These notes refer to the Finance Act 2009 (c.10) which received Royal Assent on 21 July 2009

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 51Schedule 27: Remittance Basis

Summary

1. Section 51 and Schedule 27 make a number of minor amendments to provisions relating to the remittance basis of taxation.

Details of the Section

2. Section 51 introduces Schedule 27.

Details of the Schedule

3. Paragraph 1 introduces Part 1 of the Schedule which amends Chapter A1 of Part 14 of the Income Tax Act 2007 (ITA).

4. Paragraph 2 inserts new subsection 5A in section 809C of ITA. This provides that any income tax charged to an individual under section 424 of ITA is to be excluded when nominating foreign income and gains in situations where that individual has claimed Gift Aid tax relief and has chosen to use the remittance basis.

5. Paragraph 3 amends section 809D(1) of ITA which provides that an individual with unremitted foreign income and gains of less than £2,000 in a tax year does not need to file a self-assessment tax return under the Taxes Management Act 1970 (TMA) in order to use the remittance basis.

6. Paragraph 4 amends section 809E of ITA by inserting a new sub-paragraph (c) and a new subsection (2A).

7. New paragraph (c) provides that individuals with no UK income and gains other than taxed investment income of less than £100 in a tax year can choose to access the remittance basis of taxation for a tax year without making a claim.

8. Paragraph 4(3) amends section 809E(1) of ITA so that it mirrors the amendment made to section 809D of ITA. It provides that relevant individuals are not required to file a self-assessment tax return under TMA in order to use the remittance basis.

9. New subsection 2A defines ‘taxed investment income’ for the purposes of new subsection 1(c) as income or gains within section 946 ITA which have been taxed at source.

10. Paragraph 5 amends section 809H ITA and excludes any income tax charged to an individual under section 424 of ITA when nominating income and gains in situations where that individual has claimed Gift Aid tax relief and has chosen to use the remittance basis.

11. Paragraph 6 amends section 809L of ITA and clarifies that ‘remitted to the United Kingdom’ for the purposes of Chapter A1 includes situations where property is used to pay interest on a relevant debt.

12. Paragraph 7 amends the definition of a relevant person in section 809M of ITA..

13. Section 809M(2)(e) is amended to provide that references to a close company include subsidiaries of such companies.

14. The new paragraph (ca) of section 809M(3) introduces a definition of a participator in relation to a close company for the purposes of defining a relevant person.

15. Paragraph 8 amends section 809P of ITA to provide a statutory rule for determining the value of a remittance where property forming part of a larger set is remitted to the UK.

16. Paragraph 9 corrects a grammatical error in section 809T of ITA.

17. Paragraph 10 amends section 809X of ITA by making amendments to subsections (4) and (5) to omit the references to relevant foreign income. The effect of the amendments is to extend the current exemption which applies to property purchased out of relevant foreign income to cover property purchased from other sources of foreign income overseas and chargeable gains.

18. Paragraph 11 makes consequential amendments to section 809Z5 of ITA required by the changes made elsewhere in this Schedule.

19. Part 2 of the Schedule amends the Taxation of Chargeable Gains Act 1992 (TCGA), the Income Tax (Trading and Other Income) Act 2005 (ITTOIA) and the Finance Act 2008.

20. Paragraph 12 amends section 14A(3)(b) of TCGA 1992 to clarify its meaning and mirrors the amendment to section 809T of ITA introduced by Paragraph 9 of this Schedule.

21. Paragraph 13 amends section 648 of ITTOIA 2005 by substituting new subsections (2) to (5) to clarify the interaction between the remittance basis and the settlements legislation.

22. Paragraph 14 amends paragraph 86 of Schedule 7 to Finance Act 2008 by inserting a new paragraph (4A) to ensure that the transitional provisions which prevent certain income which arises before 6 April 2008 from being taxed as a remittance if it is brought to the UK on or after that date operate as intended.

Background Note

23. Individuals who are resident but not ordinarily resident or not domiciled in the UK can choose to use the remittance basis of taxation whereby they are required to pay UK tax on their offshore income and gains only to the extent which they are brought - or remitted - into the UK.

24. Section 25 and Schedule 7 of FA 2008 introduced significant changes to the remittance basis which came into effect from the start of the 2008-2009 tax year.

25. During the passage of Finance Bill 2008 the Government gave an undertaking that HM Treasury and HM Revenue & Customs officials would consult with external stakeholders following Royal Assent to review the legislation to ensure it operated as intended and to identify areas where it could be clarified or improved. The majority of the changes introduced in Finance Act 2009 arise from this consultation.

26. The Act also clarifies the definition of a relevant person and provides a statutory rule for determining the value of a remittance where property forming part of a larger set is remitted to the UK. Both changes are intended to prevent potential abuse of the remittance basis rules.