
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

SCHEDULES

SCHEDULE 12

Section 47

FOREIGN INCOME AND GAINS

PART 1

INCREASED REMITTANCE BASIS CHARGE

Increased charge

- 1 Chapter A1 of Part 14 of ITA 2007 (remittance basis) is amended as follows.
- 2 (1) Section 809C (claim for remittance basis by long-term UK resident: nomination of foreign income and gains to which section 809H(2) is to apply) is amended as follows.
- (2) In subsection (1), for paragraph (b) substitute—
- “(b) meets the 12-year residence test or the 7-year residence test for that year.”
- (3) After that subsection insert—
- “(1A) An individual meets the 12-year residence test for a tax year if the individual has been UK resident in at least 12 of the 14 tax years immediately preceding that year.
- (1B) An individual meets the 7-year residence test for a tax year if the individual—
- (a) does not meet the 12-year residence test for that year, but
- (b) has been UK resident in at least 7 of the 9 tax years immediately preceding that year.”
- (4) In subsection (4), for “£30,000” substitute “—
- (a) for an individual who meets the 12-year residence test for that year, £50,000;
- (b) for an individual who meets the 7-year residence test for that year, £30,000.”
- 3 (1) Section 809H (claim for remittance basis by long-term UK resident: charge) is amended as follows.
- (2) In subsection (1), for paragraph (c) substitute—
- “(c) the individual meets the 12-year residence test or the 7-year residence test for the relevant tax year.”
- (3) After that subsection insert—

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

“(1A) See section 809C(1A) and (1B) for when an individual meets the 12-year residence test or the 7-year residence test for a tax year.”

(4) In subsection (4), for “£30,000”, in each place it occurs, substitute “ the applicable amount ”.

(5) After subsection (5A) insert—

“(5B) The applicable amount” is—

- (a) if the individual meets the 12-year residence test for the relevant tax year, £50,000;
- (b) if the individual meets the 7-year residence test for the relevant tax year, £30,000.”

4 For section 809V substitute—

“809V Money paid to the Commissioners

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

Application of Part 1

5 The amendments made by this Part of this Schedule have effect for the tax year 2012-13 and subsequent tax years.

PART 2

REMITTANCE FOR INVESTMENT PURPOSES

Relief for investments

6 For the italic heading preceding section 809V substitute “ *Relief for money used to pay tax etc* ”.

7 After section 809V insert—

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

“Business investment relief

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.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

- (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).

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,

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

- (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.
- (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—

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

- (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.

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.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

- (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.
- (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,

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

- (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.
- (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

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

- (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.

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),

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

- (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.
- (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).

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

- (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).
- (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.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

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.
- (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.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

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
 - (ii) the due date, in a case within subsection (6)(c).
- (8) For the purposes of this section—

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

- (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.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

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.”

8 After the sections inserted by paragraph 7 insert the heading “*Relief for certain UK services*”.

9 Immediately before section 809X insert the heading “*Exempt property relief*”.

Formerly exempt property used to make investment

10 In section 809Y (property that ceases to be exempt property treated as remitted), after subsection (5) insert—

“(6) Subsection (1) does not apply to property that ceases to be exempt property if—

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

- (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
 - (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.”
- 11 In section 809Z2 (personal use rule), in subsection (2), omit paragraph (a) (including the word “and” at the end of it).
- 12 In section 809Z4 (temporary importation rule), in subsection (3)—
- (a) omit “or” at the end of paragraph (b),
 - (b) insert “ or ” at the end of paragraph (c), and
 - (c) after that paragraph insert—
 - “(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) or 809YC(2) as not remitted to the United Kingdom.”

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

Interpretation provisions

- 13 In section 809M (meaning of “relevant person”), in subsection (1), for “sections 809L, 809N and 809O” substitute “this Chapter”.
- 14 In section 809Z7 (interpretation of Chapter), omit subsection (7).
- 15 For the heading of that section substitute “**Meaning of “foreign income and gains” etc**”.
- 16 After that section insert—

“809Z8 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.
- (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.

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.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

- (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
 - (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.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

- (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 section 809VB(2) but in that case—
- (a) disregard references in this section to investment, and
 - (b) the assessment date for the purposes of subsection (5) is the date of the relevant event (see section 809VA(3)(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;

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

Application of Part 2

- 17 The amendments made by this Part of this Schedule have effect where the relevant event (as defined in section 809VA of ITA 2007) or the ceasing to be exempt property (as defined in section 809Y of that Act) occurs on or after 6 April 2012.

PART 3

SALES OF EXEMPT PROPERTY

Relief from deemed remittance rule

- 18 After section 809Y of ITA 2007 (property that ceases to be exempt property treated as remitted) insert—

“809YA Exception to section 809Y: proceeds taken offshore or invested

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

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

- (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.

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.
- (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.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

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.

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
 - (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 and P is not domiciled in the United Kingdom in that year, the relevant UK gain is

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

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.”

Application of Part 3

- 19 The amendment made by this Part of this Schedule has effect in relation to exempt property that is sold on or after 6 April 2012 (including property sold pursuant to a contract entered into before that date so long as the contract only becomes unconditional on or after that date).

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12. (See end of Document for details)

PART 4

NOMINATED INCOME

Disapplication of ordering rules

- 20 (1) Section 809I of ITA 2007 (remittance basis charge: income and gains treated as remitted) is amended as follows.
- (2) In subsection (1)—
- (a) omit “and” at the end of paragraph (a), and
 - (b) at the end of paragraph (b) insert “, and
 - (c) the £10 test is met for that year.”
- (3) In subsection (3), after “earlier tax year” insert “ (each such year for which the individual has made a nomination under that section being referred to as a “nomination year”) ”.
- (4) After subsection (4) insert—
- “(5) The £10 test is met for the tax year mentioned in subsection (1)(a) (“year X”) if, taking each nomination year separately, the cumulative total as respects at least one nomination year exceeds £10.
- (6) In relation to a nomination year—
- (a) “the cumulative total” means the sum, for all the tax years in aggregate up to and including year X, of the amounts of relevant income and gains remitted to the United Kingdom in those tax years from that nomination year, and
 - (b) “relevant income and gains” means the income and chargeable gains nominated by the individual under section 809C for that nomination year.”

Application of Part 4

- 21 The amendments made by this Part of this Schedule have effect for determining whether section 809I of ITA 2007 applies for the tax year 2012-13 or any subsequent tax year.

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 12.