remittance basis).”
- 158 Omit section 644 of that Act (accrued income profits: individuals to whom remittance basis applies).
- 159 After section 670 of that Act insert—

*“Individuals to whom remittance basis applies*

**670A Individuals to whom remittance basis applies**

- (1) This section applies if—
- (a) accrued income profits are made by an individual as a result of a transfer of foreign securities, and
- (b) section 809B, 809D or 809E (remittance basis) applies to the individual for the tax year in which the profits are made.
- (2) Treat the accrued income profits as relevant foreign income of the individual.
- (3) For the purposes of Chapter A1 of Part 14 (remittance basis)—
- (a) if the individual is the transferor—
- (i) treat any consideration for the transfer as deriving from the accrued income profits, and
- (ii) if on the transfer the individual does not receive consideration of an amount equal to (or exceeding) the market value of the securities, treat the securities as deriving from the accrued income profits, and
- (b) if the individual is the transferee, treat the securities as deriving from the accrued income profits.
- (4) For the purposes of this section securities are “foreign” if income from them would be relevant foreign income.”
- 160 The amendments made by paragraphs 156 to 159 have effect in relation to transfers of securities where the settlement day is on or after 6 April 2008.

*Transfers of assets abroad*

<sup>F9</sup>161 .....

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### Textual Amendments

**F9** Sch. 7 para. 161 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 470](#)

162 In section 830(4) of ITTOIA 2005 (meaning of “relevant foreign income”), after paragraph (h) insert “and

(i) sections 726, 730 and 735 of that Act (transfer of assets abroad: foreign deemed income).”

163 ITA 2007 is amended as follows.

164 In section 720(4) (transfer of assets abroad: charge where power to enjoy income), after “abroad” insert “ and section 726 (non-UK domiciled individuals to whom remittance basis applies) ”.

165 For section 726 substitute—

#### “726 Non-UK domiciled individuals to whom remittance basis applies

(1) This section applies in relation to income treated under section 721 as arising to an individual in a tax year (“the deemed income”) if—

(a) section 809B, 809D or 809E (remittance basis) applies to the individual for the year, and

(b) the individual is not domiciled in the United Kingdom in the year.

(2) For the purposes of this section the deemed income is “foreign” if (and to the extent that) the income mentioned in section 721(2) would be relevant foreign income if it were the individual's.

(3) Treat the foreign deemed income as relevant foreign income of the individual.

(4) For the purposes of Chapter A1 of Part 14 (remittance basis) treat so much of the income within section 721(2) as would be relevant foreign income if it were the individual's as deriving from the foreign deemed income.”

166 In section 727 (transfer of assets abroad: charge where capital sums received), after subsection (3) insert—

“(3A) But see section 730 (non-UK domiciled individuals to whom remittance basis applies).”

167 For section 730 substitute—

#### “730 Non-UK domiciled individuals to whom remittance basis applies

(1) This section applies in relation to income treated under section 728 as arising to an individual in a tax year (“the deemed income”) if—

(a) section 809B, 809D or 809E (remittance basis) applies to the individual for the year, and

(b) the individual is not domiciled in the United Kingdom in the year.

*Status: Point in time view as at 01/12/2009.*

*Changes to legislation: Finance Act 2008, SCHEDULE 7 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) For the purposes of this section the deemed income is “foreign” if (and to the extent that) the income mentioned in section 728(1)(a) would be relevant foreign income if it were the individual's.
- (3) Treat the foreign deemed income as relevant foreign income of the individual.
- (4) For the purposes of Chapter A1 of Part 14 (remittance basis) treat so much of the income within section 728(1)(a) as would be relevant foreign income if it were the individual's as deriving from the foreign deemed income.”
- 168 In section 731 (transfer of assets abroad: charge where benefit received), after subsection (2) insert—
- “(2A) But see section 735 (non-UK domiciled individuals to whom remittance basis applies).”
- 169 For section 735 substitute—

**“735 Non-UK domiciled individuals to whom remittance basis applies**

- (1) This section applies if—
- income is treated under section 732 as arising to an individual in a tax year (“the deemed income”),
  - section 809B, 809D or 809E (remittance basis) applies to the individual for the year, and
  - the individual is not domiciled in the United Kingdom in the year.
- (2) For the purposes of this section the deemed income is “foreign” if (and to the extent that) the relevant income to which it relates would be relevant foreign income if it were the individual's.
- (3) Treat the foreign deemed income as relevant foreign income of the individual.
- (4) For the purposes of Chapter A1 of Part 14 (remittance basis) treat relevant income, or a benefit, that relates to any part of the foreign deemed income as deriving from that part of the foreign deemed income.

**735A Section 735: relevant income and benefits relating to foreign deemed income**

- (1) For the purposes of section 735—
- place the benefits mentioned in Step 1 in the order in which they were received by the individual (starting with the earliest benefit received),
  - deduct from those benefits so much of any benefit within section 734(1)(b) as gives rise as mentioned in section 734(1)(d) to chargeable gains or offshore income gains,
  - place the income mentioned in Step 3 for the tax years mentioned in Step 4 (“the relevant income”) in the order determined under subsection (3),
  - deduct from that income any income that may not be taken into account because of section 743(1) or (2) (no duplication of charges),

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- (e) place the income treated under section 732(2) as arising to the individual in respect of the benefits in the order in which it is treated as arising (starting with the earliest income treated as having arisen), and
  - (f) treat the income mentioned in paragraph (e) as related to—
    - (i) the benefits, and
    - (ii) the relevant income,by matching that income with the benefits and the relevant income (in the orders mentioned in paragraphs (a), (c) and (e)).
- (2) In subsection (1) references to a step are to a step in section 733(1).
- (3) The order referred to in subsection (1)(c) is arrived at by taking the following steps.

*Step 1*

Find the relevant income for the earliest tax year (of the tax years referred to in subsection (1)(c)).

*Step 2*

Place so much of that income as is not foreign in the order in which it arose (starting with the earliest income to arise).

*Step 3*

After that, place so much of that income as is foreign in the order in which it arose (starting with the earliest income to arise).

*Step 4*

Repeat Steps 1 to 3.

For this purpose, read references to the relevant income for the earliest tax year as references to the relevant income for the first tax year after the last tax year in relation to which those Steps have been undertaken.

- (4) For the purposes of subsection (3) relevant income is “foreign” where it would be relevant foreign income if it were the individual's.
- (5) For those purposes treat income for a period as arising immediately before the end of the period.
- (6) Subsection (1)(d) does not apply if the income may not be taken into account because the individual has been charged to income tax under section 731 by reason of the income.”

170 The amendments made by paragraphs 161 to 169 have effect for the tax year 2008-09 and subsequent tax years.

*General*

171 For the purposes of this Part of this Schedule, the market value of any asset is its market value for the purposes of TCGA 1992.

**Status:**

Point in time view as at 01/12/2009.

**Changes to legislation:**

Finance Act 2008, SCHEDULE 7 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.