



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 14

#### INCOME TAX LIABILITY: MISCELLANEOUS RULES

#### [<sup>F1</sup>CHAPTER A1

#### REMITTANCE BASIS

##### Textual Amendments

- F1** Pt. 14 Ch. A1 inserted (21.7.2008 with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 1](#) (with [Sch. 7 paras. 85-89](#))

##### Modifications etc. (not altering text)

- C1** **No commentary item could be found for this reference key-  
b5c85c5c86db98b959e5afcecbd540f6**Pt. 14 Ch. A1 modified by 2003 c. 1, s. 41A(8) (as inserted (with effect in accordance with Sch. 7 para. 80 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 22](#))
- C2** Pt. 14 Ch. A1 modified by [2003 c. 1, s. 41A\(8\)](#) (as inserted (21.7.2008 with effect in accordance with Sch. 7 para. 80 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 22](#))
- C3** Pt. 14 Ch. A1 modified by [1988 c. 1, s. 762ZB\(3\)](#) (as inserted (21.7.2008 with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 94](#))
- C4** Pt. 14 Ch. A1 modified by [1992 c. 12, s. 87B\(3\)](#) (as inserted (21.7.2008 with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 108](#) (with [Sch. 7 paras. 116-119](#)))
- C5** Pt. 14 Ch. A1 modified (with effect in accordance with art. 1(2)(3) Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\)](#), [19\(3\)](#)
- C6** Pt. 14 Ch. A1 modified by 2003 c. 1, s. 41F(8) (as substituted (6.4.2015) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 5, 47](#) (with [Sch. 9 para. 48](#)))

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

## Introduction

### 809A Overview of Chapter

This Chapter provides for an alternative basis of charge in the case of individuals who are not domiciled in the United Kingdom <sup>F2</sup>....

#### Textual Amendments

- F2** Words in s. 809A omitted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 2](#) (with [Sch. 46 para. 26](#))

## Application of remittance basis

### 809B Claim for remittance basis to apply

- (1) This section applies to an individual for a tax year if the individual—
- (a) is UK resident [<sup>F3</sup>for that year] ,
  - (b) is not domiciled in the United Kingdom in that year <sup>F4</sup>..., and
  - (c) makes a claim under this section for that year.

<sup>F5</sup>(2) .....

- (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.

#### Textual Amendments

- F3** Words in s. 809B(1)(a) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 152\(2\)](#)
- F4** Words in s. 809B(1)(b) omitted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 3\(a\)](#) (with [Sch. 46 para. 26](#))
- F5** S. 809B(2) omitted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 3\(b\)](#) (with [Sch. 46 para. 26](#))

#### Modifications etc. (not altering text)

- C7** S. 809B applied by 2003 c. 1, s. 41C(7) (as inserted (21.7.2008 with effect in accordance with Sch. 7 para. 80 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 22](#))

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

- (1) This section applies to an individual for a tax year if the individual—
- (a) is aged 18 or over in that year, and
  - <sup>F6</sup>(b) meets [<sup>F7</sup>the 17-year residence test,] the 12-year residence test or the 7-year residence test for that year.]

[ An individual meets the 17-year residence test for a tax year if the individual has been <sup>F8</sup>(1ZA) UK resident in at least 17 of the 20 tax years immediately preceding that year.]

[ An individual meets the 12-year residence test for a tax year if the individual—

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- <sup>F9</sup>(1A) (a) [<sup>F10</sup>does not meet the 17-year residence test for that year, but  
(b) has been UK resident in at least 12 of the 14 tax years immediately preceding that year.]
- (1B) An individual meets the 7-year residence test for a tax year if the individual—
- (a) does not meet [<sup>F11</sup>the 17-year residence test or] the 12-year residence test for that year, but
- (b) has been UK resident in at least 7 of the 9 tax years immediately preceding that year.]
- (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 [<sup>F12</sup>—
- [<sup>F13</sup>(za) for an individual who meets the 17-year residence test for that year, £90,000;]
- (a) for an individual who meets the 12-year residence test for that year, [<sup>F14</sup>£60,000];
- (b) for an individual who meets the 7-year residence test for that year, £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).
- [ The references to income tax in subsection (5) do not include income tax under <sup>F15</sup>(5A) section 424 (gift aid).]
- (6) See section 809Z7 for the meaning of an individual's foreign income and gains for a tax year.

#### Textual Amendments

- F6** S. 809C(1)(b) substituted (17.7.2012) (with effect in accordance with Sch. 12 para. 5 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 2\(2\)](#)
- F7** Words in s. 809C(1)(b) inserted (with effect in accordance with s. 24(4) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 24\(2\)\(a\)](#)
- F8** S. 809C(1ZA) inserted (with effect in accordance with s. 24(4) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 24\(2\)\(b\)](#)
- F9** S. 809C(1A)(1B) inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 5 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 2\(3\)](#)
- F10** S. 809C(1A)(a) and word inserted (with effect in accordance with s. 24(4) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 24\(2\)\(c\)](#)
- F11** Words in s. 809C(1B)(a) inserted (with effect in accordance with s. 24(4) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 24\(2\)\(d\)](#)
- F12** Words in s. 809C(4) substituted (17.7.2012) (with effect in accordance with Sch. 12 para. 5 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 2\(4\)](#)

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- F13** S. 809C(4)(za) inserted (with effect in accordance with s. 24(4) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 24\(2\)\(e\)\(i\)](#)
- F14** Sum in s. 809C(4)(a) substituted (with effect in accordance with s. 24(4) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 24\(2\)\(e\)\(ii\)](#)
- F15** S. 809C(5A) inserted (with effect in accordance with Sch. 27 para. 15(1) of the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 27 para. 2](#)

### **809D Application of remittance basis without claim where unremitted foreign income and gains under £2,000**

- (1) This section applies to an individual for a tax year if—
- (a) the individual is UK resident [<sup>F16</sup>for that year] ,
  - (b) the individual is not domiciled in the United Kingdom in that year <sup>F17</sup>..., and
  - (c) the amount of the individual's unremitted foreign income and gains for that year is less than £2,000.

[<sup>F18</sup>unless condition A or condition B is met.]

[<sup>F19</sup>(1A) Condition A is that <sup>F20</sup>... conditions A to F in section 828B are met.]

(1B) Condition B is that the individual gives notice in a return under section 8 of TMA 1970 that this section is not to apply in relation to the individual for that year.]

- (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.

#### **Textual Amendments**

- F16** Words in s. 809D(1)(a) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\), Sch. 45 para. 152\(3\)](#)
- F17** Words in s. 809D(1)(b) omitted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 4\(a\)](#) (with [Sch. 46 para. 26](#))
- F18** Words in s. 809D(1) inserted (with effect in accordance with Sch. 27 para. 15(1) of the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 27 para. 3\(2\)](#)
- F19** S. 809D(1A)(1B) inserted (with effect in accordance with Sch. 27 para. 15(1) of the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 27 para. 3\(3\)](#)
- F20** Words in s. 809D(1A) omitted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 4\(b\)](#) (with [Sch. 46 para. 26](#))

### **809E Application of remittance basis without claim: other cases**

- (1) This section applies to an individual for a tax year if—
- (a) the individual is UK resident [<sup>F21</sup>for that year],
  - (b) the individual is not domiciled in the United Kingdom in that year <sup>F22</sup>...,
  - [<sup>F23</sup>(c) for that year the individual either has no UK income or gains or has no UK income and gains other than taxed investment income not exceeding £100.]

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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
- [<sup>F24</sup>unless the individual gives notice in a return under section 8 of TMA 1970 that this section is not to apply in relation to the individual for 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.
- [ For the purposes of subsection (1)(c) “taxed investment income” means UK income <sup>F25</sup>(2A) or gains consisting of payments within section 946 from which a sum representing income tax has been deducted.]
- (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.

#### Textual Amendments

- F21** Words in s. 809E(1)(a) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\), Sch. 45 para. 152\(4\)](#)
- F22** Words in s. 809E(1)(b) omitted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 5](#) (with [Sch. 46 para. 26](#))
- F23** S. 809E(1)(c) substituted (with effect in accordance with Sch. 27 para. 15(1) of the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 27 para. 4\(2\)](#)
- F24** Words in s. 809E(1) inserted (with effect in accordance with Sch. 27 para. 15(1) of the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 27 para. 4\(3\)](#)
- F25** S. 809E(2A) inserted (with effect in accordance with Sch. 27 para. 15(1) of the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 27 para. 4\(4\)](#)

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

#### **809F Effect on what is chargeable**

- (1) 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) [<sup>F26</sup>The] individual's foreign chargeable gains for that year are charged in accordance with section 12 of TCGA 1992.

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(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.

[ For the effect on amounts which count as employment income under Chapter 2 of Part <sup>F27</sup>(5A) 7A of ITEPA 2003, see sections 554Z9 to 554Z11 of that Act.]

(6) Nothing in this section applies in relation to nominated income or chargeable gains (see section 809H).

#### Textual Amendments

**F26** Word in s. 809F(4) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 22](#) (with [Sch. 46 para. 26](#))

**F27** S. 809F(5A) inserted (19.7.2011) (with effect in accordance with Sch. 2 para. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 41](#)

### 809G Claim for remittance basis: effect on allowances etc

(1) 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), <sup>F28</sup>...

[ any tax reduction under Chapter 3A of that Part (transferable tax allowance <sup>F29</sup>(ba) for married couples and civil partners), or]

(c) any relief under section 457 [<sup>F30</sup>or 458] (payments for life insurance etc).

(3) See also section 3(1A) of TCGA 1992 (no annual exempt amount for chargeable gains).

#### Textual Amendments

**F28** Word in s. 809G(2) omitted (with effect in accordance with s. 11(12) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), [s. 11\(8\)\(a\)](#)

**F29** S. 809G(2)(ba) inserted (with effect in accordance with s. 11(12) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 11\(8\)\(b\)](#)

**F30** Words in s. 809G(2)(c) substituted (17.7.2012) (with effect in accordance with Sch. 39 para. 32(6) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 32\(2\)\(d\)](#)

### 809H Claim for remittance basis by long-term UK resident: charge

(1) 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

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[<sup>F31</sup>(c) the individual meets [<sup>F32</sup>the 17-year residence test,] the 12-year residence test or the 7-year residence test for the relevant tax year.]

[ See section [<sup>F34</sup>809C(1ZA), (1A)] and (1B) for when an individual meets [<sup>F35</sup>the 17-<sup>F33</sup>(1A) year residence test,] the 12-year residence test or the 7-year residence test for a 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.

[<sup>F36</sup>(3A) If the individual is a Scottish taxpayer for the relevant tax year, the individual is to be treated for the purpose of calculating income tax charged by virtue of subsection (2) as if the individual were not a Scottish taxpayer for that year.]

(4) If the relevant tax increase would otherwise be less than [<sup>F37</sup>the applicable amount], 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 [<sup>F37</sup>the applicable amount], 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).

[ The references to income tax in subsection (5) do not include income tax under <sup>F38</sup>(5A) section 424 (gift aid).]

[ The applicable amount” is—

<sup>F39</sup>(5B) [ if the individual meets the 17-year residence test for the relevant tax year,

<sup>F40</sup>(za) £90,000;]

(a) if the individual meets the 12-year residence test for the relevant tax year, [<sup>F41</sup>£60,000];

(b) if the individual meets the 7-year residence test for the relevant tax year, £30,000.]

(6) Nothing in subsection (4) affects what is regarded, for the purposes of section 809I or 809J, as nominated under section 809C.

#### Textual Amendments

**F31** S. 809H(1)(c) substituted (17.7.2012) (with effect in accordance with Sch. 12 para. 5 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 3\(2\)](#)

**F32** Words in s. 809H(1)(c) inserted (with effect in accordance with s. 24(4) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 24\(3\)\(a\)](#)

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- F33** S. 809H(1A) inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 5 of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 12 para. 3\(3\)](#)
- F34** Words in s. 809H(1A) substituted (with effect in accordance with s. 24(4) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 24\(3\)\(b\)\(i\)](#)
- F35** Words in s. 809H(1A) inserted (with effect in accordance with s. 24(4) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 24\(3\)\(b\)\(ii\)](#)
- F36** S. 809H(3A) substituted (with effect in accordance with Sch. 38 para. 12 of the amending Act) by [Finance Act 2014 \(c. 26\), Sch. 38 para. 8](#)
- F37** Words in s. 809H(4) substituted (17.7.2012) (with effect in accordance with Sch. 12 para. 5 of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 12 para. 3\(4\)](#)
- F38** S. 809H(5A) inserted (with effect in accordance with Sch. 27 para. 15(1) of the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 27 para. 5](#)
- F39** S. 809H(5B) inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 5 of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 12 para. 3\(5\)](#)
- F40** S. 809H(5B)(za) inserted (with effect in accordance with s. 24(4) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 24\(3\)\(c\)\(i\)](#)
- F41** Sum in s. 809H(5B)(a) substituted (with effect in accordance with s. 24(4) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 24\(3\)\(c\)\(ii\)](#)

## 809I Remittance basis charge: income and gains treated as remitted

- (1) This section applies if—
    - (a) any of an individual's nominated income and gains is remitted to the United Kingdom in a tax year, <sup>F42</sup> ...
    - (b) any of the individual's remittance basis income and gains has not been remitted to the United Kingdom in or before that year<sup>F43</sup>, and
    - (c) the £10 test is met for 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 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 [<sup>F44</sup>(each such year for which the individual has made a nomination under that section being referred to as a “nomination 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.
- [ The £10 test is met for the tax year mentioned in subsection (1)(a) (“year X”) if,
- <sup>F45</sup>(5) taking each nomination year separately, the cumulative total as respects at least one nomination year exceeds £10.
- (6) In relation to a nomination year—
    - (a) “the cumulative total” means the sum, for all the tax years in aggregate up to and including year X, of the amounts of relevant income and gains remitted to the United Kingdom in those tax years from that nomination year, and



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- (b) “relevant income and gains” means the income and chargeable gains nominated by the individual under section 809C for that nomination year.]

#### Textual Amendments

- F42** Word in s. 809I(1)(a) omitted (17.7.2012) (with effect in accordance with Sch. 12 para. 21 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 20\(2\)\(a\)](#)
- F43** S. 809I(1)(c) and preceding word inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 21 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 20\(2\)\(b\)](#)
- F44** Words in s. 809I(3) inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 21 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 20\(3\)](#)
- F45** S. 809I(5)(6) inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 21 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 20\(4\)](#)

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

- (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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*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

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

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

- (1) 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),
  - <sup>F46</sup>(c) Chapter 5B of Part 2 of that Act (taxable specific income from employment-related securities etc: internationally mobile employees),
  - <sup>F47</sup>[ sections 554Z9 to 554Z11 of that Act (employment income provided through third parties 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 <sup>F48</sup>[809UA] to 809Z6).

#### **Textual Amendments**

- F46** S. 809K(1)(c) substituted (6.4.2015) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 29, 47](#) (with [Sch. 9 para. 48](#))
- F47** S. 809K(1)(ca) inserted (19.7.2011) (with effect in accordance with Sch. 2 para. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 42](#)
- F48** Word in s. 809K(2)(e) substituted (with effect in accordance with s. 21(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 21\(2\)](#)

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

#### **809L Meaning of “remitted to the United Kingdom”**

- (1) 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—

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- (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
    - (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).

<sup>F49</sup>(8) .....

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- (9) The cases in which [<sup>F50</sup>property (including income or chargeable gains) is used in respect of a debt include cases where the property is] 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).

#### Textual Amendments

- F49** S. 809L(8) omitted (retrospective to 22.4.2009) by virtue of Finance Act 2009 (c. 10), Sch. 27 paras. 6(2), 15(2)
- F50** Words in s. 809L(9) substituted (retrospective to 22.4.2009) by Finance Act 2009 (c. 10), Sch. 27 paras. 6(3), 15(2)

### 809M Meaning of “relevant person”

- (1) This section applies for the purposes of [<sup>F51</sup>this Chapter].
- (2) A “relevant person” is—
- the individual,
  - the individual's husband or wife,
  - the individual's civil partner,
  - 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,
  - a close company in which a person falling within any other paragraph of this subsection is a participator [<sup>F52</sup>or a company which is a 51% subsidiary of such a close company],
  - 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, [<sup>F53</sup> or a company which is a 51% subsidiary of such a company, ]
  - the trustees of a settlement of which a person falling within any other paragraph of this subsection is a beneficiary, or
  - a body connected with such a settlement.
- (3) For that purpose—
- a man and woman living together as husband and wife are treated as if they were husband and wife,
  - 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,
  - “close company” [<sup>F54</sup>is to be read in accordance with Chapter 2 of Part 10 of CTA 2010 (see in particular section 439 of that Act)],
- [<sup>F55</sup>(ca) “participator”, in relation to a close company, means a person who is a participator in relation to the company for the purposes of [<sup>F56</sup>section 455 of CTA 2010 (see sections 454 and 455(5) of] that [<sup>F57</sup>Act) and, in relation to a company that would be a close company if it were resident in the United Kingdom, means a person who would be such a participator if it were a close company,]
- “51% subsidiary” has the same meaning as in the Corporation Tax Acts (see [<sup>F58</sup>Chapter 3 of Part 24 of CTA 2010]),]
  - “settlement” and “settlor” have the same meaning as in Chapter 2 of Part 9,

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- (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.

#### Textual Amendments

- F51** Words in s. 809M(1) substituted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 12 para. 13**
- F52** Words in s. 809M(2)(e) inserted (retrospective to 22.4.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 27 paras. 7(2), 15(2)**
- F53** Words in s. 809M(2)(f) inserted (retrospective to 6.4.2010) by [Finance Act 2010 \(c. 13\)](#), **s. 33(2)(4)**
- F54** Words in s. 809M(3)(c) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **s. 1184(1), Sch. 1 para. 552(a)** (with Sch. 2)
- F55** S. 809M(3)(ca)(cb) inserted (retrospective to 22.4.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 27 paras. 7(3), 15(2)**
- F56** Words in s. 809M(3)(ca) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **s. 1184(1), Sch. 1 para. 552(b)** (with Sch. 2)
- F57** Words in s. 809M(3)(ca) substituted (retrospective to 6.4.2010) by [Finance Act 2010 \(c. 13\)](#), **s. 33(3)(4)**
- F58** Words in s. 809M(3)(cb) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **s. 1184(1), Sch. 1 para. 552(c)** (with Sch. 2)

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

- (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 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.
- (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—

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- (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.

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

- (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—
  - (a) with reference to a qualifying disposition, or
  - (b) with a view to enabling or facilitating a qualifying disposition.
- (4) A “qualifying disposition” is a disposition that—
  - (a) is made by a relevant person,
  - (b) 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

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- (c) 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—
- (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.

*Remittance of income and gains: amount remitted*

**809P Section 809L: amount remitted**

- (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.
- (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.



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- (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.
- [ If the property forms part of a set only part of which is in the United Kingdom, the<sup>F59</sup>(13) amount remitted is such portion of what it would have been had the complete set been brought to, or received or used in, the United Kingdom when the part was as is just and reasonable (having regard to the part of the set which is there).]

#### Textual Amendments

**F59** S. 809P(13) inserted (retrospective to 22.4.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 27 paras. 8, 15\(2\)](#)

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

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

- (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).

[ But this section must be read subject to section 809RA.]<sup>F60</sup>(1A)

- (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.

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- (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.

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

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- (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.

#### Textual Amendments

**F60** S. 809Q(1A) inserted (with effect in accordance with Sch. 6 para. 8 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 6 para. 5](#)

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

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

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- (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.

### **Special mixed fund rules for certain employment cases**

**809RA**

- (1) This section applies if—
- (a) an individual has general earnings from an employment for a tax year,
  - (b) those earnings include both general earnings within section 15(1) of ITEPA 2003 (“section 15(1) earnings”) and general earnings within section 26(1) of that Act (“section 26(1) earnings”),
  - (c) at least some of the section 15(1) earnings, or sums deriving (wholly or in part, and directly or indirectly) from at least some of the section 15(1) earnings, are paid into an account in that tax year at a time (a “relevant time”) when the account is a qualifying account of the individual, and
  - (d) at least some of the section 26(1) earnings, or sums deriving (wholly or in part, and directly or indirectly) from at least some of the section 26(1) earnings, are also paid into the account in that tax year at a relevant time.
- (2) If this section applies, the composition of each transfer made from the account in that tax year at a relevant time is to be determined as follows—
- Step 1* Suppose that all the condition A transfers made from the account in the tax year at a relevant time had been a single transfer made from the account at the end of the tax year.
- Step 2* Suppose that all the other transfers made from the account in the tax year at a relevant time had been a single offshore transfer made at the end of the tax year immediately after the single transfer mentioned in step 1.
- Step 3* Applying those suppositions—
- (a) find under section 809Q(3) the extent to which the single transfer mentioned in step 1 is of the individual's income or chargeable gains, and
  - (b) find under section 809R(4) the content of the single offshore transfer mentioned in step 2.
- Step 4* Each transfer made from the account in the tax year at a relevant time is to be treated as containing the specified proportion of each kind of income or capital contained in the relevant deemed transfer. “The specified proportion” is the amount of the transfer divided by the amount of the relevant deemed transfer. “The relevant deemed transfer” is—
- (a) if the transfer is a condition A transfer, the single transfer mentioned in step 1, and

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- (b) otherwise, the single offshore transfer mentioned in step 2.
- (3) Subsection (2) applies in determining the composition of a transfer for the purposes of sections 809Q and 809R but it does not otherwise affect the date on which a transfer is considered to occur for the purposes of this Chapter.
- (4) If the tax year is the tax year in which the account becomes a qualifying account, for the purpose of applying section 809Q(3) in relation to the single transfer mentioned in step 1 of subsection (2), treat the part of the tax year falling before the qualifying date for the account as a separate tax year.
- (5) If the account ceases to be a qualifying account of the individual during the tax year other than as a result of a breach of the deposit rule—
- (a) subsection (2) has effect as if references to the end of the tax year were to the end of the day on which the account ceases to be a qualifying account, and
  - (b) for the purpose of applying section 809Q(3) in relation to the single transfer mentioned in step 1 of subsection (2), treat the part of the tax year falling after the day mentioned in paragraph (a) as a separate tax year.
- (6) A transfer from the account is a “condition A transfer” if and to the extent that—
- (a) condition A in section 809L is met, and
  - (b) either—
    - (i) the property or consideration for the service is (wholly or in part), or derives (wholly or in part, and directly or indirectly) from, the transfer, or
    - (ii) the transfer, or anything deriving (wholly or in part, and directly or indirectly) from the transfer, is used as mentioned in section 809L(3)
  - (c).
- (7) A transfer from the account is an “other transfer” if and to the extent that it is not a condition A transfer.
- (8) Treat a transfer as an “other transfer” if and to the extent that, at the end of the tax year—
- (a) it is not a condition A transfer, and
  - (b) on the basis of the best estimate that can reasonably be made at that time, it will not become a condition A transfer.
- (9) If the account ceases to be a qualifying account of the individual during the tax year other than as a result of a breach of the deposit rule, subsection (8) has effect as if the reference to the end of the tax year were to the end of the day on which the account ceases to be a qualifying account.
- (10) “Qualifying account” and “the qualifying date” for an account are defined in section 809RB.
- (11) For the purposes of this section and sections 809RB to 809RD—
- (a) “employment” is to be read in accordance with section 4(1) of ITEPA 2003, and includes an office (as read in accordance with section 5(3) of that Act),
  - (b) whether general earnings are “for” a tax year is to be determined as for the purposes of the employment income Parts of ITEPA 2003 (see section 3(2) of that Act),
  - (c) a reference to anything “paid into” an account includes anything credited to the account by whatever means, and

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- (d) references to a breach of the deposit rule are to be read in accordance with section 809RC.

#### **Textual Amendments**

**F61** Ss. 809RA-809RD inserted (with effect in accordance with Sch. 6 para. 8 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 6 para. 6](#)

### **809RB Qualifying accounts**

- (1) An individual may by notice to the Commissioners nominate an account to be a qualifying account of the individual for the purposes of section 809RA.
- (2) The notice must specify the qualifying date for the account.
- (3) “The qualifying date” for the account is the first date on which there is paid into the account sums falling within subsection (4) which (in total) are more than £10.
- (4) A sum falls within this subsection if it is, or derives wholly (whether directly or indirectly) from, general earnings of the individual from an employment for a tax year which is a relevant tax year in relation to the employment.
- (5) A tax year is a “relevant” tax year in relation to an employment if the general earnings which the individual has for the tax year from the employment include both general earnings within section 15(1) of ITEPA 2003 and general earnings within section 26(1) of that Act.
- (6) The individual may withdraw the nomination by giving a further notice to the Commissioners, specifying the date with effect from which the nomination is withdrawn.
- (7) A notice under subsection (1) or (6) must be in writing and include such information as the Commissioners may reasonably require.
- (8) A notice under subsection (1) or (6) must be given no later than—
  - (a) 31 January in the tax year following the tax year in which falls, as the case may be—
    - (i) the qualifying date for the account, or
    - (ii) the date with effect from which the nomination is withdrawn, or
  - (b) such later date as the Commissioners may allow.
- (9) If an individual nominates an account under this section, the account is a “qualifying account” of the individual throughout the period—
  - (a) beginning with the qualifying date, and
  - (b) ending with the date before the earliest of the following dates—
    - (i) the date on which the account is closed or ceases to be an ordinary bank account held by and for the benefit of the individual (alone or jointly with others);
    - (ii) the date with effect from which the nomination is withdrawn under this section;
    - (iii) the qualifying date for another qualifying account of the individual;
    - (iv) 6 April in a tax year in which there is a breach of the deposit rule which is not remedied or cannot be remedied;

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- (v) 6 April in a tax year for which the individual has no general earnings within section 26(1) of ITEPA 2003.
- (10) The account is not to be a qualifying account at all if—
- (a) at any time on the qualifying date, the account is not an ordinary bank account held by and for the benefit of the individual (alone or jointly with others), or
  - (b) immediately before the qualifying date, the account has a credit balance of more than £10.
- (11) The account is not to be a qualifying account at all if the qualifying date falls in a tax year—
- (a) for which the individual has no general earnings within section 26(1) of ITEPA 2003, or
  - (b) in which there is a breach of the deposit rule which is not remedied or cannot be remedied.
- (12) Subsection (9)(b)(iv) or (11)(b) (as relevant) is to be ignored if the breach occurs on or after a date falling within subsection (9)(b)(i) to (iii).
- (13) If, apart from this subsection, an individual might have nominated two or more accounts for which the qualifying date would be the same, the individual may nominate only one of those accounts.
- (14) If, apart from this subsection, an account would be a qualifying account of two or more individuals at any time, it is not to be a qualifying account of either or any of them at that time or any other time.
- (15) For the purposes of this section an account is an “ordinary bank account” if it is a cash account in a bank (whether a current or savings account) where sums standing to the credit of the account from time to time represent a debt owed by the bank to the account-holder.

#### Textual Amendments

**F61** Ss. 809RA-809RD inserted (with effect in accordance with Sch. 6 para. 8 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 6 para. 6](#)

### 809RC Breaches of the deposit rule

- (1) There is a breach of the deposit rule if a prohibited sum is paid into the account on or after the qualifying date.
- (2) A breach of the deposit rule is remedied if, within 30 days beginning with the day on which the individual became or ought reasonably to have become aware of the payment of the prohibited sum, the required amount is transferred out of the account by way of a single one-off transfer.
- (3) “The required amount” is an amount equal to—
- (a) the prohibited sum, plus
  - (b) all the other prohibited sums (if any) that have been paid into the account since that sum was paid in.
- (4) If there are 3 breaches of the deposit rule in any 12 month period, subsection (2) does not apply to the third breach and, accordingly, the third breach cannot be remedied.

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- (5) The payment of a prohibited sum (“the later prohibited sum”) into the account does not result in a breach of the deposit rule if—
- (a) a breach resulting from an earlier payment of a prohibited sum into the account is remedied, and
  - (b) the later prohibited sum is represented by the required amount in relation to that breach.
- (6) A “prohibited sum” is anything other than a sum that is, or derives wholly (whether directly or indirectly) from, any of the following kinds of income or capital—
- (a) general earnings of the individual from an employment for a tax year which is a relevant tax year in relation to the employment,
  - (b) general earnings of the individual from an employment which consist of money and are paid in a tax year which is a relevant tax year in relation to the employment,
  - (c) an amount of specific employment income which, by virtue of Part 6, 7 or 7A of ITEPA 2003 or any other enactment, counts as employment income of the individual in respect of an employment for a tax year which is a relevant tax year in relation to the employment,
  - (d) interest on the account, or
  - (e) consideration for the disposal of employment-related securities or employment-related securities options in the circumstances described in subsection (7).
- (7) The circumstances are—
- (a) the securities or options were acquired pursuant to a right or opportunity available by reason of an employment of the individual,
  - (b) the disposal is or occurs in conjunction with, or as soon as reasonably practicable after, a relevant event involving those securities or options, and
  - (c) the tax year in which the relevant event occurs is a relevant tax year in relation to the employment.
- (8) For the purposes of subsection (7) each of the following is a “relevant event”—
- (a) the acquisition mentioned in subsection (7)(a), and
  - (b) any event on the occurrence of which an amount (if positive) counts as employment income by virtue of Part 7 of ITEPA 2003 or would do so but for—
    - (i) section 421E or 474 of that Act (exclusions: residence etc), or
    - (ii) an election under section 430 or 431 of that Act.
- (9) For the purposes of this section a tax year is a “relevant” tax year in relation to an employment if—
- (a) the individual has general earnings from the employment for the tax year,
  - (b) those earnings include both general earnings within section 15(1) of ITEPA 2003 (“section 15(1) earnings”) and general earnings within section 26(1) of that Act (“section 26(1) earnings”),
  - (c) at least some of the section 15(1) earnings, or sums deriving (wholly or in part, and directly or indirectly) from at least some of the section 15(1) earnings, are paid into the account in the tax year, and



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- (d) at least some of the section 26(1) earnings, or sums deriving (wholly or in part, and directly or indirectly) from at least some of the section 26(1) earnings, are also paid into the account in the tax year.
- (10) For the purposes of this section—
- (a) “employment-related securities” has the meaning given in section 421B(8) of ITEPA 2003, and
  - (b) “employment-related securities options” has the meaning given in section 471(5) of that Act.

#### Textual Amendments

**F61** Ss. 809RA-809RD inserted (with effect in accordance with Sch. 6 para. 8 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 6 para. 6](#)

### 809RD Effect where 30-day deadline is met

- (1) This section applies if the required amount in relation to a breach of the deposit rule was transferred out of the account in accordance with section 809RC(2).
- (2) Sections 809Q and 809R have effect as if—
  - (a) the intervening transactions had never taken place, and
  - (b) each prohibited sum represented by the required amount had instead been transferred directly (at the time that sum was paid into the qualifying account) into the account or other property into which the required amount was transferred by virtue of the single one-off transfer.
- (3) Each of the following is an “intervening transaction”—
  - (a) each payment into the qualifying account of a prohibited sum represented by the required amount, and
  - (b) the single one-off transfer out of the qualifying account.
- (4) If it is supposed under step 1 or 2 of section 809RA(2) that a single transfer had been made in the intervening period, re-apply section 809Q or 809R in relation to that transfer taking account of subsection (2).
- (5) “The intervening period” is the period—
  - (a) beginning with the day on which the breach occurred, and
  - (b) ending with the day on which the single one-off transfer was made in accordance with section 809RC(2).
- (6) If more than one transfer of a sum equal to the required amount was transferred out of the qualifying account within the 30-day grace period, the first of those transfers is assumed to be the single one-off transfer.
- (7) “The 30-day grace period” is the period of 30 days mentioned in section 809RC(2).]

#### Textual Amendments

**F61** Ss. 809RA-809RD inserted (with effect in accordance with Sch. 6 para. 8 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 6 para. 6](#)

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## 809S Section 809Q: anti-avoidance

- (1) 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).
- (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).
- [<sup>F62</sup>(4) Income tax advantage” means—
  - (a) a relief from income tax or increased relief from income tax,
  - (b) a repayment of income tax or increased repayment of income tax,
  - (c) the avoidance or reduction of a charge to income tax or an assessment to income tax, or
  - (d) the avoidance of a possible assessment to income tax;
- <sup>F63</sup> ...
- (4A) For the purposes of subsection (4)(c) and (d) it does not matter whether the avoidance or reduction is effected—
  - (a) by receipts accruing in such a way that the recipient does not pay or bear income tax on them, or
  - (b) by a deduction in calculating profits or gains.]
- (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.

### Textual Amendments

**F62** S. 809S(4)(4A) substituted (8.4.2010 with effect in accordance with Sch. 12 para. 15(1) of the amending Act) for s. 809S(4) by [Finance Act 2010 \(c. 13\)](#), [Sch. 12 para. 11](#)

**F63** Words in s. 809S(4) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 63\(13\)](#)

*Remittance of income and gains: supplementary*

## 809T Foreign chargeable gains accruing on disposal made [<sup>F64</sup>otherwise] than for full consideration

- (1) 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 [<sup>F65</sup>at least] equal to the market value of the asset.

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(2) For the purposes of this Chapter treat the asset as deriving from the chargeable gains.

#### Textual Amendments

- F64** Word in s. 809T heading substituted (retrospective to 22.4.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 27 paras. 9\(3\), 15\(2\)](#)
- F65** Words in s. 809T(1)(b) inserted (retrospective to 22.4.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 27 paras. 9\(2\), 15\(2\)](#)

### **809U Deemed income or gains not to be regarded as remitted before time when they are treated as arising or accruing**

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.

*[<sup>F66</sup>Relief for money used to pay tax etc]*

#### Textual Amendments

- F66** S. 809V cross heading substituted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 6](#)

### **Money used for payments on account**

<sup>F67</sup>**809UA**

- (1) Subsection (2) applies to income or chargeable gains of an individual if—
  - (a) the income or gains would (but for subsection (2)) be regarded as remitted to the United Kingdom by virtue of the bringing of money to the United Kingdom,
  - (b) the money is brought to the United Kingdom by way of direct payments to the Commissioners on account of income tax,
  - (c) the tax year (“tax year 2”) in respect of which the payments on account are made is a tax year for which section 809H (remittance basis charge for long-term UK resident) does not apply as respects the individual, and
  - (d) that section applied as respects the individual for the previous tax year (“tax year 1”).
- (2) The relevant amount of income or chargeable gains is to be treated as not remitted to the United Kingdom if money equal to the relevant amount is taken offshore by—
  - (a) the 15 March following the end of tax year 2, or
  - (b) such later date as the Commissioners may allow on a claim made by the individual.
- (3) A claim under subsection (2)(b)—

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- (a) may be made only if the individual has made and delivered a return under section 8 of TMA 1970 for tax year 2 and reasonably expects to receive from the Commissioners a repayment of tax paid in respect of that tax year, and
  - (b) may be made no later than the 5 April following the end of tax year 2.
- (4) Money that is taken offshore in accordance with subsection (2) is to be treated as having the same composition of kinds of income and capital as the money used to make the payments on account.
- (5) In this section “the relevant amount” means the lower of the following—
- (a) the amount brought to the United Kingdom as mentioned in subsection (1) (b), and
  - (b) the applicable amount (as defined in section 809H) for tax year 1.]

**Textual Amendments**

**F67** S. 809UA inserted (with effect in accordance with s. 21(5) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 21\(3\)](#)

**[<sup>F68</sup>809VMoney paid to the Commissioners**

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

**Textual Amendments**

**F68** S. 809V substituted (17.7.2012) (with effect in accordance with Sch. 12 para. 5 of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 12 para. 4](#)

*[<sup>F69</sup>Business investment relief*

**Textual Amendments**

**F69** Ss. 809VA-809VO and cross-heading inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 12 para. 7](#)

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### **809VA Money or other property used to make investments**

- (1) Subsection (2) applies if—
  - (a) a relevant event occurs,
  - (b) but for subsection (2), income or chargeable gains of an individual would be regarded as remitted to the United Kingdom by virtue of that event, and
  - (c) the individual makes a claim for relief under this section.
- (2) The income or gains are to be treated as not remitted to the United Kingdom.
- (3) A “relevant event” occurs if money or other property—
  - (a) is used by a relevant person to make a qualifying investment, or
  - (b) is brought to or received in the United Kingdom in order to be used by a relevant person to make a qualifying investment.
- (4) Subsection (1)(b) includes a case where income or gains would be treated under section 809Y as remitted to the United Kingdom by virtue of the relevant event.
- (5) Subsection (2) applies by virtue of subsection (3)(b) to the extent only that the investment is made within the period of 45 days beginning with the day on which the money or other property is brought to or received in the United Kingdom.
- (6) Where some but not all of the money or other property is used to make the investment within that 45-day period, the part of the income or gains to which subsection (2) applies is to be determined on a just and reasonable basis.
- (7) Subsection (2) does not apply if the relevant event occurs, or the investment is made, as part of or as a result of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (8) A claim for relief under this section must be made on or before the first anniversary of the 31 January following the tax year in which the income or gains would, but for subsection (2), be regarded as remitted to the United Kingdom by virtue of the relevant event.

### **809VB Failure to invest within 45 days**

- (1) This section applies to any portion of the income or gains to which section 809VA(2) does not apply because the investment was not made within the period mentioned in section 809VA(5) (“the 45-day period”).
- (2) That portion is to be treated as not remitted to the United Kingdom to the extent that the remaining money or other property is taken offshore within the 45-day period.
- (3) Where some but not all of the remaining money or other property is taken offshore within the 45-day period, the part of the income or gains to which subsection (2) applies is to be determined on a just and reasonable basis.
- (4) If any remaining money or other property is taken offshore within the 45-day period, nothing in subsection (2) prevents anything subsequently done in relation to it (or anything deriving from it) from counting as a remittance of the underlying income or gains to the United Kingdom at the time when the thing is subsequently done.
- (5) A reference to the “remaining” money or other property is to so much of the money or other property brought to or received in the United Kingdom as is not used within the 45-day period to make the investment (which may in some cases be all of it).

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### **809VC Qualifying investments**

- (1) For the purposes of section 809VA, a person makes an investment if—
  - (a) shares in a company are issued to the person, or
  - (b) the person makes a loan (secured or unsecured) to a company.
- (2) The company is referred to as “the target company”.
- (3) The shares or the person's rights under the loan (or both) forming the subject of the investment are referred to as “the holding”.
- (4) The investment counts as a “qualifying investment” if conditions A and B are met when the investment is made.
- (5) Conditions A and B are defined in sections 809VD and 809VF.
- (6) A reference in this section to “shares” includes any securities.
- (7) If a loan agreement authorises a company to draw down amounts of a loan over a period of time—
  - (a) entry into the agreement does not count for the purposes of this section as the making of a loan, but
  - (b) a separate loan is to be treated as made each time an amount is drawn down under the agreement.
- (8) Accordingly—
  - (a) a separate investment is treated as made each time an amount is drawn down under the agreement, and
  - (b) the reference in subsection (3) to the person's rights under the loan applies only to so much of the person's rights as relate to the drawdown of that particular amount.

### **809VD Condition A**

- (1) Condition A is that the target company is—
  - (a) an eligible trading company,
  - (b) an eligible stakeholder company, or
  - (c) an eligible holding company.
- (2) A company is an “eligible trading company” if—
  - (a) it is a private limited company,
  - (b) it carries on one or more commercial trades or is preparing to do so within the next 2 years, and
  - (c) carrying on commercial trades is all or substantially all of what it does (or of what it is reasonably expected to do once it begins trading).
- (3) A company is an “eligible stakeholder company” if—
  - (a) it is a private limited company,
  - (b) it exists wholly for the purpose of making investments in eligible trading companies (ignoring any minor or incidental purposes), and
  - (c) it holds one or more such investments or is preparing to do so within the next 2 years.

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- (4) The reference in subsection (3) to making investments is to be read in accordance with section 809VC.
- (5) A company is an “eligible holding company” if—
  - (a) it is a member of an eligible trading group or of an eligible group that is reasonably expected to become an eligible trading group within the next 2 years,
  - (b) an eligible trading company in the group is a 51% subsidiary of it, and
  - (c) if the ordinary share capital that it owns in the eligible trading company is owned indirectly, each intermediary in the series is also a member of the group.
- (6) “Group” means a parent company and its 51% subsidiaries.
- (7) “Parent company” means a company that—
  - (a) has one or more 51% subsidiaries, but
  - (b) is not itself a 51% subsidiary of any company.
- (8) A group is an “eligible group” if the parent company and each of its 51% subsidiaries are private limited companies.
- (9) A group is an “eligible trading group” if—
  - (a) it is an eligible group, and
  - (b) carrying on commercial trades is all or substantially all of what the group does (taking the activities of its members as a whole).
- (10) The reference in subsection (5) to owning ordinary share capital indirectly is to be read in accordance with section 1155 of CTA 2010.
- (11) A company is a “private limited company” if—
  - (a) it is a body corporate whose liability is limited,
  - (b) it is not a limited liability partnership, and
  - (c) none of its shares are listed on a recognised stock exchange.

### **809VE Commercial trades**

- (1) Section 809VD is to be read in accordance with this section.
- (2) A reference to a “trade” also includes—
  - (a) anything that is treated for corporation tax purposes as if it were a trade, and
  - (b) a business carried on for generating income from land (as defined in section 207 of CTA 2009).
- (3) A trade is a “commercial trade” if it is conducted on a commercial basis and with a view to the realisation of profits.
- (4) The carrying on of activities of research and development from which it is intended that a commercial trade will be derived, or will benefit, is to be treated as the carrying on of a commercial trade.
- (5) But preparing to carry on activities within subsection (4) is not to be treated as the carrying on of a commercial trade.

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### **809VF Condition B**

- (1) Condition B is that no relevant person has (directly or indirectly) obtained or become entitled to obtain any related benefit, and no relevant person expects to obtain any such benefit.
- (2) A “benefit”—
  - (a) includes the provision of anything that would not be provided to the relevant person in the ordinary course of business, or would be provided but on less favourable terms, but
  - (b) does not include the provision of anything provided to the relevant person in the ordinary course of business and on arm's length terms.
- (3) A benefit is “related” if—
  - (a) it is directly or indirectly attributable to the making of the investment (whether it is obtained before or after the investment is made), or
  - (b) it is reasonable to assume that the benefit would not be available in the absence of the investment.
- (4) For the purposes of subsection (2)—
  - (a) a reference to the provision of anything is to the provision of anything in money or money's worth, including property, capital, goods or services of any kind, and
  - (b) “provision” includes any arrangement that allows a person to enjoy or benefit from the thing in question (whether temporarily or permanently).

### **809VG Income or gains treated as remitted following certain events**

- (1) Subsection (2) applies if—
  - (a) income or chargeable gains are treated under section 809VA(2) as not remitted to the United Kingdom as a result of a qualifying investment,
  - (b) a potentially chargeable event occurs after the investment is made, and
  - (c) the appropriate mitigation steps are not taken within the grace period allowed for each step.
- (2) The affected income or gains are to be treated as having been remitted to the United Kingdom immediately after the end of the relevant grace period.
- (3) Where the step required by section 809VI(2)(a) is not taken within the grace period allowed for that step, “the relevant grace period” is the grace period allowed for that step.
- (4) Otherwise, “the relevant grace period” is the grace period allowed for the step required by section 809VI(1) or (2)(b).
- (5) “The affected income or gains” means such portion of the income or gains mentioned in subsection (1)(a) as reflects the portion of the investment affected by the potentially chargeable event.
- (6) The portion of the investment affected is—
  - (a) if the potentially chargeable event is a disposal of a part of the holding (or a part of the remaining holding), a portion equal to the portion of the holding (or remaining holding) being disposed of, and
  - (b) otherwise, the whole of the investment.



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- (7) Sections 809VN (order of disposals etc) and 809VO (investments made from mixed funds) make further provision for the purposes of this section.
- (8) If a qualifying investment is made using the money or other property mentioned in section 809VA(3) together with other funds—
- (a) that investment is to be treated as two separate investments, one made using the money or other property mentioned in section 809VA(3) and one made using the other funds, and
  - (b) references in the business investment provisions to “the investment” and “the holding” relate only to the investment made using the money or other property mentioned in section 809VA(3).
- (9) If the potentially chargeable event mentioned in subsection (1)(b) is not the first such event to affect the investment, the income or gains mentioned in subsection (1)(a) do not include, as respects that investment—
- (a) any part already treated under subsection (2) as remitted to the United Kingdom as a result of an earlier event,
  - (b) any part contained in amounts already taken offshore or re-invested by way of appropriate mitigation steps following an earlier event, or
  - (c) any part contained in amounts already used to make a tax deposit without which an amount mentioned in paragraph (b) would not have been enough to satisfy section 809VI(1) or (2)(b) (see section 809VK).

### **809VH Meaning of “potentially chargeable event”**

- (1) For the purposes of section 809VG, a “potentially chargeable event” occurs if—
- (a) the target company is for the first time neither an eligible trading company nor an eligible stakeholder company nor an eligible holding company,
  - (b) the relevant person who made the investment (“P”) disposes of all or part of the holding,
  - (c) the extraction of value rule is breached, or
  - (d) the 2-year start-up rule is breached.
- (2) The extraction of value rule is breached if—
- (a) value (in money or money's worth) is received by or for the benefit of P or another relevant person,
  - (b) the value is received—
    - (i) from an involved company, or
    - (ii) from anyone else but in circumstances that are directly or indirectly attributable to the investment or to any other investment made by a relevant person in an involved company, and
  - (c) the value is received other than by virtue of a disposal that is itself a potentially chargeable event.
- (3) But the extraction of value rule is not breached merely because a relevant person receives value that—
- (a) is treated for income tax or corporation tax purposes as the receipt of income or would be so treated if that person were liable to such tax, and
  - (b) is paid or provided to the person in the ordinary course of business and on arm's length terms.

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- (4) Each of the following is an “involved company”—
- (a) the target company,
  - (b) if the target company is an eligible stakeholder company, any eligible trading company in which it has made or intends to make an investment,
  - (c) if the target company is an eligible holding company, any eligible trading company that is a 51% subsidiary of it, and
  - (d) any company that is connected with a company within paragraph (a), (b) or (c).
- (5) The 2-year start-up rule is breached if—
- (a) immediately after the end of the period of 2 years beginning with the day on which the investment was made, the target company is non-operational, or
  - (b) at any time after the end of that period, the target company becomes non-operational.
- (6) The target company is “non-operational” at any time when—
- (a) it is an eligible trading company but is not trading,
  - (b) it is an eligible stakeholder company but—
    - (i) it holds no investments in eligible trading companies, or
    - (ii) none of the eligible trading companies in which it holds investments is trading, or
  - (c) it is an eligible holding company but—
    - (i) the group of which it is a member is not an eligible trading group, or
    - (ii) none of its 51% subsidiaries in the eligible trading group of which it is a member is an eligible trading company that is trading.
- (7) In subsection (6), “trading” means carrying on one or more commercial trades (including the carrying on of any activities treated under section 809VE(4) as the carrying on of a commercial trade).
- (8) If consideration for a disposal of all or part of the holding is or is to be paid in instalments, the disposal is to be treated for the purposes of this section as if it were separate disposals, one for each instalment (and each giving rise to a separate potentially chargeable event).
- (9) An event listed in subsection (1) does not count as a potentially chargeable event if it is due to an insolvency step taken for genuine commercial reasons (but this does not prevent the extraction of any value in connection with the insolvency step from counting as a potentially chargeable event).
- (10) For the purposes of subsection (9), an insolvency step is taken if—
- (a) the target company enters into administration or receivership or is wound up or dissolved,
  - (b) the target company is an eligible stakeholder company and any eligible trading company in which it holds an investment enters into administration or receivership or is wound up or dissolved,
  - (c) the target company is an eligible holding company and any eligible trading company in the group that is a 51% subsidiary of it enters into administration or receivership or is wound up or dissolved, or
  - (d) a similar step is taken in relation to a company mentioned in paragraph (a), (b) or (c) under the law of a country or territory outside the United Kingdom.

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### **809VI The appropriate mitigation steps**

- (1) If the potentially chargeable event is a disposal of all or part of the holding, the appropriate mitigation steps are regarded as taken if the whole of the disposal proceeds have been taken offshore or re-invested.
- (2) For any other case, the appropriate mitigation steps are regarded as taken if—
  - (a) P has disposed of the entire holding (or so much of it as P retains when the potentially chargeable event occurs), and
  - (b) the whole of the disposal proceeds have been taken offshore or re-invested.
- (3) But if the disposal proceeds exceed X, subsections (1) and (2)(b) apply only to so much of the proceeds as is equal to X.
- (4) “X” is—
  - (a) the sum originally invested, less
  - (b) so much of that sum as has, on previous occasions involving the same investment—
    - (i) been taken into account in determining the affected income or gains under section 809VG(2),
    - (ii) been taken offshore or re-invested in order to avoid the application of that section, or
    - (iii) been used to make a tax deposit without which the amount actually taken offshore or re-invested would not have been enough to satisfy subsection (1) or (2)(b) (see section 809VK).
- (5) “The sum originally invested” means the amount of the money, or the market value of the other property, used to make the investment.
- (6) Market value is to be assessed for these purposes as at the date of the relevant event (see section 809VA).
- (7) Proceeds are “re-invested” if a relevant person uses them to make another qualifying investment (or the proceeds are themselves a qualifying investment) whether in the same or a different company.
- (8) In cases where a breach of the extraction of value rule occurs in connection with the winding-up or dissolution of the target company—
  - (a) subsection (2)(a) does not apply,
  - (b) the reference in subsection (2)(b) to the disposal proceeds is to the value received, and
  - (c) references in this section and in succeeding provisions of the business investment provisions to the disposal proceeds are to be read as references to the value received.

### **809VJ The grace period allowed for the appropriate mitigation steps**

- (1) The grace period allowed for the step mentioned in section 809VI(2)(a) is the period of 90 days beginning—
  - (a) if the potentially chargeable event is a breach of the extraction of value rule, with the day on which the value is received, and
  - (b) otherwise, with the day on which a relevant person first became aware or ought reasonably to have become aware of the potentially chargeable event.

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- (2) The grace period allowed for the step mentioned in section 809VI(1) and (2)(b) is the period of 45 days beginning with the day on which the disposal proceeds first became available for use by or for the benefit of P or any other relevant person.
- (3) An officer of Revenue and Customs may agree in a particular case to extend the grace period allowed for an appropriate mitigation step in exceptional circumstances.
- (4) An officer of Revenue and Customs may agree in a particular case to extend the grace period allowed for an appropriate mitigation step in circumstances specified in regulations made by the Commissioners.
- (5) Regulations under subsection (4) may have effect in relation to investments made before the day on which the regulations are made.
- (6) Nothing in subsection (4) or in regulations made under it limits the power conferred by subsection (3).
- (7) The powers conferred on officers of Revenue and Customs by subsections (3) and (4) include power to agree to extend a grace period for a length of time that is indefinite but is capable of becoming definite by means identified in the agreement (such as the satisfaction of conditions).

#### **809VK Retention of funds to meet CGT liabilities**

- (1) This section applies if—
  - (a) there is a disposal of all or part of the holding,
  - (b) the disposal counts as a potentially chargeable event or is part of the appropriate mitigation steps taken in consequence of a potentially chargeable event,
  - (c) a chargeable gain (but not a loss) accrues to P on the disposal,
  - (d) P is chargeable to capital gains tax (but not corporation tax) in respect of that gain, and
  - (e) the actual disposal proceeds are less than Y.
- (2) The difference between the actual disposal proceeds and Y is referred to in this section as “the shortfall”.
- (3) “The actual disposal proceeds” means the disposal proceeds but disregarding section 809Z8(4).
- (4) “Y” is the sum of—
  - (a) the amount (if any) that would, but for this section, be required to be taken offshore or re-invested in order to satisfy section 809VI(1) or (2)(b), and
  - (b) the amount found by applying the highest potential CGT rate to the amount (computed in accordance with TCGA 1992) of the chargeable gain accruing to P on the disposal.
- (5) The highest potential CGT rate is—
  - (a) if the chargeable gain accrues to P as the trustees of a settlement or accrues to the personal representatives of P, the rate specified in section 4(3) of TCGA 1992, and
  - (b) otherwise, the rate specified in section 4(4) of that Act (regardless of the rate at which income tax is chargeable in respect of P's income).

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- (6) If this section applies, the amount that is required to be taken offshore or re-invested in order to satisfy section 809VI(1) or (2)(b) is reduced by the permitted amount.
- (7) “The permitted amount” is so much of the shortfall as is used, within the grace period allowed for taking the disposal proceeds offshore or re-investing them, to make a deposit in respect of which a certificate of tax deposit is issued to P under section 12 of the National Loans Act 1968.
- (8) A reduction may not be made under subsection (6) unless—
  - (a) when details of the deposit are confirmed to Her Majesty's Revenue and Customs, the confirmation letter states that this section is intended to apply to the deposit, and
  - (b) the amount of the deposit is no greater than the shortfall.

### **809VL Effect of taking appropriate mitigation steps within grace period**

- (1) This section explains the effect for the purposes of this Chapter in cases where section 809VG(2) does not apply because the appropriate mitigation steps were taken within the grace period allowed for each step.
- (2) If disposal proceeds were taken offshore as part of those steps, nothing in section 809VA(2) prevents anything subsequently done in relation to those proceeds (or anything deriving from them) from counting as a remittance of the underlying income or gains to the United Kingdom at the time when the thing is subsequently done.
- (3) If disposal proceeds were re-invested as part of those steps—
  - (a) the underlying income or gains continue to be treated under section 809VA(2) as not remitted to the United Kingdom, and
  - (b) the business investment provisions apply to the re-investment as they apply to the original investment.
- (4) In the application of the business investment provisions to the re-investment—
  - (a) treat the potentially chargeable event mentioned in section 809VG(1)(b) as the relevant event,
  - (b) treat the underlying income or gains as the income or gains treated under section 809VA(2) as not remitted to the United Kingdom as a result of the re-investment, and
  - (c) treat the amount used to make the re-investment as the sum originally invested.
- (5) If the re-investment is made using more than the minimum amount of disposal proceeds required to satisfy section 809VI(1) or (2)(b)—
  - (a) that investment is to be treated as two separate investments, one made using the minimum amount of disposal proceeds and one made using the excess, and
  - (b) references in the business investment provisions to “the investment” and “the holding” relate only to the investment made using the minimum amount of disposal proceeds.
- (6) “The underlying income or gains” means the affected income or gains (within the meaning of section 809VG) or, if one part of the disposal proceeds is taken offshore and the other part re-invested, a corresponding proportion of the affected income or gains.

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- (7) A further claim must be made in accordance with section 809VA in respect of the re-investment and, if no such claim is made on or before the first anniversary of the 31 January following the tax year in which the re-investment was made, section 809VG(2) applies, as respects the original investment, as if the appropriate mitigation steps had not been taken within the grace period allowed for each step.
- (8) Section 809VM makes further provision in cases involving a tax deposit.

### **809VM Cases involving tax deposits**

- (1) This section applies in cases where—
- (a) section 809VG(2) did not apply because the appropriate mitigation steps were taken within the grace period allowed for each step,
  - (b) the amount required to be taken offshore or re-invested in order to satisfy section 809VI(1) or (2)(b) had been reduced under section 809VK, and
  - (c) but for that reduction, the amount that was actually taken offshore or re-invested would not have been enough to satisfy section 809VI(1) or (2)(b).
- (2) The tax deposit that gave rise to the reduction is referred to in this section as “the tax deposit”.
- (3) Use of the tax deposit to pay the relevant tax liability does not count as remitting the underlying income or gains to the United Kingdom (and, accordingly, section 809VA(2) continues to apply to the income or gains).
- (4) If any of the CTD conditions is breached, the underlying income or gains are to be treated as having been remitted to the United Kingdom immediately after the day on which the breach occurs.
- (5) “The underlying income or gains” means such portion of the affected income or gains (within the meaning of section 809VG) as is—
- (a) represented by the payment, in the case of subsection (3), or
  - (b) affected by the breach, in the case of subsection (4).
- (6) The CTD conditions are as follows—
- (a) the tax deposit must not be used to pay a tax liability other than the relevant tax liability,
  - (b) if any of the tax deposit is withdrawn by the depositor, the amount withdrawn must be taken offshore or re-invested within the period of 45 days beginning with the day on which the withdrawal was made, and
  - (c) any part of the tax deposit that has been neither used to pay a tax liability nor withdrawn by the due date must be withdrawn by the depositor and taken offshore or re-invested within the period of 45 days beginning with that date.
- (7) Where the CTD conditions were not breached because the requisite amount was taken offshore or re-invested within the 45-day period mentioned in subsection (6)(b) or (c) —
- (a) section 809VL applies to the amount taken offshore or re-invested as it applies to disposal proceeds, but
  - (b) read the reference in section 809VL(4)(a) to the potentially chargeable event as a reference to—
    - (i) the withdrawal, in a case within subsection (6)(b), and

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(ii) the due date, in a case within subsection (6)(c).

(8) For the purposes of this section—

- (a) “the relevant tax liability” means P’s liability to capital gains tax for the tax year in which the disposal took place,
- (b) “the due date” means the date by which the relevant tax liability is required to be paid,
- (c) “re-invested” has the meaning given in section 809VI(7), and
- (d) references to withdrawal include repayment for whatever reason.

### **809VN Order of disposals etc**

(1) Subsection (2) applies if at any time income or chargeable gains of an individual are treated under section 809VA as not remitted to the United Kingdom as a result of—

- (a) more than one qualifying investment made in the same target company,
- (b) more than one qualifying investment made in companies in the same eligible trading group, or
- (c) qualifying investments made in an eligible trading company and in an eligible stakeholder company that holds investments in that trading company.

(2) In the application of section 809VG at that time—

- (a) treat the investments and holdings as if they were a single qualifying investment and a single holding, and
- (b) assume that a disposal of all or part of that deemed single holding affects the deemed single investment in the order in which the qualifying investments were made (that is to say, on a first in, first out basis).

(3) Subsection (4) applies if at any time—

- (a) income or chargeable gains of an individual are treated under section 809VA as not remitted to the United Kingdom as a result of one or more qualifying investments,
- (b) in addition to that investment or those investments, a relevant person holds at least one other investment in the same target company, the same eligible trading group or a related eligible company, and
- (c) that other investment is not a qualifying investment.

(4) In the application of section 809VG at that time—

- (a) treat the investments and holdings as if they were a single investment and a single holding, and
- (b) assume that a disposal of all or part of that deemed single holding is a disposal of a holding from a qualifying investment until the holdings from all the qualifying investments have been disposed of.

(5) The reference to a “related eligible company”—

- (a) in relation to an eligible trading company, is to an eligible stakeholder company that holds investments in that company, and
- (b) in relation to an eligible stakeholder company, is to an eligible trading company in which that company holds investments.

(6) Subsections (2) and (4) apply whether the investments in question are held by the same relevant person or different ones.

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## 809VO Investments made from mixed funds

- (1) This section applies if—
  - (a) but for section 809VA(2), income or gains would have been remitted to the United Kingdom by virtue of a relevant event, and
  - (b) section 809Q (transfers from mixed funds) would have applied in determining the amount that would have been so remitted.
- (2) The relevant event counts as an offshore transfer for the purposes of section 809R(4).
- (3) The holding is to be treated as containing a proportion of each kind of income and capital contained in the invested property equal to the fixed proportion.
- (4) “The fixed proportion” is the proportion of that kind of income or capital contained in the invested property by virtue of subsection (2).
- (5) “The invested property” means the money or other property used to make the investment.
- (6) Subsection (7) applies in cases where—
  - (a) section 809VG(2) does not apply because an amount is taken offshore, re-invested or used to make a tax deposit, or
  - (b) section 809VM(4) does not apply because an amount is taken offshore or re-invested.
- (7) The amount taken offshore, re-invested or used to make a tax deposit is treated, immediately after that step, as containing the fixed proportion of each kind of income and capital contained in the holding.
- (8) In cases where section 809VG(2) applies—
  - (a) the affected income or gains are so much of the fixed amount of each kind of income or gain mentioned in subsection (1)(a) as reflects the portion of the investment affected by the potentially chargeable event (see section 809VG(6)),
  - (b) “the fixed amount” is the amount of that kind of income or gain that the holding is treated as containing by virtue of subsection (3), and
  - (c) section 809Q does not apply in determining the affected income or gains.
- (9) Section 809R(2) and (3) and section 809S apply for the purposes of this section.]

*[<sup>F70</sup>Relief for certain UK services]*

### Textual Amendments

**F70** S. 809W cross heading inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 8](#)

## 809W Consideration for certain services

- (1) 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,



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- (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.

*[<sup>F71</sup> Exempt property relief]*

#### Textual Amendments

**F71** S. 809X crossheading inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 9](#)

### 809X Exempt property

- (1) 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 [<sup>F72</sup> section 809Z]).
- (4) Clothing, footwear, jewellery and watches <sup>F73</sup>... are exempt property if they meet the personal use rule (see section 809Z2).
- (5) Property <sup>F74</sup>... 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.

#### Textual Amendments

**F72** Words in s. 809X(3) substituted (with effect in accordance with Sch. 7 paras. 10, 11 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 7 para. 2](#)

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- F73** Words in s. 809X(4) omitted (with effect in accordance with Sch. 27 para. 15(1) of the amending Act) by virtue of Finance Act 2009 (c. 10), Sch. 27 para. 10(2)
- F74** Words in s. 809X(5) omitted (with effect in accordance with Sch. 27 para. 15(1) of the amending Act) by virtue of Finance Act 2009 (c. 10), Sch. 27 para. 10(3)

### 809Y Property that ceases to be exempt property treated as remitted

- (1) 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 [<sup>F75</sup>any] 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.

[ Where exempt property has been lost, stolen or destroyed, the first and second cases <sup>F76</sup>(4A) do not apply in relation to the property during any period—

- (a) beginning with the time at which it was lost, stolen or destroyed, and
  - (b) (if lost or stolen) ending with the time at which it is recovered.
- (4B) The third case is where a compensation payment is released in respect of exempt property that has been lost, stolen or destroyed.]

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

[ Subsection (1) does not apply to property that ceases to be exempt property [<sup>F78</sup>by <sup>F77</sup>(6) virtue of the first or second case] if—

- (a) the property, or anything into which it is converted, is used by a relevant person to make a qualifying investment within the period of 45 days beginning with the day on which it ceased to be exempt property, and

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- (b) the remittance basis user makes a claim for relief under this subsection on or before the first anniversary of the 31 January following the tax year in which the property ceases to be exempt property.
- (7) The reference in subsection (6)(a) to anything into which property is converted is—
  - (a) if the property is disposed of, the disposal proceeds, and
  - (b) if the property is converted into money in some other way, the money into which it is converted,(including where the disposal or conversion occurs after the property ceases to be exempt property).
- (8) If subsection (1) does not apply by virtue of subsection (6)—
  - (a) the property (or thing into which it was converted) used to make the investment is to be treated as containing or deriving from an amount of each kind of income and gain mentioned in section 809Q(4)(a) to (h) equal to the fixed amount,
  - (b) the income or gains treated under section 809X as not remitted to the United Kingdom continue to be treated as not remitted to the United Kingdom even though the property has ceased to be exempt property, and
  - (c) the business investment provisions apply to the income and gains as they apply to income or gains treated under section 809VA(2) as not remitted to the United Kingdom.
- (9) “The fixed amount” is the amount of that kind of income or gain contained in the property when it was brought to, or received or used in, the United Kingdom (as mentioned in section 809X).
- (10) If the investment is made using more than just the property (or thing into which it was converted), treat only the part made using the property (or thing into which it was converted) as “the investment” for the purposes of the business investment provisions.]

#### Textual Amendments

- F75** Word in s. 809Y(2) substituted (with effect in accordance with Sch. 7 paras. 10, 11 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 7 para. 3\(2\)](#)
- F76** S. 809Y(4A)(4B) inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 7 para. 3\(3\)](#)
- F77** Ss. 809Y(6)-(10) inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 10](#)
- F78** Words in s. 809Y(6) inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 7 para. 3\(4\)](#)

#### **Exception to section 809Y: proceeds taken offshore or invested**

**F79 809YA**

- (1) Section 809Y(1) does not apply to property if—
  - (a) it ceases to be exempt property because the whole of it is sold whilst it is in the United Kingdom, and
  - (b) conditions A to F are met.
- (2) Condition A is that the sale is to a person other than a relevant person.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

- (3) Condition B is that the sale is by way of a bargain made at arm's length.
- (4) Condition C is that, once the sale is completed, no relevant person—
  - (a) has any interest in the property,
  - (b) is able or entitled to benefit from the property by virtue of any interest, right or arrangement, or
  - (c) has any right (whether conditional or unconditional) to acquire any interest mentioned in paragraph (a) or ability or entitlement mentioned in paragraph (b).
- (5) Condition D is that the whole of the disposal proceeds are released (whether in one go or in instalments) on or before the final deadline.
- (6) “The final deadline” is the first anniversary of the 5 January following the tax year in which the property ceases to be exempt property (within the meaning of section 809Y).
- (7) Condition E is that—
  - (a) the whole of the disposal proceeds are taken offshore or used by a relevant person to make a qualifying investment within the period of 45 days beginning with the day on which the proceeds are released, or
  - (b) if the disposal proceeds are paid in instalments, each instalment is taken offshore or used by a relevant person to make a qualifying investment within the period of 45 days beginning with the day on which the instalment is released.
- (8) But if any of the disposal proceeds are released in the period of 45 days ending with the final deadline, Condition E is satisfied, as respects those proceeds, only if they are taken offshore or used by a relevant person to make a qualifying investment on or before the final deadline.
- (9) Condition F is that, if Condition E is satisfied wholly or in part by using disposal proceeds to make a qualifying investment, the remittance basis user makes a claim for relief under section 809YC(2) on or before the first anniversary of the 31 January following the tax year in which the property is sold.
- (10) For the purposes of this section, proceeds or instalments are “released” on the day on which they first become available for use by or for the benefit of any relevant person.
- (11) This section does not apply if the sale is made as part of or as a result of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

#### **Textual Amendments**

**F79** Ss. 809YA-809YD inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 19 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 18](#)

#### **809YB Condition E: supplementary**

- (1) An officer of Revenue and Customs may agree in a particular case to extend any period within which disposal proceeds (or instalments) must be taken offshore or used by a relevant person to make a qualifying investment in order to satisfy Condition E.

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- (2) The power to agree to an extension is exercisable only in exceptional circumstances and only if the remittance basis user requests such an extension.

#### Textual Amendments

**F79** Ss. 809YA-809YD inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 19 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 18](#)

### 809YC Effect of disapplying section 809Y

- (1) This section has effect if section 809Y(1) does not apply to property by virtue of section 809YA.
- (2) The income and gains treated under section 809X as not remitted to the United Kingdom continue to be treated after the sale as not remitted to the United Kingdom even though the property has ceased to be exempt property.
- (3) But nothing in subsection (2) prevents anything done in relation to any part of the disposal proceeds after that part is taken offshore (or used to make a qualifying investment) from counting as a remittance of the underlying income or gains to the United Kingdom at the time when the thing is done.
- (4) Treat the disposal proceeds as containing or deriving from an amount of each kind of income and gain mentioned in section 809Q(4)(a) to (h) equal to the amount of that kind of income or gain contained in the exempt property when it was brought to, or received or used in, the United Kingdom (as mentioned in section 809X).
- (5) Where Condition E was met by using the disposal proceeds to make a qualifying investment—
  - (a) the business investment provisions apply to the income and gains that continue, by virtue of subsection (2), to be treated as not remitted as they apply to income or gains that are treated under section 809VA(2) as not remitted, and
  - (b) if the investment was made using more than just the disposal proceeds, treat only the part of the investment made using the disposal proceeds as “the investment” for the purposes of those provisions.

#### Textual Amendments

**F79** Ss. 809YA-809YD inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 19 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 18](#)

### 809YD Chargeable gains accruing on sales of exempt property

- (1) This section applies to an individual (“P”) if—
  - (a) a chargeable gain (but not a loss) accrues to a person on a sale of exempt property,
  - (b) but for section 809YA, section 809Y(1) would have applied to the property by virtue of the sale, and
  - (c) P is either—
    - (i) the person to whom the gain accrues, or

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- (ii) a person to whom a part of the gain is treated as accruing under section 13 of TCGA 1992 (members of non-resident companies).
- (2) The relevant UK gain is to be treated for the purposes of this Chapter as if—
- (a) it were a foreign chargeable gain of P, and
  - (b) in the case of section 809E, it were not part of P's UK income and gains.
- (3) Accordingly, if section 809F applies to P for the applicable tax year <sup>F80</sup>..., the relevant UK gain is charged in accordance with section 12 of TCGA 1992 as if it were a foreign chargeable gain.
- (4) The relevant UK gain is—
- (a) in a case falling within subsection (1)(c)(i), the gain accruing to P,
  - (b) in a case falling within subsection (1)(c)(ii), the part of the gain treated as accruing to P.
- (5) The applicable tax year is —
- (a) if section 10A of TCGA 1992 (temporary non-residents) applies in P's case and the relevant UK gain is within subsection (2) of that section, the year of return as defined in that section,
  - (b) otherwise, the tax year in which the relevant UK gain accrues.
- (6) In applying this Chapter to the relevant UK gain—
- (a) treat the amount of any gains mentioned in section 809Q(4)(e) contained in the disposal proceeds by virtue of section 809YC(4) as increased by the amount of the relevant UK gain,
  - (b) disregard section 809U, and
  - (c) anything done in relation to any part of the disposal proceeds before the part is taken offshore or used to make a qualifying investment (or both) does not count as a remittance to the United Kingdom of any of the relevant UK gain.
- (7) The relevant UK gain is to be treated for the purposes of the following provisions of TCGA 1992 as if it fell within the definition of foreign chargeable gains in section 12(4) of that Act—
- (a) section 10A,
  - (b) section 12,
  - (c) section 14A, and
  - (d) sections 16ZB to 16ZD.
- (8) This section has effect despite section 14A(2) of TCGA 1992.
- (9) This section does not apply with respect to a chargeable gain if P gives notice to Her Majesty's Revenue and Customs under this subsection.
- (10) A notice under subsection (9)—
- (a) must be in writing and must identify the gain in question,
  - (b) must be given on or before the first anniversary of the 31 January following the applicable tax year, and
  - (c) may not be revoked after that first anniversary.]

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#### Textual Amendments

- F79** Ss. 809YA-809YD inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 19 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 18](#)
- F80** Words in s. 809YD(3) omitted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 23](#) (with [Sch. 46 para. 26](#))

#### <sup>F81</sup> **Exception to section 809Y: gifts to the nation**

##### **809YE**

- (1) Section 809Y(1) does not apply to property if—
- (a) it ceases to be exempt property in the second case mentioned in that section, and
  - (b) by no later than the time when it ceases to be exempt property, it has been donated in the circumstances described in paragraph 1 of Schedule 14 to FA 2012 (gifts to the nation).
- (2) Where section 809Y(1) does not apply to property by virtue of this section, the property is to continue to be treated as not remitted to the United Kingdom even though it no longer meets any of the relevant rules.]

#### Textual Amendments

- F81** S. 809YE inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 14 para. 35](#)

#### <sup>F82</sup> **Exception to section 809Y: compensation taken offshore or invested**

##### **809YF**

- (1) Section 809Y(1) does not apply to property if—
- (a) it ceases to be exempt property because a compensation payment in respect of it is released, and
  - (b) conditions A and B are met.
- (2) Condition A is that the whole of the compensation payment is taken offshore or used by a relevant person to make a qualifying investment within the period of 45 days beginning with the day on which the payment is released.
- (3) Condition B is that, if Condition A is satisfied wholly or in part by using the compensation payment to make a qualifying investment, the remittance basis user makes a claim for relief under subsection (4) on or before the first anniversary of the 31 January following the tax year in which the payment is released.
- (4) If section 809Y(1) does not apply to property by virtue of subsection (1), the income and gains treated under section 809X as not remitted to the United Kingdom continue to be treated after the compensation payment is released as not remitted to the United Kingdom even though the property has ceased to be exempt property.
- (5) But nothing in subsection (4) prevents anything done in relation to any part of the compensation payment after that payment is taken offshore (or used to make a qualifying investment) from counting as a remittance of the underlying income or gains to the United Kingdom at the time when the thing is done.
- (6) Treat the compensation payment as containing or deriving from an amount of each kind of income and gain mentioned in section 809Q(4)(a) to (h) equal to the amount

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of that kind of income or gain contained in the exempt property when it was brought to, or received or used in, the United Kingdom (as mentioned in section 809X).

- (7) Where Condition A was met by using the compensation payment to make a qualifying investment—
- (a) the business investment provisions apply to the income and gains that continue, by virtue of subsection (4), to be treated as not remitted as they apply to income or gains that are treated under section 809VA(2) as not remitted, and
  - (b) if the investment was made using more than just the compensation payment, treat only the part of the investment made using the payment as “the investment” for the purposes of those provisions.]

#### Textual Amendments

**F82** S. 809YF inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 7 para. 4](#)

#### 809Z Public access rule: general

- (1) Property meets the public access rule if conditions [<sup>F83</sup>B and C] are met.
- <sup>F84</sup>(2) .....
- (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



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- (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.
  - (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.
- [ But if the property is lost or stolen—
- <sup>F85</sup>(8A) (a) the relevant period ends with the time at which it is lost or stolen, and
  - (b) a new relevant period begins with its importation or the time at which it is recovered.]
- (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.
- <sup>F86</sup>(10) .....

**Textual Amendments**

- F83** Words in s. 809Z(1) substituted (with effect in accordance with Sch. 7 paras. 10, 11 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 7 para. 5(2)**
- F84** S. 809Z(2) omitted (with effect in accordance with Sch. 7 paras. 10, 11 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 7 para. 5(3)**
- F85** S. 809Z(8A) inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 7 para. 5(4)**
- F86** S. 809Z(10) omitted (with effect in accordance with Sch. 7 paras. 10, 11 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 7 para. 5(5)**

<sup>F87</sup>**809Z1 Public access rule: relevant VAT relief**

.....

**Textual Amendments**

- F87** S. 809Z1 omitted (with effect in accordance with Sch. 7 paras. 10, 11 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 7 para. 6**

**809Z2 Personal use rule**

- (1) 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—
  - <sup>F88</sup>(a) .....

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- (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).

#### **Textual Amendments**

**F88** S. 809Z2(2)(a) omitted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 11](#)

### **809Z3 Repair rule**

- (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.

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## 809Z4 Temporary importation rule

- (1) Property meets the temporary importation rule if the total number of countable days [F89 (subject to any increase under subsection (3B))] 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 (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—
- [ F90 (za) the property meets the public access rule,]
    - (a) the property meets the personal use rule,
    - (b) the property meets the repair rule, F91 ...
  - [ F92 (ba) subsection (3A) applies to the property,]
    - (c) the notional remitted amount in relation to the property is less than £1,000 [F93 or]
  - [ F94 (d) all or any part of the income or chargeable gains contained in the property (or from which the property derives) is treated, or continues to be treated, under section 809VA(2), 809Y(8)(b) [F95, 809YC(2) or 809YF(4)] as not remitted to the United Kingdom.]
- [ This subsection applies to the property if—
- F96 (3A) (a) it is not available to be used or enjoyed in the United Kingdom by or for the benefit of a relevant person because it has been lost, stolen or destroyed,
- (b) (if lost or stolen) it has not been recovered, and
- (c) no compensation payment has been released in respect of it.
- (3B) If—
- (a) property that has been lost or stolen is recovered,
  - (b) the first day after the day on which it is recovered is a countable day, and
  - (c) excluding that countable day there have already been 231 or more countable days in relation to the property,
- the number of countable days specified in subsection (1) is read as being increased by the number necessary for there to be 45 countable days beginning with the countable day mentioned in paragraph (b).]

- F97 (4) .....
- F97 (5) .....
- F97 (6) .....
- F97 (7) .....
- F97 (8) .....
- F97 (9) .....
- F97 (10) .....

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### Textual Amendments

- F89** Words in s. 809Z4(1) inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 7 para. 7\(2\)](#)
- F90** S. 809Z4(3)(za) inserted (with effect in accordance with Sch. 7 paras. 10, 11 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 7 para. 7\(3\)\(a\)](#)
- F91** Word in s. 809Z4(3)(b) omitted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 12\(a\)](#)
- F92** S. 809Z4(3)(ba) inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 7 para. 7\(3\)\(b\)](#)
- F93** Word in s. 809Z4(3)(c) inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 12\(b\)](#)
- F94** S. 809Z4(3)(d) inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 12\(c\)](#)
- F95** Words in s. 809Z4(3)(d) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 7 para. 7\(3\)\(c\)](#)
- F96** S. 809Z4(3A)(3B) inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 7 para. 7\(4\)](#)
- F97** S. 809Z4(4)-(10) omitted (with effect in accordance with Sch. 7 paras. 10, 11 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 7 para. 7\(5\)](#)

### 809Z5 Notional remitted amount

- (1) The “notional remitted amount”, in relation to property, is the amount <sup>F98</sup>... 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).

<sup>F99</sup>(2) .....

<sup>F99</sup>(3) .....

### Textual Amendments

- F98** Words in s. 809Z5(1) omitted (with effect in accordance with Sch. 27 para. 15(1) of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 27 para. 11\(2\)](#)
- F99** S. 809Z5(2)(3) omitted (21.7.2009 retrospective) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 27 paras. 11\(3\), 15\(2\)](#)

### 809Z6 Exempt property: other interpretation

- (1) 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

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- (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.
- [ References to property being lost, stolen or destroyed are to the property being lost,  
<sup>F100</sup>(5) stolen or destroyed whilst in the United Kingdom.
- (6) “Compensation payment”, in relation to property that has been lost, stolen or destroyed, means any payment of compensation (whether under an insurance policy or otherwise) in respect of the property.
- (7) A compensation payment is “released” on the day on which it first becomes available for use in the United Kingdom by or for the benefit of any relevant person.
- (8) Property that has been lost or stolen is “recovered” on the day on which it becomes available to be used or enjoyed in the United Kingdom by or for the benefit of a relevant person.]

#### Textual Amendments

**F100** S. 809Z6(5)-(8) inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 7 para. 8**

### *Interpretation of Chapter*

#### **809Z7** [<sup>F101</sup>Meaning of “foreign income and gains” etc]

- (1) 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) <sup>F102</sup>... 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 [<sup>F103</sup>does not meet the requirement of section 26A of ITEPA 2003 for] 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).
- [<sup>F104</sup>(4) An individual's “foreign specific employment income” for a tax year (“the relevant tax year”) consists of the income (if any) within subsections (4A) and (4B).
- (4A) The income within this subsection is the individual's specific employment income for the relevant tax year so far as it consists of [<sup>F105</sup>securities income that is “foreign” for the purposes of section 41F] of ITEPA 2003.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

- (4B) The income within this subsection is any income, or any part of any income, of the individual—
- (a) to which section 554Z9(2) or 554Z10(2) of ITEPA 2003 applies, and
  - (b) which consists of the value of a relevant step, or a part of the value of a relevant step, which is “for” the relevant tax year as determined under section 554Z4 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).

<sup>F106</sup>(7) . . . . .]

#### Textual Amendments

- F101** S. 809Z7 heading substituted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 15](#)
- F102** Words in s. 809Z7(2)(d) omitted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 24\(a\)](#) (with [Sch. 46 para. 26](#))
- F103** Words in s. 809Z7(3)(a) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 24\(b\)](#) (with [Sch. 46 para. 26](#))
- F104** Ss. 809Z7(4)-(4B) substituted (19.7.2011) for s. 809Z7(4) (with effect in accordance with Sch. 2 para. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 43](#)
- F105** Words in s. 809Z7(4A) substituted (17.2.2016) by [The Finance Act 2014, Schedule 9 \(Consequential Amendment\) Regulations 2016 \(S.I. 2016/74\)](#), regs. 1(2), 2
- F106** S. 809Z7(7) omitted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 14](#)

#### [<sup>F107</sup>809Z7] Meaning of “the disposal proceeds”

- (1) In this Chapter, in relation to a sale or other disposal, “the disposal proceeds” means—
  - (a) the consideration for the disposal, less
  - (b) any agency fees that are deducted before the consideration is paid or otherwise made available to or for the benefit of the person making the disposal (“the transferor”) or any other relevant person.
- (2) The following rules apply in determining the consideration for the disposal.
- (3) If the consideration is provided in the form of anything other than money, the amount of the consideration is the market value of the thing at the time of the disposal.
- (4) If the disposal is made other than by way of a bargain made at arm's length, the disposal is deemed to be made for a consideration equal to the market value, immediately before the disposal, of the thing being disposed of.
- (5) Without limiting the generality of subsection (4), a disposal made to another relevant person or to a person connected with a relevant person is treated in all cases as made other than by way of a bargain at arm's length.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

- (6) In subsection (1), “agency fees” means fees and other incidental costs of the disposal that are charged to the transferor by any person by or through whom the disposal is effected, but excluding any such fees or costs that—
- (a) are charged to the transferor by another relevant person, or
  - (b) are to be passed on to or otherwise applied for the benefit of a relevant person.
- (7) The exclusion mentioned in subsection (6) does not apply to the extent that the fees or costs—
- (a) relate to a service actually provided by the relevant person to the transferor in connection with effecting the disposal, and
  - (b) do not exceed the amount that would be charged for that service if it were provided in the ordinary course of business and on arm's length terms.

#### Textual Amendments

**F107** Ss. 809Z8-809Z10 inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 16](#)

### 809Z9 Taking proceeds etc offshore or investing them

- (1) This section applies to a provision of this Chapter that is satisfied if something (for example, disposal proceeds) is taken offshore or used by a relevant person to make a qualifying investment.
- (2) Things are to be regarded as “taken offshore” if (and only if) they are taken outside the United Kingdom such that, on leaving the United Kingdom, they cease to be available—
- (a) to be used or enjoyed in the United Kingdom by or for the benefit of a relevant person, or
  - (b) to be used or enjoyed in any other way that would count as remitting income or gains to the United Kingdom.
- (3) If—
- (a) the thing required to be taken offshore or invested is money, and
  - (b) it is paid temporarily into an account pending satisfaction of the provision, the provision is satisfied only if the money actually taken offshore or invested is taken from the same account.
- (4) If the thing required to be taken offshore or invested is something in money's worth, the provision may be satisfied—
- (a) by taking the thing offshore or investing it, or
  - (b) by taking offshore or investing money or other property of the equivalent value.
- (5) “The equivalent value” is the market value of the thing in money's worth, assessed as at the date of the sale or other disposal in relation to which the provision is triggered.
- (6) If the consideration for a disposal is deemed under section 809Z8(4), the provision may be satisfied by taking offshore or investing money or other property of a value equal to—
- (a) the amount of the deemed consideration, less

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- (b) any agency fees (within the meaning of section 809Z8) that are deducted before the actual consideration is paid or otherwise made available to or for the benefit of a relevant person.
- (7) Subsections (4)(b) and (6) do not apply in the case of other property of the equivalent value if the other property is—
- (a) exempt property under section 809X,
  - (b) consideration for the disposal of any such exempt property, or
  - (c) consideration for the disposal of all or part of the holding (see section 809VC) relating to a qualifying investment.
- (8) Money or other property taken offshore or invested in accordance with subsection (4)(b) or (6) is to be treated for the purposes of this Chapter—
- (a) as deriving from the thing required to be taken offshore or invested, and
  - (b) as having the same composition of kinds of income and capital as that thing.
- (9) A provision to which this section applies may be satisfied—
- (a) by taking the whole thing offshore or investing the whole thing, or
  - (b) by taking one part offshore and investing the other part.
- (10) References in this section to something being “invested” are to something being used by a relevant person to make a qualifying investment.
- (11) The provisions to which this section applies include [<sup>F108</sup>sections 809UA(2) and 809VB(2), but in those cases]—
- (a) disregard references in this section to investment, and
  - (b) [<sup>F109</sup>in the case of section 809VB(2),] the assessment date for the purposes of subsection (5) is the date of the relevant event (see section 809VA(3)(b)).

#### **Textual Amendments**

**F107** Ss. 809Z8-809Z10 inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 16](#)

**F108** Words in s. 809Z9(11) substituted (with effect in accordance with s. 21(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 21\(4\)\(a\)](#)

**F109** Words in s. 809Z9(11)(b) inserted (with effect in accordance with s. 21(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 21\(4\)\(b\)](#)

### **809Z10 General interpretation**

In this Chapter—

“the business investment provisions” means sections 809VA to 809VO;

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;

“market value” has the same meaning as in TCGA 1992 (see in particular sections 272 and 273 of that Act);

“qualifying investment” has the meaning given by section 809VC (and references to making a qualifying investment are to be read in accordance with that section);

“relevant person” has the meaning given by section 809M;



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“the remittance basis user”, in relation to income or chargeable gains of an individual, means that individual.]

#### Textual Amendments

**F107** Ss. 809Z8-809Z10 inserted (17.7.2012) (with effect in accordance with Sch. 12 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 12 para. 16](#)

## CHAPTER 1

### LIMITS ON LIABILITY TO INCOME TAX OF NON-UK RESIDENTS

#### *Introduction*

#### **810 Overview of Chapter**

- (1) This Chapter provides for limits on the liability to income tax of non-UK residents.
- (2) See sections 811 to 814 in the cases of—
  - (a) a non-UK resident, other than a company, and
  - (b) a non-UK resident company liable as a trustee.
- (3) See sections 815 and 816 in the case of a non-UK resident company which is liable otherwise than as a trustee.
- [<sup>F110</sup>(4) In relation to an individual—
  - (a) a reference in this Chapter to a non-UK resident's liability to income tax is a reference to the liability of someone who is non-UK resident for the tax year for which the liability arises, and
  - (b) accordingly, enactments under which income arising to a UK resident in the overseas part of a split year is treated as arising to a non-UK resident are of no relevance to this Chapter.]

#### Textual Amendments

**F110** S. 810(4) inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 152\(5\)](#)

#### *Limit for non-UK resident individuals, trustees etc*

#### **811 Limit on liability to income tax of non-UK residents**

- (1) This section applies to income tax to which—
  - (a) a non-UK resident, other than a company, is liable, or
  - (b) a non-UK resident company is liable as a trustee.
- (2) Subsection (1) is subject to section 812 (case where limit not to apply).
- (3) The non-UK resident's liability to income tax for a tax year is limited to the sum of amounts A and B.

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- (4) Amount A is the sum of—
- (a) any sums representing income tax deducted from the non-UK resident's disregarded income for the tax year (see section 813), [F111 and]
  - (b) any sums representing income tax that are treated as deducted from or paid in respect of that income, F112 ...
  - F112(c) .....
- (5) Amount B is the amount that, apart from this section, would be the non-UK resident's liability to income tax for the tax year, if the following were left out of account—
- (a) the non-UK resident's disregarded income for the tax year, and
  - (b) any relief mentioned in subsection (6) to which the non-UK resident is entitled for the tax year as a result of—
    - (i) section 56(3) or 460(3) of this Act F113 ... (residence etc of claimants),  
or
    - (ii) double taxation arrangements.
- (6) The reliefs referred to in subsection (5) are—
- (a) an allowance under Chapter 2 of Part 3 of this Act F114 ... (personal allowance and blind person's allowance),
  - (b) a tax reduction under Chapter 3 of Part 3 of this Act F114 ... (tax reductions for married couples and civil partners),
  - (c) relief under section 457 or 458 of this Act (payments to trade unions and police organisations),
  - (d) F115 ..... and
  - (e) relief under section 266 of ICTA (life assurance premiums).

#### **Textual Amendments**

- F111** Word in s. 811(4) inserted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 63\(14\)\(a\)](#)
- F112** S. 811(4)(c) and word omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 63\(14\)\(b\)](#)
- F113** Words in s. 811(5) omitted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 1 para. 6\(o\)\(iv\)](#)
- F114** Words in s. 811(6) omitted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 1 para. 6\(o\)\(iv\)](#)
- F115** S. 811(6)(d) omitted (17.7.2012) (with effect in accordance with Sch. 39 para. 32(6) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 32\(2\)\(e\)](#)

## **812 Case where limit not to apply**

- (1) Section 811 does not apply to income tax to which non-UK resident trustees are liable for a tax year, if there is a beneficiary of the trust who is—
- (a) an individual who is F116 ... UK resident, or
  - (b) a UK resident company.
- (2) For the purposes of subsection (1) a person is a beneficiary of the trust if—
- (a) the person is an actual or potential beneficiary of the trust, and
  - (b) condition A or B is met in relation to the person.

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- (3) Condition A is that the person is, or will or may become, entitled under the trust to receive some or all of any income under the trust.
- (4) Condition B is that some or all of any income under the trust may be paid to or used for the benefit of the person in the exercise of a discretion conferred by the trust.
- (5) The references in subsections (3) and (4) to any income under the trust include a reference to any capital under the trust so far as it represents amounts originally received by the trustees as income.

#### Textual Amendments

**F116** Word in s. 812(1)(a) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 66](#)

### [<sup>F117</sup>812A] Temporary non-residents

- (1) This section applies if—
  - (a) an individual is temporarily non-resident,
  - (b) the individual's liability to income tax for a tax year is limited under section 811,
  - (c) that tax year (“the non-resident year”) falls within the temporary period of non-residence, and
  - (d) the individual's income for that tax year includes relevant investment income.
- (2) The total income (see Step 1 of the calculation in section 23) on which the individual is charged to income tax for the year of return is to be increased by an amount equal to the amount of that relevant investment income.
- (3) But the notional UK tax on that relevant investment income is to be allowed as a credit against the individual's liability to income tax for the year of return under Step 6 of the calculation in section 23.
- (4) Income is “relevant investment income” if—
  - (a) it is chargeable under Chapter 3 or 5 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies and stock dividends from UK resident companies),
  - (b) the distributing company is a close company, and
  - (c) the income arises or is treated as arising to the individual because the individual was at a relevant time—
    - (i) a material participator in that company, or
    - (ii) an associate of a material participator in the company.
- (5) But income within subsection (4) in the form of a cash or stock dividend is not “relevant investment income” to the extent that the dividend is paid, or the share capital is issued, in respect of post-departure trade profits.
- (6) “Post-departure trade profits” are—
  - (a) trade profits of the distributing company arising in an accounting period that begins after the start of the temporary period of non-residence, and
  - (b) so much of any trade profits of the distributing company arising in an accounting period that straddles the start of that temporary period as is

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attributable (on a just and reasonable basis) to a time after the start of that temporary period.

- (7) The “notional UK tax” on relevant investment income is—
- (a) the total of any sums in respect of that income that were included within amount A in determining the limit under section 811, less
  - (b) any credit for foreign tax paid in respect of that income that was allowed under Chapter 2 of Part 2 of TIOPA 2010 against the individual's liability to income tax for the non-resident year.
- (8) The following matters are to be determined on a just and reasonable basis—
- (a) the extent to which a dividend is paid, or share capital is issued, in respect of post-departure trade profits, and
  - (b) the extent to which a sum included within amount A is a sum in respect of relevant investment income.
- (9) Nothing in any double taxation arrangements is to be read as preventing the individual from being chargeable to income tax by virtue of this section (or as preventing a charge to that tax from arising as a result).
- (10) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
- (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence”, “the year of departure” and “the period of return” mean.
- (11) In this section—
- “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454);
- “the distributing company” means the UK resident company mentioned in section 383(1) or, as the case may be, 410(1) of ITTOIA 2005;
- “material participator” means a participator who has a material interest in the company, as defined in section 457 of CTA 2010;
- “relevant time” means—
- (a) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
  - (b) any time in one or more of the 3 tax years preceding that year;
- “trade profits of the distributing company” means the profits of any trade carried on by the distributing company, as calculated in accordance with Part 3 of CTA 2009 (trading income);
- “year of return” means the tax year consisting of or including the period of return.]

#### **Textual Amendments**

**F117** S. 812A inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 138](#)

### **813 Meaning of “disregarded income”**

- (1) For the purposes of this Chapter income arising to a non-UK resident is “disregarded income” if it is—

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- (a) disregarded savings and investment income (see section 825),
  - (b) disregarded annual payments (see section 826),
  - (c) disregarded pension income,
  - (d) disregarded social security income,
  - (e) disregarded transaction income (see section 814), or
  - (f) income of such other description as the Treasury may by regulations designate for the purposes of this section.
- (2) But income in relation to which the non-UK resident has a UK representative for the purposes of <sup>F118</sup>Chapter 2B] is not disregarded income.
- (3) Income is “disregarded pension income” if it is chargeable under Part 9 of ITEPA 2003 (pension income) because any of the following provisions of that Act applies to it—
- section 577 (UK social security pensions),
  - section 579A (pensions under registered pension schemes) (but see subsection (4) below),
  - section 609 (annuities for the benefit of dependants),
  - section 610 (annuities under non-registered occupational pension schemes), or
  - section 611 (annuities in recognition of another's services).
- (4) Income chargeable under Part 9 of ITEPA 2003 because section 579A of that Act applies to it is disregarded pension income only if the registered pension scheme in question—
- (a) falls within paragraph 1(1)(f) of Schedule 36 to FA 2004, and
  - (b) was, immediately before 6 April 2006, a retirement annuity contract to which section 605 of ITEPA 2003 applied.
- (5) Income is “disregarded social security income” if—
- (a) it is a taxable benefit listed in Table A in section 660 of ITEPA 2003, other than income support or jobseeker's allowance, and
  - (b) it is chargeable under Part 10 of that Act (social security income).

#### Textual Amendments

**F118** Words in s. 813(2) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 282](#) (with [Sch. 9 paras. 1-9, 22](#))

#### 814 Meaning of “disregarded transaction income”

- (1) Subsection (2) applies if a non-UK resident carries on (alone or in partnership) a business through a broker in the United Kingdom.
- (2) Income is “disregarded transaction income”, subject to subsection (6), if—
  - (a) it is transaction income, and
  - (b) the independent broker conditions are met in relation to the transaction in question.
- (3) Subsection (4) applies if a non-UK resident carries on (alone or in partnership) a business through an investment manager in the United Kingdom.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

- (4) Income is “disregarded transaction income”, subject to subsection (6), if—
- (a) it is transaction income, and
  - (b) the independent investment manager conditions are met in relation to the transaction in question.
- (5) In this Chapter “transaction income”, in relation to a transaction carried out through a broker or investment manager in the United Kingdom on behalf of a non-UK resident, means income which arises to the non-UK resident from—
- (a) so much of the non-UK resident's business carried on (alone or in partnership) through the broker or investment manager as relates to the transaction, or
  - (b) property or rights which, as a result of the transaction, are used by, or held by or for, the broker or investment manager on behalf of the non-UK resident.
- (6) Income is not disregarded transaction income if it is chargeable to income tax in accordance with section 171(2) of FA 1993 (profits of the underwriting business of a member of Lloyd's).
- (7) This section needs to be read with—
- section 817 (the independent broker conditions),
  - sections 818 to 824 (the independent investment manager conditions),
  - section 827 (meaning of “investment manager” and “investment transaction”),
  - and
  - section 828 (transactions through brokers and investment managers).

*Limit for non-UK resident companies*

**815 Limit on liability to income tax of non-UK resident companies**

- (1) This section applies to income tax to which a non-UK resident company is liable, otherwise than as a trustee.
- (2) The non-UK resident company's liability to income tax for a tax year is limited to the sum of amounts A and B.
- (3) Amount A is the sum of—
- (a) any amounts representing income tax deducted from the non-UK resident company's disregarded company income for the tax year, [<sup>F119</sup>and]
  - (b) any amounts representing income tax that are treated as deducted from or paid in respect of that income, <sup>F120</sup>...
  - <sup>F120</sup>(c) .....
- (4) Amount B is the amount that, apart from this section, would be the non-UK resident company's liability to income tax for the tax year if the non-UK resident company's disregarded company income for the tax year were left out of account.

**Textual Amendments**

**F119** Word in s. 815(3) inserted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 63\(15\)\(a\)](#)

**F120** S. 815(3)(c) and word omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 63\(15\)\(b\)](#)

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

## 816 Meaning of “disregarded company income”

- (1) For the purposes of this Chapter income arising to a non-UK resident company is “disregarded company income” if it is—
- (a) disregarded savings and investment income (see section 825),
  - (b) disregarded annual payments (see section 826),
  - [<sup>F121</sup>(c) income arising from a transaction carried out through a broker in the United Kingdom acting as an agent of independent status in the ordinary course of the broker’s business,]
  - [<sup>F121</sup>(d) income arising from a transaction carried out through an investment manager in the United Kingdom acting as an agent of independent status in the ordinary course of the investment manager’s business, or]
  - (e) income of such other description as the Treasury may by regulations designate for the purposes of this section.
- [<sup>F122</sup>(2) A broker is regarded for the purposes of subsection (1)(c) as an agent of independent status acting in the ordinary course of the broker’s business in relation to a transaction carried out on behalf of a non-UK resident company in the course of that company’s trade if, and only if, the independent broker conditions are met in relation to the transaction (see section 817).
- (3) An investment manager is regarded for the purposes of subsection (1)(d) as an agent of independent status acting in the ordinary course of the investment manager’s business in relation to an investment transaction carried out on behalf of a non-UK resident company in the course of that company’s trade if, and only if, the independent investment manager conditions are met in relation to the investment transaction (see sections 818 to 824).
- (4) This section needs to be read with—  
section 827 (meaning of “investment manager” and “investment transaction”), and  
section 828 (transactions through brokers and investment managers).]

### Textual Amendments

**F121** S. 816(1)(c)(d) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [Income Tax Act 2007 \(Amendment\) \(No.3\) Order 2007 \(S.I. 2007/3506\)](#), arts. 1(1), **3(4)(a)**

**F122** S. 816(2)-(4) substituted for s. 816(2) (with effect in accordance with art. 1(2) of the amending S.I.) by [Income Tax Act 2007 \(Amendment\) \(No.3\) Order 2007 \(S.I. 2007/3506\)](#), arts. 1(1), **3(4)(b)**

### *The independent broker conditions*

## 817 The independent broker conditions

- (1) The independent broker conditions are met in relation to a transaction carried out on behalf of a non-UK resident by a broker in the United Kingdom if—
- (a) conditions A to D are met, if this section applies for the purposes of section 813, or
  - (b) conditions A to C and E are met, if this section applies for the purposes of section 816.

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- (2) Condition A is that at the time of the transaction the broker is carrying on the business of a broker.
- (3) Condition B is that the transaction is carried out <sup>F123</sup>... in the ordinary course of that business.
- (4) Condition C is that the remuneration which the broker receives in respect of the transaction for the provision of the services of a broker to the non-UK resident is not less than is customary for that class of business.
- (5) Condition D is that the broker does not fall for the purposes of [<sup>F124</sup>Chapter 2B of this Part, or of Chapter 1 of Part 7A of TCGA 1992,] to be treated as a UK representative of the non-UK resident in relation to any other income which is chargeable to income tax, or amounts which are chargeable to capital gains tax, for the same tax year as the transaction income.
- (6) Condition E is that the broker does not fall to be treated as a permanent establishment of the non-UK resident company in relation to any other transaction of any kind carried out in the same accounting period of the non-UK resident company as the transaction in question.

#### **Textual Amendments**

**F123** Words in s. 817(3) repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 283\(2\), Sch. 10 Pt. 11](#) (with [Sch. 9 paras. 1-9, 22](#))

**F124** Words in s. 817(5) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 283\(3\)](#) (with [Sch. 9 paras. 1-9, 22](#))

### *The independent investment manager conditions*

#### **818 The independent investment manager conditions**

- (1) The independent investment manager conditions are met in relation to an investment transaction carried out on behalf of a non-UK resident by an investment manager in the United Kingdom [<sup>F125</sup>if conditions A to E are met.]
- (2) Condition A is that at the time of the transaction the investment manager is carrying on a business of providing investment management services.
- (3) Condition B is that the transaction is carried out in the ordinary course of that business.
- (4) Condition C is that, when the investment manager acts on behalf of the non-UK resident in relation to the transaction, the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.
- (5) Condition D is that the requirements of the 20% rule are met (see section 819).
- (6) Condition E is that the remuneration which the investment manager receives in respect of the transaction for the provision of investment management services to the non-UK resident is not less than is customary for that class of business.



*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

F126(7) .....

F127(8) .....

#### **Textual Amendments**

**F125** Words in s. 818(1) substituted (21.7.2008 with effect in accordance with Sch. 16 para. 11(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 16 para. 10\(2\)](#)

**F126** S. 818(7) omitted (21.7.2008 with effect in accordance with Sch. 16 para. 11(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 16 para. 10\(3\)](#)

**F127** S. 818(8) omitted (21.7.2008 with effect in accordance with Sch. 16 para. 11(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 16 para. 10\(3\)](#)

### **819 Investment managers: the 20% rule**

- (1) The requirements of the 20% rule are met if conditions A and B are met.
- (2) Condition A is that in relation to a qualifying period it has been or is the intention of the investment manager and the persons connected with the investment manager that at least 80% of the non-UK resident's relevant disregarded income should consist of amounts to which none of them has a beneficial entitlement.
- (3) Condition B is that, so far as there is a failure to fulfil that intention, that failure—
  - (a) is attributable (directly or indirectly) to matters outside the control of the investment manager and persons connected with the investment manager, and
  - (b) does not result from a failure by any of them to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.
- (4) This section needs to be read with—
  - section 820 (meaning of “qualifying period”),
  - section 821 (meaning of “relevant disregarded income”), and
  - section 822 (meaning of “beneficial entitlement”).

### **820 Meaning of “qualifying period”**

- (1) This section applies for the purposes of this Chapter.
- (2) If section 819 applies for the purposes of section 813, a “qualifying period” means—
  - (a) the tax year in which the transaction income is chargeable to income tax, or
  - (b) a period of not more than 5 years comprising two or more tax years including that one.
- (3) If section 819 applies for the purposes of section 816, a “qualifying period” means—
  - (a) the accounting period of the non-UK resident company in which the transaction in question is carried out, or
  - (b) a period of not more than 5 years comprising two or more complete accounting periods including that one.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

## 821 Meaning of “relevant disregarded income”

- (1) This section applies for the purposes of this Chapter.
- (2) If section 819 applies for the purposes of section 813, the “relevant disregarded income” of the non-UK resident for the qualifying period is the total of the non-UK resident's income for the tax years comprised in the qualifying period which derives from the transactions mentioned in subsection (4).
- (3) If section 819 applies for the purposes of section 816, the “relevant disregarded income” of the non-UK resident company for the qualifying period is the total of the non-UK resident company's income for the accounting periods comprised in the qualifying period which derives from the transactions mentioned in [F128 subsection (5)]
- (4) The transactions referred to in [F129 subsection (2)] are investment transactions—
  - (a) carried out by the investment manager on the non-UK resident's behalf, and
  - (b) in relation to which the independent investment manager conditions are met, ignoring the requirements of the 20% rule.
- [F130 (5) The transactions referred to in subsection (3) are transactions—
  - (a) carried out by the investment manager on the non-UK resident company's behalf, and
  - (b) in relation to which the investment manager does not fall to be treated as a permanent establishment of the non-UK resident company, ignoring the requirements of the 20% rule.]

### Textual Amendments

**F128** Words in s. 821(3) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) Order 2009 \(S.I. 2009/23\)](#), arts. 1(1), **5(3)(a)**

**F129** Words in s. 821(4) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) Order 2009 \(S.I. 2009/23\)](#), arts. 1(1), **5(3)(b)**

**F130** S. 821(5) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) Order 2009 \(S.I. 2009/23\)](#), arts. 1(1), **5(3)(c)**

## 822 Meaning of “beneficial entitlement”

- (1) This section applies for the purposes of this Chapter.
- (2) A person has a “beneficial entitlement” to relevant disregarded income if the person has or may acquire a beneficial entitlement that is, or would be, attributable to the relevant disregarded income as a result of having an interest or other rights mentioned in subsection (3).
- (3) The interests and rights referred to in subsection (2) are—
  - (a) an interest (whether or not an interest giving a right to an immediate payment of a share in the profits or gains) in property in which the whole or any part of the relevant disregarded income is represented, or
  - (b) an interest in, or other rights in relation to, the non-UK resident.

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*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

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### **823 Treatment of transactions where requirements of 20% rule not met**

- (1) This section applies in the case of an investment transaction in relation to which the independent investment manager conditions are met, except for the requirements of the 20% rule.
- (2) This Chapter has effect as if the requirements of that rule were met in relation to the transaction but only in relation to—
  - (a) so much of the transaction income of the non-UK resident as falls within subsection (3), if this section applies for the purposes of section 813, or
  - (b) so much of the income of the non-UK resident company deriving from the transaction as falls within subsection (3), if this section applies for the purposes of section 816.
- (3) Income falls within this subsection if it does not represent income—
  - (a) which is relevant disregarded income of the non-UK resident, and
  - (b) to which the investment manager or a person connected with the investment manager has or has had any beneficial entitlement.

### **824 Application of 20% rule to collective investment schemes**

- (1) This section applies if amounts arise or accrue to the non-UK resident as a participant in a collective investment scheme.
- (2) It applies for the purposes of determining whether the requirements of the 20% rule are met in relation to a transaction carried out for the purposes of the scheme [<sup>F131</sup>(so far as the transaction is one in respect of which such amounts so arise or accrue)].
- (3) In applying this section make the following assumptions—
  - (a) that all the transactions carried out for the purposes of the scheme are carried out on behalf of a company (“the assumed company”) which is—
    - (i) constituted for the purposes of the scheme, and
    - (ii) non-UK resident, and
  - (b) that the participants do not have any rights in respect of the amounts arising or accruing in respect of those transactions, other than the rights which, if they held shares in the assumed company, would be their rights as shareholders.
- (4) If the scheme is such that the assumed company would not be regarded for tax purposes as carrying on a trade in the United Kingdom in relation to the appropriate relevant period, the requirements of the 20% rule are treated as met in relation to a transaction carried out for the purposes of the scheme.
- (5) If the scheme is such that the assumed company would be so regarded for tax purposes, sections 819 to 823 have effect in relation to a transaction carried out for the purposes of the scheme with the modifications in subsection (6).
- (6) The modifications are—
  - (a) for references to the non-UK resident substitute references to the assumed company, and
  - (b) for references to the non-UK resident's relevant disregarded income for a qualifying period substitute references to the sum of the amounts that would, for relevant periods comprised in the qualifying period, be chargeable to tax on the assumed company as profits deriving from the transactions—

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- (i) carried out by the investment manager, and
- (ii) assumed to be carried out on behalf of the company.

(7) In this section—

“the appropriate relevant period” is—

- (a) the tax year in which the transaction income is chargeable to income tax, if this section applies for the purposes of section 813, or
- (b) the accounting period in which the transaction is carried out, if this section applies for the purposes of section 816,

“collective investment scheme” has the meaning given by section 235 of FISMA 2000,

“participant”, in relation to a collective investment scheme, is construed in accordance with that section, and

“relevant period” means—

- (a) a tax year, if this section applies for the purposes of section 813, or
- (b) an accounting period, if this section applies for the purposes of section 816.

#### Textual Amendments

**F131** Words in s. 824(2) inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 284](#) (with Sch. 9 paras. 1-9, 22)

### *Supplementary*

#### **825 Meaning of “disregarded savings and investment income”**

(1) For the purposes of this Chapter income is “disregarded savings and investment income” if—

- (a) it is chargeable under Chapter 3 or 5 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies and stock dividends from UK resident companies), or
- (b) it is within subsection (2) and is not relevant foreign income.

(2) Income is within this subsection if it is chargeable under—

- (a) Chapter 2 of Part 4 of ITTOIA 2005 (interest),
- (b) Chapter 7 of that Part (purchased life annuity payments),
- (c) Chapter 8 of that Part (profits from deeply discounted securities),
- <sup>F132</sup>(d) .....
- (e) Chapter 11 of that Part (transactions in deposits)<sup>F133</sup>, or
- (f) regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013.]

#### Textual Amendments

**F132** S. 825(2)(d) omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **37(9)(a)** (with reg. 32)

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

**F133** S. 825(2)(f) and word inserted (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013](#) (S.I. 2013/2819), regs. 1(3), **37(9)(b)** (with reg. 32)

## 826 Meaning of “disregarded annual payments”

For the purposes of this Chapter income is “disregarded annual payments” if it is not relevant foreign income and is chargeable under—

- (a) section 579 of ITTOIA 2005, so far as it relates to annual payments (royalties etc from intellectual property),
- (b) Chapter 4 of Part 5 of that Act, so far as it relates to annual payments (certain telecommunication rights: non-trading income), or
- (c) Chapter 7 of Part 5 of that Act (annual payments not otherwise charged).

## 827 Meaning of “investment manager” and “investment transaction”

(1) In this Chapter “investment manager” means a person who provides investment management services.

[<sup>F134</sup>(2) In this section “investment transaction” means any transaction of a description specified for the purposes of this section in regulations made by the Commissioners for Her Majesty’s Revenue and Customs.

(3) Provision made in regulations under subsection (2) may, in particular, have effect in relation to the tax year current on the day on which the regulations are made.]

### Textual Amendments

**F134** S. 827(2)(3) substituted (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 16 paras. 5\(2\), 11\(4\)](#) (with [Sch. 16 para. 11\(5\)\(6\)](#))

## 828 Transactions through brokers and investment managers

(1) For the purposes of this Chapter a person is regarded as carrying out a transaction on behalf of another if the person—

- (a) undertakes the transaction, whether on behalf of or to the account of the other, or
- (b) gives instructions for it to be so carried out by another.

(2) In the case of a person who acts as a broker or investment manager as part only of a business, this Chapter has effect as if that part were a separate business.

## [<sup>F135</sup>CHAPTER 1A

### EXEMPTION FOR PERSONS NOT DOMICILED IN UNITED KINGDOM

### Textual Amendments

**F135** Pt. 14 Ch. 1A inserted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 52\(1\)](#)

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

## 828A Introduction

This Chapter provides for an exemption from liability to income tax for an individual for a tax year if—

- (a) the individual is UK resident in the tax year but not domiciled in the United Kingdom in the tax year,
- (b) section 809B does not apply to the individual for the tax year, and
- (c) conditions A to F in section 828B are met.

## 828B Conditions to be met

- (1) Condition A is that in the tax year the individual has income from an employment the duties of which are performed wholly or partly in the United Kingdom.
- (2) Condition B is that, if the individual's income for the tax year consists of or includes relevant foreign earnings—
  - (a) the amount of the relevant foreign earnings does not exceed £10,000, and
  - (b) all of that amount is subject to a foreign tax.
- (3) Condition C is that, if the individual's income for the tax year consists of or includes income that is relevant foreign income by virtue of section 830(2)(e) of ITTOIA 2005—
  - (a) the amount of that income does not exceed £100, and
  - (b) all of that amount is subject to a foreign tax.
- (4) Condition D is that the individual has no other foreign income and gains for the tax year.
- (5) Condition E is that the individual would not for the tax year be liable to income tax at a rate other than the basic rate<sup>F136</sup>, the savings nil rate<sup>F137</sup>, the Scottish basic rate] or the starting rate for savings if this Chapter did not apply to the individual for the tax year.
- (6) Condition F is that the individual does not make a return under section 8 of TMA 1970 for the tax year.

### Textual Amendments

**F136** Words in s. 828B(5) inserted (with effect for the tax year 2016-17 and subsequent years) by [Finance Act 2016 \(c. 24\), s. 4\(10\)\(17\)](#)

**F137** Words in s. 828B(5) inserted (with effect in accordance with Sch. 38 para. 12 of the amending Act) by [Finance Act 2014 \(c. 26\), Sch. 38 para. 9](#)

## 828C The exemption

- (1) The exemption is given by deducting the relevant amount from what would otherwise be the amount of the individual's liability to income tax for the tax year under section 23.
- (2) “The relevant amount” is so much of the amount of the individual's liability to income tax as is attributable to the individual's foreign income or gains for the tax year.
- (3) But if for the tax year the individual's total income is reduced by any deductions which fall to be made at Step 3 of the calculation in section 23 from the individual's foreign

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income or gains for the tax year, subsection (2) has effect as if the individual's foreign income or gains for the tax year were reduced by the amount of the deductions.

- (4) And if the individual is entitled under—
- (a) [<sup>F138</sup>sections 2 and 6 of TIOPA 2010] (double taxation arrangements: relief by agreement), or
  - (b) [<sup>F139</sup>section 18(1)(b) and (2)] of that Act (relief for foreign tax where no double taxation arrangements),

to a tax reduction in respect of the individual's foreign income or gains for the tax year, what would otherwise be the relevant amount is reduced by the amount of that reduction.

#### Textual Amendments

**F138** Words in s. 828C(4)(a) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 83\(a\)](#) (with Sch. 9 paras. 1-9, 22)

**F139** Words in s. 828C(4)(b) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 83\(b\)](#) (with Sch. 9 paras. 1-9, 22)

## 828D Interpretation of Chapter

- (1) This section applies for the purposes of this Chapter.
- (2) “Employed” and “employment” have the same meaning as in the employment income Parts of ITEPA 2003: see Chapter 1 of Part 2 of that Act.
- (3) “Foreign income and gains”, in relation to an individual, means what would be the individual's foreign income and gains for the purposes of Chapter A1 of this Part if section 809B applied to the individual (see section 809Z7(2)).
- (4) “Foreign tax” means any tax chargeable under the law of a territory outside the United Kingdom.
- (5) “Relevant foreign earnings”, in relation to an individual, means what would be the individual's relevant foreign earnings for the purposes of Chapter A1 of this Part if section 809B applied to the individual (see section 809Z7(3)).]

## CHAPTER 2

### RESIDENCE

#### <sup>F140</sup>829 Residence of individuals temporarily abroad

#### Textual Amendments

**F140** Ss. 829-832 omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\), Sch. 45 para. 152\(6\)](#)

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

### <sup>F140</sup>830 Residence of individuals working abroad

.....

#### Textual Amendments

**F140** Ss. 829-832 omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 152\(6\)](#)

### <sup>F140</sup>831 Foreign income of individuals in the United Kingdom for temporary purpose

.....

#### Textual Amendments

**F140** Ss. 829-832 omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 152\(6\)](#)

### <sup>F140</sup>832 Employment income of individuals in the United Kingdom for temporary purpose

.....

#### Textual Amendments

**F140** Ss. 829-832 omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 152\(6\)](#)

### 833 Visiting forces [<sup>F141</sup>etc]

- (1) This section applies to an individual who—
- (a) is a member of a visiting force of a designated country or of a civilian component of such a force,
  - (b) is in the United Kingdom, but only because of being a member of the force or the civilian component, and
  - (c) is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.
- (2) For the purposes of subsection (1)—
- (a) members of the armed forces of a designated country who are attached to a designated [<sup>F142</sup>international military] headquarters are treated as a visiting force of that country, and
  - (b) whether an individual is a member of a civilian component of such a force is to be determined accordingly.

[<sup>F143</sup>(2A) This section also applies to an individual within subsection (3) or (3A).]

- (3) [<sup>F144</sup>An individual is within this subsection if the individual—]
- (a) is of a category for the time being agreed between Her Majesty's Government in the United Kingdom and the other members of the North Atlantic Council,
  - (b) is employed by a designated allied headquarters,
  - (c) is in the United Kingdom, but only because of being employed by the designated allied headquarters, and



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- (d) is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.
- [<sup>F145</sup>(3A) An individual is within this subsection if the individual—
- (a) belongs to the EU civilian staff,
  - (b) is in the United Kingdom, but only because of serving as part of that staff, and
  - (c) is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.]
- (4) If this section applies to an individual throughout a period, the period is not treated for income tax purposes as—
- (a) a period of residence in the United Kingdom, or
  - (b) creating a change of the individual's residence or domicile.
- (5) Subsection (4) does not affect the operation of section 56 or 460 of this Act <sup>F146</sup>... (residence etc of claimants) in relation to an individual for any tax year.
- (6) Subsections (1) to (3) are to be interpreted as if—
- (a) they were in Part 1 of the Visiting Forces Act 1952 (c. 67), and
  - (b) references in that Act to a country to which a provision of that Act applies were references to a designated country.
- (7) In this section—
- “allied headquarters” means an international military headquarters established under the North Atlantic Treaty, <sup>F147</sup> ...
- “designated” means designated for the purpose in question by or under an Order in Council made for giving effect to an international agreement<sup>[<sup>F148</sup></sup>, and
- “the EU civilian staff” means—
- (a) civilian personnel seconded by a member State to an EU institution for the purposes of activities (including exercises) relating to the preparation for, and execution of, tasks mentioned in Article 43(1) of the Treaty on European Union (tasks relating to a common security and defence policy), as amended from time to time, and
  - (b) civilian personnel (other than locally hired personnel)—
    - (i) made available to the EU by a member State to work with designated international military headquarters or a force of a designated country, or
    - (ii) otherwise made available to the EU by a member State for the purposes of activities of the kind referred to in paragraph (a).]

#### Textual Amendments

- F141** Words in s. 833 heading substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 37 para. 5\(7\)](#)
- F142** Words in s. 833(2)(a) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 37 para. 5\(2\)](#)
- F143** S. 833(2A) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 37 para. 5\(3\)](#)
- F144** Words in s. 833(3) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 37 para. 5\(4\)](#)
- F145** S. 833(3A) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 37 para. 5\(5\)](#)
- F146** Words in s. 833(5) omitted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 1 para. 6\(o\)\(v\)](#)
- F147** Word in s. 833(7) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 37 para. 5\(6\)\(a\)](#)
- F148** Words in s. 833(7) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 37 para. 5\(6\)\(b\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

### 834 Residence of personal representatives

- (1) This section applies for income tax purposes if the personal representatives of a deceased person (“D”) include one or more persons who are UK resident and one or more persons who are non-UK resident.
- (2) If the following condition is met, the person or persons who are non-UK resident are treated, in their capacity as personal representatives, as UK resident.
- (3) The condition is that when D died D was UK resident <sup>F149</sup>... or domiciled in the United Kingdom.
- (4) If that condition is not met, the person or persons who are UK resident are treated, in their capacity as personal representatives, as non-UK resident.

#### Textual Amendments

**F149** Words in s. 834(3) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 67\(1\)](#) (with [Sch. 46 para. 67\(2\)](#))

### 835 Residence rules for trustees <sup>F150</sup>...

- (1) See sections 475 and 476 for rules about the residence of the trustees of a settlement.

<sup>F151</sup>(2) .....

#### Textual Amendments

**F150** Words in s. 835 heading omitted (with effect in accordance with s. 1329(1) of the amending Act) by virtue of [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 705\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F151** S. 835(2) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 705\(2\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

### [<sup>F152</sup>835A] Residence of companies

Chapter 3 of Part 2 of CTA 2009 (rules for determining residence of companies) applies for the purposes of the Income Tax Acts as it applies for the purposes of the Corporation Tax Acts.]

#### Textual Amendments

**F152** S. 835A inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 706](#) (with [Sch. 2 Pts. 1, 2](#))

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

## [<sup>F153</sup>CHAPTER 2A

### DOMICILE

#### Textual Amendments

**F153** Pt. 14 Ch. 2A inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 7 para. 77](#) (with [Sch. 9 paras. 1-9, 22](#))

#### **835B Domicile for income tax purposes of overseas electors**

- (1) In determining for income tax purposes where a person is domiciled, disregard any relevant electoral action taken by the person (whether taken before, on or after the day on which TIOPA 2010 is passed).
- (2) For the purposes of this section, relevant electoral action is taken by a person if—
  - (a) the person does anything with a view to, or in connection with, being registered as an overseas elector, or
  - (b) the person, when registered as an overseas elector, votes in any election at which the person is entitled to vote as a result of being registered as an overseas elector.
- (3) For the purposes of this section, a person is registered as an overseas elector if the person is—
  - (a) registered in any register of parliamentary electors in pursuance of such a declaration as is mentioned in section 1(1)(a) of the Representation of the People Act 1985 (extension of parliamentary franchise to certain non-resident British citizens), or
  - (b) registered under section 3 of that Act (certain non-resident peers entitled to vote at European Parliamentary elections).
- (4) Subsection (1) does not prevent regard being had, in determining a person's domicile at any time, to any relevant electoral action taken by the person if—
  - (a) the person's domicile at that time is being determined for the purpose of ascertaining that or any other person's liability to income tax, and
  - (b) the person whose liability is being ascertained wishes regard to be had to that action.
- (5) If a person's domicile is determined in accordance with any such wishes, that domicile is to be regarded as having been determined for the purpose only of ascertaining the liability concerned.]

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

## [<sup>F154</sup>CHAPTER 2B

### UK REPRESENTATIVE OF NON-UK RESIDENT

#### Textual Amendments

**F154** Pt. 14 Ch. 2B inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 1](#) (with Sch. 9 paras. 1-9, 22)

#### *Introduction*

#### **835C Overview of Chapter**

- (1) This Chapter provides for a branch or agency to be treated as the UK representative of a non-UK resident in respect of certain amounts chargeable to income tax.
- (2) For obligations and liabilities in relation to income tax imposed on a branch or agency which under this Chapter is treated as the UK representative of a non-UK resident, see Chapter 2C.]

#### **[<sup>F155</sup>835D] Income tax chargeable on company's income: application**

This Chapter does not apply in relation to income tax chargeable on income of a company otherwise than as a trustee.]

#### Textual Amendments

**F155** S. 835D inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 2](#) (with Sch. 9 paras. 1-9, 22)

#### *[<sup>F156</sup>Branches and agencies*

#### Textual Amendments

**F156** S. 835E and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 3](#) (with Sch. 9 paras. 1-9, 22)

#### **835E Branch or agency treated as UK representative**

- (1) This section applies if a non-UK resident carries on (alone or in partnership) any trade, profession or vocation through a branch or agency in the United Kingdom.
- (2) The branch or agency is the UK representative of the non-UK resident in relation to—
  - (a) the amount of any income from the trade, profession or vocation that arises (directly or indirectly) through or from the branch or agency, and

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

- (b) the amount of any income from property or rights which are used by, or held by or for, the branch or agency.
- (3) The following rules are to be applied for the purposes of subsection (2) and Chapter 2C in relation to an amount within that subsection.
- Rule 1* The UK representative continues to be the UK representative of the non-UK resident in relation to the amount even after ceasing to be a branch or agency through which the non-UK resident carries on the trade, profession or vocation concerned.
- Rule 2* The UK representative is treated in relation to the amount as a distinct and separate person from the non-UK resident (if the representative would not otherwise be so treated).
- Rule 3* If the branch or agency is carried on by persons in partnership, the partnership, as such, is treated in relation to the amount as the UK representative of the non-UK resident.
- (4) For further rules that apply where a trade or profession carried on by a non-UK resident in the United Kingdom is carried on in partnership, see section 835F.
- (5) This section needs to be read with sections 835G to 835K (which provide for descriptions of persons who are not to be regarded as the UK representative of a non-UK resident if certain conditions are met).]

#### [<sup>F157</sup>835F Trade or profession carried on in partnership

- (1) Subsection (2) applies if a trade or profession carried on by a non-UK resident through a branch or agency in the United Kingdom is carried on by the non-UK resident in partnership.
- (2) The trade or profession carried on through the branch or agency is, for the purposes of section 835E and Chapter 2C, to be treated as including the notional trade or profession.
- (3) Subsection (4) applies (in addition to subsection (2) if that subsection also applies) if—
- (a) a trade or profession carried on by a non-UK resident in the United Kingdom is carried on by the non-UK resident in partnership, and
- (b) any member of the partnership is resident in the United Kingdom.
- (4) The notional trade or profession is, for the purposes of section 835E and Chapter 2C, to be treated as being a trade carried on in the United Kingdom through the partnership as such.
- (5) In this section “the notional trade or profession” means the notional trade from which the non-UK resident's share in the partnership's profits or losses is treated for the purposes of section 852 of ITTOIA 2005 as deriving.]

#### Textual Amendments

**F157** S. 835F inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 4](#) (with Sch. 9 paras. 1-9, 22)

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

### [<sup>F158</sup>Persons who are not UK representatives

#### Textual Amendments

**F158** S. 835G and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 5](#) (with Sch. 9 paras. 1-9, 22)

#### 835G Agents

- (1) This section applies if a non-UK resident carries on (alone or in partnership) a business through an agent in the United Kingdom.
- (2) The agent is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) arising to the non-UK resident from—
  - (a) so much of the non-UK resident's business as relates to disregarded transactions, or
  - (b) property or rights which, as a result of disregarded transactions, are used by, or held by or for, the agent on behalf of the non-UK resident.
- (3) “Disregarded transactions” are transactions—
  - (a) carried out through the agent in the United Kingdom, and
  - (b) in respect of which the agent does not act in the course of carrying on a regular agency for the non-UK resident.]

#### [<sup>F159</sup>835H Brokers

- (1) This section applies if a non-UK resident carries on (alone or in partnership) a business through a broker in the United Kingdom.
- (2) The broker is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) if—
  - (a) the amount is transaction income in relation to a transaction carried out through the broker in the United Kingdom on behalf of the non-UK resident, and
  - (b) the independent broker conditions are met in relation to the transaction (see section 835L).
- (3) In subsection (2) “transaction income”, in relation to a transaction carried out through a broker in the United Kingdom on behalf of a non-UK resident, has the same meaning as in Chapter 1 (see section 814(5)).]

#### Textual Amendments

**F159** S. 835H inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 6](#) (with Sch. 9 paras. 1-9, 22)

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

## [<sup>F160</sup>835I] Investment managers

- (1) This section applies if a non-UK resident carries on (alone or in partnership) a business through an investment manager in the United Kingdom.
- (2) The investment manager is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) if—
  - (a) the amount is transaction income in relation to an investment transaction carried out through the investment manager in the United Kingdom on behalf of the non-UK resident, and
  - (b) the independent investment manager conditions are met in relation to the investment transaction (see section 835M).
- (3) In subsection (2) “transaction income”, in relation to a transaction carried out through an investment manager in the United Kingdom on behalf of a non-UK resident, has the same meaning as in Chapter 1 (see section 814(5)).]

### Textual Amendments

**F160** S. 835I inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 7](#) (with Sch. 9 paras. 1-9, 22)

## [<sup>F161</sup>835J] Persons acting under alternative finance arrangements

- (1) Subsection (2) applies if an amount within section 835E(2) arising to a non-UK resident consists of alternative finance return.
- (2) Neither of the following is the UK representative of the non-UK resident in relation to the amount—
  - (a) the other party to the alternative finance arrangements,
  - (b) any other person acting for the non-UK resident in relation to the alternative finance arrangements.
- (3) In subsection (1) “alternative finance return” means alternative finance return within the application of section 564I, 564K or 564L(2) or (3).
- (4) In subsection (2) the reference to “the alternative finance arrangements” is a reference to the alternative finance arrangements under which the alternative finance return mentioned in subsection (1) arises.]

### Textual Amendments

**F161** S. 835J inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 8](#) (with Sch. 9 paras. 1-9, 22)

## [<sup>F162</sup>835K] Lloyd's agents

- (1) This section applies if—
  - (a) a non-UK resident (“X”) is a member of Lloyd's, and
  - (b) an amount within section 835E(2) arises to X from X's underwriting business.

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

- (2) A person who has been X's members' agent or the managing agent of the syndicate in question is not the UK representative of X in relation to the amount or to matters connected with the amount.
- (3) For the purposes of this section—
- (a) X is a member of Lloyd's if X is a member within the meaning of Chapter 3 of Part 2 of FA 1993, and
  - (b) “members' agent” and “managing agent” are to be construed in accordance with section 184 of that Act.]

#### Textual Amendments

**F162** S. 835K inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 9](#) (with [Sch. 9 paras. 1-9, 22](#))

### *[<sup>F163</sup>The independent broker conditions*

#### Textual Amendments

**F163** S. 835L and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 10](#) (with [Sch. 9 paras. 1-9, 22](#))

### **835L The independent broker conditions**

- (1) The independent broker conditions are met in relation to a transaction carried out on behalf of a non-UK resident by a broker in the United Kingdom if conditions A to D are met.
- (2) Condition A is that at the time of the transaction the broker is carrying on the business of a broker.
- (3) Condition B is that the transaction is carried out in the ordinary course of that business.
- (4) Condition C is that the remuneration which the broker receives in respect of the transaction for the provision of the services of a broker to the non-UK resident is not less than is customary for that class of business.
- (5) Condition D is that the broker does not fall (apart from this subsection) to be treated under this Chapter, or under Chapter 1 of Part 7A of TCGA 1992, as a UK representative of the non-UK resident in relation to any amounts that—
  - (a) are not included in transaction income in relation to the transaction (see section 835H(2) and (3)), and
  - (b) are chargeable to tax for the same tax year as that transaction income.]



*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

### *[<sup>F164</sup>The independent investment manager conditions*

#### **Textual Amendments**

**F164** S. 835M and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 11](#) (with Sch. 9 paras. 1-9, 22)

### **835M The independent investment manager conditions**

- (1) The independent investment manager conditions are met in relation to an investment transaction carried out on behalf of a non-UK resident by an investment manager in the United Kingdom if conditions A to E are met.
- (2) Condition A is that at the time of the transaction the investment manager is carrying on a business of providing investment management services.
- (3) Condition B is that the transaction is carried out in the ordinary course of that business.
- (4) Condition C is that, when the investment manager acts on behalf of the non-UK resident in relation to the transaction, the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.
- (5) Condition D is that the requirements of the 20% rule are met (see section 835N).
- (6) Condition E is that the remuneration which the investment manager receives in respect of the transaction for the provision of investment management services to the non-UK resident is not less than is customary for that class of business.]

### **[<sup>F165</sup>835N Investment managers: the 20% rule**

- (1) The requirements of the 20% rule are met if conditions A and B are met.
- (2) Condition A is that, in relation to a qualifying period, it has been or is the intention of the investment manager and the persons connected with the investment manager that at least 80% of the non-UK resident's relevant disregarded income should consist of amounts to which none of them has a beneficial entitlement.
- (3) Condition B is that, so far as there is a failure to fulfil that intention, that failure—
  - (a) is attributable (directly or indirectly) to matters outside the control of the investment manager and persons connected with the investment manager, and
  - (b) does not result from a failure by any of them to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.]

#### **Textual Amendments**

**F165** S. 835N inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 12](#) (with Sch. 9 paras. 1-9, 22)

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

**[<sup>F166</sup>835O Meaning of “qualifying period”, “relevant disregarded income” and “beneficial entitlement”**

- (1) This section applies for the purposes of this Chapter.
- (2) A “qualifying period” means—
  - (a) the tax year in which the transaction income mentioned in section 835I(2) is chargeable to tax, or
  - (b) a period of not more than 5 years comprising two or more tax years including that one.
- (3) The “relevant disregarded income” of the non-UK resident for a qualifying period is the total of the non-UK resident's income for the tax years comprised in the qualifying period which derives from investment transactions—
  - (a) carried out by the investment manager on the non-UK resident's behalf, and
  - (b) in relation to which the independent investment manager conditions are met, ignoring the requirements of the 20% rule.
- (4) A person has a “beneficial entitlement” to relevant disregarded income if the person has or may acquire a beneficial entitlement that is, or would be, attributable to the relevant disregarded income as a result of having an interest or other rights mentioned in subsection (5).
- (5) The interests and rights referred to in subsection (4) are—
  - (a) an interest (whether or not an interest giving a right to an immediate payment of a share in the profits or gains) in property in which the whole or any part of the relevant disregarded income is represented, or
  - (b) an interest in, or other rights in relation to, the non-UK resident.]

**Textual Amendments**

**F166** S. 835O inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 6 para. 13](#) (with [Sch. 9 paras. 1-9, 22](#))

**[<sup>F167</sup>835P Treatment of transactions where 20% rule not met**

- (1) This section applies in the case of an investment transaction in relation to which the independent investment manager conditions are met, except for the requirements of the 20% rule.
- (2) This Chapter has effect as if the requirements of that rule were met in relation to the transaction, but only in relation to so much of the transaction income in relation to the transaction (see section 835I(2) and (3)) as does not represent an amount—
  - (a) which is relevant disregarded income of the non-UK resident, and
  - (b) to which the investment manager or a person connected with the investment manager has or has had any beneficial entitlement.]

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

### Textual Amendments

**F167** S. 835P inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 6 para. 14](#) (with [Sch. 9 paras. 1-9, 22](#))

## [<sup>F168</sup>835Q] **Application of 20% rule to collective investment schemes**

- (1) This section applies if amounts arise or accrue to the non-UK resident as a participant in a collective investment scheme.
- (2) It applies for the purposes of determining whether the requirements of the 20% rule are met in relation to a transaction carried out for the purposes of the scheme (so far as the transaction is one in respect of which amounts so arise or accrue).
- (3) In applying this section make the following assumptions—
  - (a) that all the transactions carried out for the purposes of the scheme are carried out on behalf of a company (“the assumed company”) which is—
    - (i) constituted for the purposes of the scheme, and
    - (ii) non-UK resident, and
  - (b) that the participants do not have any rights in respect of the amounts arising or accruing in respect of those transactions, other than the rights which, if they held shares in the assumed company, would be their rights as shareholders.
- (4) If the scheme is such that the assumed company would not be regarded for tax purposes as carrying on a trade in the United Kingdom in relation to the tax year in which the transaction income mentioned in section 835I(2) is chargeable to tax, the requirements of the 20% rule are treated as met in relation to a transaction carried out for the purposes of the scheme.
- (5) If the scheme is such that the assumed company would be so regarded for tax purposes, sections 835N to 835P have effect in relation to a transaction carried out for the purposes of the scheme with the modifications in subsection (6).
- (6) The modifications are—
  - (a) for references to the non-UK resident substitute references to the assumed company, and
  - (b) for references to the non-UK resident's relevant disregarded income for a qualifying period substitute references to the sum of the amounts that would, for tax years comprised in the qualifying period, be chargeable to tax on the assumed company as profits deriving from the transactions—
    - (i) carried out by the investment manager, and
    - (ii) assumed to be carried out on behalf of the company.
- (7) In this section—

“collective investment scheme” has the meaning given by section 235 of FISMA 2000, and

“participant”, in relation to a collective investment scheme, is construed in accordance with that section.]

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

#### Textual Amendments

**F168** S. 835Q inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 15](#) (with Sch. 9 paras. 1-9, 22)

### *[<sup>F169</sup>Supplementary*

#### Textual Amendments

**F169** S. 835R and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 16](#) (with Sch. 9 paras. 1-9, 22)

### **835R Supplementary provision**

- (1) For the purposes of this Chapter a person is to be regarded as carrying out a transaction on behalf of another if the person—
  - (a) undertakes the transaction, whether on behalf of or to the account of the other, or
  - (b) gives instructions for it to be so carried out by another.
- (2) In the case of a person who acts as a broker or investment manager as part only of a business, this Chapter has effect as if that part were a separate business.]

### **[<sup>F170</sup>835S Interpretation of Chapter**

- (1) This section applies for the purposes of this Chapter.
- (2) “Branch or agency” means any factorship, agency, receivership, branch or management.
- (3) “Investment manager” has the same meaning as in Chapter 1 (see section 827).
- (4) “Investment transaction” means any transaction of a description specified for the purposes of this section in regulations made by the Commissioners for Her Majesty’s Revenue and Customs.
- (5) Provision made in regulations under subsection (4) may, in particular, have effect in relation to the tax year current on the day on which the regulations are made.]

#### Textual Amendments

**F170** S. 835S inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 17](#) (with Sch. 9 paras. 1-9, 22)

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*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

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## [<sup>F171</sup>CHAPTER 2C

### INCOME TAX OBLIGATIONS AND LIABILITIES IMPOSED ON UK REPRESENTATIVES

#### Textual Amendments

**F171** Pt. 14 Ch. 2C inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 6 para. 18** (with Sch. 9 paras. 1-9, 22)

#### 835T Introduction to Chapter

- (1) This Chapter applies to the enactments relating to income tax so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax.
- (2) Those enactments have effect in accordance with section 835U in relation to amounts in respect of which a branch or agency is to be treated as the UK representative of a non-UK resident under Chapter 2B.
- (3) In this section “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.]

#### [<sup>F172</sup>835U Obligations and liabilities of UK representative

- (1) The obligations and liabilities of a non-UK resident are to be treated, for the purposes of the enactments to which this Chapter applies, as if they were also the obligations and liabilities of the UK representative of the non-UK resident.
- (2) Subsection (3) applies if—
  - (a) the UK representative of a non-UK resident discharges an obligation or liability imposed by this section that corresponds to one to which the non-UK resident is subject, or
  - (b) a non-UK resident discharges an obligation or liability that corresponds to one to which the non-UK resident's UK representative is subject by virtue of this section.
- (3) The corresponding obligation or liability—
  - (a) of the non-UK resident (in a case within subsection (2)(a)), or
  - (b) of the UK representative (in a case within subsection (2)(b)),
 is discharged.
- (4) A non-UK resident is bound, as if they were the non-UK resident's own, by acts or omissions of the non-UK resident's UK representative in the discharge of the obligations and liabilities imposed on the representative by this section.
- (5) This section is subject to sections 835V and 835W.]

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

#### Textual Amendments

**F172** S. 835U inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 19](#) (with Sch. 9 paras. 1-9, 22)

#### [<sup>F173</sup>835V] **Exceptions: notices and information**

- (1) An obligation or liability attaching to a non-UK resident (“X”) by reason of a notice or other document having been given or served on X does not also attach to the UK representative of X by virtue of section 835U unless the notice or other document (or a copy of it) has been given to or served on the representative.
- (2) An obligation or liability attaching to X by reason of a request or demand having been received by X does not also attach to the UK representative of X by virtue of section 835U unless the representative has been notified of the request or demand.
- (3) Subsection (4) applies to obligations relating to the provision of information that are imposed on the UK representative of X by section 835U in a case where the representative is X’s independent agent.
- (4) The obligations do not require the UK representative to do anything except so far as it is practicable for the representative to do so.
- (5) For this purpose, the representative must act to the best of the representative’s knowledge and belief after taking all reasonable steps to obtain the necessary information.
- (6) An obligation of X to provide information is not discharged by virtue of section 835U in a case where the UK representative of X has discharged the obligation only so far as required by subsection (4) of this section.
- (7) X is not bound by virtue of section 835U by mistakes in information provided by the UK representative of X in discharging, so far as required under subsection (4) of this section, an obligation imposed on the representative by section 835U unless—
  - (a) the mistake is the result of an act or omission of X, or
  - (b) the mistake is one to which X consented or in which X connived.
- (8) In this section “information” includes anything contained in a return, self-assessment, account, statement or report required to be provided to the Commissioners for Her Majesty’s Revenue and Customs or to any officer of Revenue and Customs.]

#### Textual Amendments

**F173** S. 835V inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 20](#) (with Sch. 9 paras. 1-9, 22)

#### [<sup>F174</sup>835W] **Exceptions: criminal offences and penalties etc**

- (1) A person is not by virtue of section 835U liable to be proceeded against for a criminal offence unless the person—

*Status: Point in time view as at 15/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 14. (See end of Document for details)*

- (a) committed the offence, or
  - (b) consented to or connived in its commission.
- (2) An independent agent of a non-UK resident is not by virtue of section 835U liable to any civil penalty or surcharge in respect of an act or omission if conditions A and B are met.
- (3) Condition A is that the act or omission is not—
- (a) an act or omission of the independent agent, or
  - (b) an act or omission to which the agent consented or in which the agent connived.
- (4) Condition B is that the independent agent is able to show that the amount of the penalty or surcharge will not be recoverable out of the sums mentioned in section 835X(3) (after being indemnified for any other liabilities under section 835X).]

#### Textual Amendments

**F174** S. 835W inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 6 para. 21** (with Sch. 9 paras. 1-9, 22)

#### [<sup>F175</sup>835V] Indemnities

- (1) An independent agent of a non-UK resident is entitled to be indemnified for the amount of any liability of the non-UK resident which the agent has discharged by virtue of section 835U.
- (2) An independent agent of a non-UK resident is entitled to retain, from the sums mentioned in subsection (3), amounts sufficient to meet any liabilities which by virtue of section 835U the agent has discharged or to which the agent is subject.
- (3) The sums are those which—
  - (a) (ignoring subsection (2)) are due from the independent agent to the non-UK resident, or
  - (b) are received by the independent agent on behalf of the non-UK resident.]

#### Textual Amendments

**F175** S. 835X inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 6 para. 22** (with Sch. 9 paras. 1-9, 22)

#### [<sup>F176</sup>835W] Meaning of “independent agent”

- (1) In this Chapter “independent agent”, in relation to a non-UK resident (“X”), means a person who is the UK representative of X in respect of any agency in which the person is acting on behalf of X in an independent capacity.
- (2) For this purpose a person does not act in an independent capacity on behalf of X unless the relationship between them, having regard to its legal, financial and commercial

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characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.]

#### Textual Amendments

**F176** S. 835Y inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 6 para. 23](#) (with Sch. 9 paras. 1-9, 22)

## CHAPTER 3

### JOINTLY HELD PROPERTY

#### 836 Jointly held property

- (1) This section applies if income arises from property held in the names of individuals—
  - (a) who are married to, or are civil partners of, each other, and
  - (b) who live together.
- (2) The individuals are treated for income tax purposes as beneficially entitled to the income in equal shares.
- (3) But this treatment does not apply in relation to any income within any of the following exceptions.

*Exception A*

Income to which neither of the individuals is beneficially entitled.

*Exception B*

Income in relation to which a declaration by the individuals under section 837 has effect (unequal beneficial interests).

*Exception C*

Income to which Part 9 of ITTOIA 2005 applies (partnerships).

*Exception D*

Income arising from a UK property business which consists of, or so far as it includes, the commercial letting of furnished holiday accommodation (within the meaning of Chapter 6 of Part 3 of ITTOIA 2005).

*[<sup>F177</sup>Exception DA*

Income arising from an overseas property business which consists of, or so far as it includes, the commercial letting of furnished holiday accommodation (within the meaning of Chapter 6 of Part 3 of ITTOIA 2005) in one or more EEA states.]

*Exception E*

Income consisting of a distribution arising from property consisting of—

- (a) shares in or securities of a close company to which one of the individuals is beneficially entitled to the exclusion of the other, or
- (b) such shares or securities to which the individuals are beneficially entitled in equal or unequal shares.

“Shares” and “securities” have the same meaning as in [<sup>F178</sup>section 1117 of CTA 2010].

*Exception F*



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Income to which one of the individuals is beneficially entitled so far as it is treated as a result of any other provision of the Income Tax Acts as—

- (a) the income of the other individual, or
- (b) the income of a third party.

#### Textual Amendments

**F177** Words in s. 836(3) inserted (19.7.2011) (with effect in accordance with Sch. 14 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 3\(5\)](#)

**F178** Words in s. 836(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 553](#) (with [Sch. 2](#))

### 837 Jointly held property: declarations of unequal beneficial interests

- (1) The individuals may make a joint declaration under this section if—
  - (a) one of them is beneficially entitled to the income to the exclusion of the other, or
  - (b) they are beneficially entitled to the income in unequal shares, and their beneficial interests in the income correspond to their beneficial interests in the property from which it arises.
- (2) The declaration must state the beneficial interests of the individuals in—
  - (a) the income to which the declaration relates, and
  - (b) the property from which that income arises.
- (3) The declaration has effect only if notice of it is given to an officer of Revenue and Customs—
  - (a) in such form and manner as the Commissioners for Her Majesty's Revenue and Customs may prescribe, and
  - (b) within the period of 60 days beginning with the date of the declaration.
- (4) The declaration has effect in relation to income arising on or after the date of the declaration.
- (5) The declaration continues to have effect until such time (if any) as there is a change in the beneficial interests of the individuals in either—
  - (a) the income to which the declaration relates, or
  - (b) the property from which that income arises.

## [<sup>F179</sup>CHAPTER 3A

### BANKS ETC IN COMPULSORY LIQUIDATION

#### Textual Amendments

**F179** Pt. 14 Ch. 3A inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 7 para. 71](#) (with [Sch. 9 paras. 1-9, 22](#))

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### **837A Overview of Chapter**

- (1) This Chapter provides for the receipts of certain types of company being wound up to be charged to income tax.
- (2) For provision charging the receipts of such companies to corporation tax, see Chapter 6 of Part 13 of CTA 2010.

### **837B Application of Chapter**

- (1) This Chapter applies if—
  - (a) a company is being or has been wound up by the court in the United Kingdom, and
  - (b) conditions A, B and C are met.
- (2) Condition A is that the company was, at any time within the period mentioned in subsection (5), lawfully carrying on a business of accepting deposits as—
  - (a) a person of the kind mentioned in paragraph (b) of the definition of “bank” in section 991(2) (persons with permission under Part 4 of FISMA 2000 to accept deposits), or
  - (b) a permitted EEA credit institution.
- (3) Condition B is that the company has permanently ceased to carry on the trade that included the business of accepting deposits (the “deposit-taking trade”).
- (4) Condition C is that the company is insolvent and—
  - (a) was so when the winding up proceedings started, or
  - (b) became so at any time in the period of 12 months following the day on which those proceedings started.
- (5) The period referred to in subsection (2) is the period of 12 months ending with the earlier of—
  - (a) the day on which the winding up proceedings started, and
  - (b) the day on which the company permanently ceased to carry on the deposit-taking trade.
- (6) In subsection (2)(b) a “permitted EEA credit institution” means an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to FISMA 2000 (credit institutions authorised by home state regulator) which has permission to accept deposits under paragraph 15 of that Schedule.

### **837C Charge to income tax on winding up receipts**

- (1) Winding up receipts arising from the deposit-taking trade are chargeable to income tax.
- (2) Subsection (1) applies in relation to a winding up receipt only so far as its value was not brought into account in calculating the profits of the trade of any period before the permanent cessation of the trade.
- (3) A “winding up receipt” means (subject to subsection (4)) a sum received by the company or its liquidator after—
  - (a) the start of the winding up proceedings, or
  - (b) if later, the permanent cessation of the deposit-taking trade.

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- (4) The following are not winding up receipts—
- (a) a sum received on behalf of a person entitled to the sum to the exclusion of the company and its liquidator, and
  - (b) a sum realised by the transfer of an asset required to be valued under section 173 of ITTOIA 2005 (valuation of trading stock on cessation).

### **837D Transfer of rights to payment**

- (1) This section applies if—
- (a) the company or its liquidator transfers for value to another person the right to receive a sum arising from the deposit-taking trade, and
  - (b) the sum is one which, if received by the company or its liquidator, would be a winding up receipt.
- (2) If the transfer is at arm's length, this Chapter has effect as if the amount or value of the consideration for the transfer were a winding up receipt arising from the deposit-taking trade.
- (3) If the transfer is not at arm's length, this Chapter has effect as if the value of the right transferred as between parties at arm's length were a winding up receipt arising from the deposit-taking trade.

### **837E Allowable deductions**

- (1) In calculating the amount on which income tax is charged under this Chapter for a tax year, deductions are allowed in accordance with this section from the amount which would otherwise be chargeable to income tax under this Chapter.
- (2) A deduction is allowed for the total sum of all losses, expenses and debits within subsection (3) that are incurred during or before the tax year (but subject to subsections (4) and (5)).
- (3) The losses, expenses and debits within this subsection are those which, if the company carrying on the deposit-taking trade had not permanently ceased to do so—
- (a) would have been deducted in calculating the profits of the trade for income or corporation tax purposes, or
  - (b) would have been deducted from or set off against the profits of the trade for income or corporation tax purposes.
- (4) No deduction is allowed if the loss, expense or debit arises directly or indirectly from the cessation itself.
- (5) A loss, expense or debit is only within subsection (3) if incurred—
- (a) after the start of the winding up proceedings or, if later, the permanent cessation of the deposit-taking trade, or
  - (b) in the case of a loss, at or before the permanent cessation of the deposit-taking trade.
- (6) No deduction for an amount is allowed under this section if the amount has already been allowed (whether under this section or under any other provision of the Tax Acts).

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### **837F Election to carry back**

- (1) This section applies if a winding up receipt arising from the deposit-taking trade is received in a tax year beginning no later than 6 years after the company permanently ceased to carry on the trade.
- (2) The company or its liquidator may elect that the income tax chargeable under this Chapter in respect of the receipt is to be charged as if the receipt has been received on the date of the cessation.
- (3) The election must be made before the end of the period of two years beginning immediately after the end of the tax year in which the receipt is received.
- (4) If an election is made under this section an assessment to income tax must be made accordingly (regardless of anything in the Income Tax Acts).

### **837G Relationship of Chapter with other income tax provisions**

If a winding up receipt arising from the deposit-taking trade is chargeable to income tax under this Chapter it is not chargeable to income tax under any other provision.

### **837H Interpretation of Chapter**

- (1) This section applies for the purposes of this Chapter.
- (2) There is the permanent cessation of a company's trade if—
  - (a) the company ceases to carry on the trade, or
  - (b) the company ceases to be within the charge to corporation tax in respect of the trade,
 whether or not the trade is in fact ceased.
- (3) A company is insolvent at any time if at that time—
  - (a) it is unable to pay its debts as they fall due, or
  - (b) the value of its assets is less than the amount of its liabilities (including its contingent and prospective liabilities).
- (4) “Company” means—
  - (a) a company as defined in section 1(1) of the Companies Act 2006, or
  - (b) an unregistered company as defined in section 220 of the Insolvency Act 1986 or Article 184 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (5) For the meaning of “deposit-taking trade” and “winding up receipt”, see sections 837B(3) and 837C(3) respectively.]

## **CHAPTER 4**

### OTHER MISCELLANEOUS RULES

### **838 Local authorities and local authority associations**

- (1) A local authority in the United Kingdom is not liable to income tax in respect of its income.

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- (2) A local authority association in the United Kingdom is not liable to income tax in respect of its income.
- (3) Tax is repayable as a result of subsection (1) or (2) only if a claim for repayment is made.

**Modifications etc. (not altering text)**

**C8** S. 838 modified by 1999 c. 29, s. 34A(3) (as inserted (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), [ss. 224\(2\), 240\(2\)](#); S.I. 2012/57, art. 4(1)(cc) (with arts. 6, 7, 9-11))

**[<sup>F180</sup>838AAsbestos compensation settlements**

- (1) The trustees of an asbestos compensation settlement are not liable to income tax in respect of the income of the trustees.
- (2) In this section “asbestos compensation settlement” means a settlement—
  - (a) the sole or main purpose of which is making compensation payments to or in respect of individuals who have, or had before their death, an asbestos-related condition, and
  - (b) which is made before 24 March 2010 in pursuance of an arrangement within subsection (3).
- (3) An arrangement is within this subsection if it is—
  - (a) a voluntary arrangement that has taken effect under Part 1 of the Insolvency Act 1986 or Part 2 of the Insolvency (Northern Ireland) Order 1989,
  - (b) a compromise or arrangement that has taken effect under section 425 of the Companies Act 1985, Article 418 of the Companies (Northern Ireland) Order 1986 or Part 26 of the Companies Act 2006, or
  - (c) an arrangement or compromise of a kind corresponding to any of those mentioned in paragraph (a) or (b) that has taken effect under, or as a result of, the law of a country or territory outside the United Kingdom.]

**Textual Amendments**

**F180** S. 838A inserted (16.12.2010 with effect in accordance with Sch. 14 para. 3(4) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 14 para. 3\(3\)](#)

**839 Issue departments of the Reserve Bank of India and the State Bank of Pakistan**

No liability to income tax arises in respect of the income of the issue department of—

- (a) the Reserve Bank of India constituted under an Act of the Indian legislature called the Reserve Bank of India Act 1934, or
- (b) the State Bank of Pakistan constituted under orders made under section 9 of the Indian Independence Act 1947 (c. 30).

**840 Government securities held by non-UK resident central banks**

- (1) No liability to income tax arises in respect of income from securities which is—
  - (a) income payable out of the public revenue of the United Kingdom, and

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- (b) income of a bank, or the issue department of a bank, to which this section applies for the time being.
- (2) But subsection (1) does not prevent the income from being taken into account in calculating profits, gains or losses of a business carried on in the United Kingdom.
- (3) Her Majesty may by Order in Council direct that this section applies to a bank or its issue department if it appears to Her Majesty that the bank—
  - (a) is non-UK resident, and
  - (b) is entrusted by the government of a territory outside the United Kingdom with the custody of the territory's principal foreign exchange reserves.
- (4) No recommendation may be made to Her Majesty in Council to make an order under this section unless a draft of the order has been laid before and approved by a resolution of the House of Commons.

#### **841 Official agents of Commonwealth countries etc**

- (1) This section applies if an individual is employed in the United Kingdom as an official agent for—
  - (a) a country mentioned in Schedule 3 to the British Nationality Act 1981 (c. 61) (which contains a list of Commonwealth countries) or the Republic of Ireland, or
  - (b) a state or province of a country within paragraph (a).
- (2) If conditions A and B are met, the individual is entitled to the same immunity from income tax as that to which a member of the staff of a mission is entitled under the Diplomatic Privileges Act 1964 (c. 81).
- (3) Condition A is that the individual has been certified—
  - (a) to be ordinarily resident outside the United Kingdom, and
  - (b) to be UK resident solely for the purposes of the individual's functions as an official agent.
- (4) The certification must have been done by (as the case may be)—
  - (a) the High Commissioner of the country for which the individual is an official agent, or
  - (b) the Agent-General of the state or province for which the individual is an official agent.
- (5) In subsection (4)(a) “High Commissioner” includes the head of the mission of the country in question by whatever name called.
- (6) Condition B is that the individual's functions as an official agent are not performed in connection with a trade, business or other undertaking carried on for the purposes of profit.
- (7) In this section “head of the mission” and “a member of the staff of a mission” are to be read in accordance with the Diplomatic Privileges Act 1964.

#### **842 European Economic Interest Groupings**

- (1) The following rules about European Economic Interest Groupings apply for the purposes of charging income tax—

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#### *Rule 1*

A grouping is treated as acting as the agent of its members.

#### *Rule 2*

The activities of a grouping are treated as those of its members acting jointly.

#### *Rule 3*

Each member of a grouping is treated as having a share of the grouping's property, rights and liabilities.

#### *Rule 4*

Any trade or profession carried on by the grouping is treated as carried on in partnership by the members of the grouping.

- (2) For the purposes of Rule 3, a member's share of any property, rights or liabilities of a grouping is determined according to the contract under which the grouping is established.
- (3) If the contract does not provide for this, the member's share is determined by reference to the share of the profits of the grouping to which the member is entitled under the contract.
- (4) If the contract does not provide for this either, the members are treated as having equal shares of the property, rights and liabilities of the grouping.
- (5) “European Economic Interest Grouping” means a European Economic Interest Grouping formed under Council Regulation (EEC) No 2137/85 of 25 July 1985, whether registered in Great Britain, Northern Ireland or elsewhere.

### **843 Restriction of deductions for annual payments**

In calculating a person's income from any source, no deduction is allowed for an annual payment to which section 904 applies (annual payments for dividends or non-taxable consideration).

### **844 Letters patent etc: exempting provisions**

- (1) No provision in letters patent granted by the Crown is to be construed as conferring exemption from income tax.
- (2) Subsection (1) applies whether the letters patent are granted before or after the date on which this Act is passed.
- (3) Any provision of the letters patent purporting to override the effect of subsection (1) is void.

### **845 Extra return to be treated as interest etc**

- (1) This section applies if—
  - (a) securities (“old securities”) of a particular kind are issued by way of an original issue of securities of that kind,
  - (b) on a later occasion securities (“new securities”) of the same kind are issued,

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- (c) a sum (“the extra return”) is payable in respect of the new securities by the issuer of them to reflect the fact that interest is accruing on the old securities,
  - (d) the issue price of the new securities includes an element (whether or not separately identified) representing payment for the extra return, and
  - (e) the extra return is equal to the amount of interest mentioned in subsection (2).
- (2) The amount of interest referred to in subsection (1)(e) is—
- (a) the amount of interest payable for the relevant period on so many old securities as there are new, or
  - (b) if there are more new securities than old, the amount of interest which would be so payable if there were as many old securities as new.
- (3) A sum paid or payable by way of the extra return is treated for income tax purposes as if it were paid or payable as interest (so far as it would not be treated in that way apart from this subsection).
- (4) No relief for the extra return is to be given to the issuer of the new securities.

#### **846 Interpretation of section 845**

- (1) This section applies for the purposes of section 845.
- (2) Securities are of the same kind if they—
- (a) are treated as being of the same kind by the practice of a recognised stock exchange, or
  - (b) would be so treated if dealt in on a recognised stock exchange.
- (3) “The relevant period” is the period—
- (a) beginning with the day mentioned in subsection (4), and
  - (b) ending with the day (“the new issue day”) on which the new securities are issued.
- (4) The day referred to in subsection (3)(a) is the day after—
- (a) the last (or only) interest payment day before the new issue day, or
  - (b) if there is no interest payment day before the new issue day, the day on which the old securities are issued.
- (5) In subsection (4) “interest payment day” means a day on which interest is payable under the old securities.
- (6) “Relief” means relief by way of deduction in calculating amounts of income charged to income tax or in calculating net income.



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