

*Status: Point in time view as at 31/10/2013.*

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## SCHEDULES

### SCHEDULE 6

#### EMPLOYMENT INCOME: DUTIES PERFORMED IN THE UK AND OVERSEAS

#### PART 2

##### REMITTANCE BASIS OF TAXATION: SPECIAL MIXED FUND RULES

- 4 Chapter A1 of Part 14 of ITA 2007 (remittance basis) is amended as follows.
- 5 In section 809Q (sections 809L and 809P: transfers from mixed funds), after subsection (1) insert—
- “(1A) But this section must be read subject to section 809RA.”
- 6 After section 809R insert—

#### “809RA Special mixed fund rules for certain employment cases

- (1) This section applies if—
- an individual has general earnings from an employment for a tax year,
  - 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”),
  - 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
  - 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—

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- (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
  - (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.

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

#### **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.

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- (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;
    - (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.

### **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

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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.
- (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—

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- (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
  - (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.

### **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).

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- (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).”

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