SCHEDULES

SCHEDULE 12

FOREIGN INCOME AND GAINS

PART 2

REMITTANCE FOR INVESTMENT PURPOSES

Relief for investments

7 After section 809V insert—

"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.

(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,
(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—

(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.

(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,

(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
(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),
  - (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).

(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.

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.

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—

(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.

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."

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2012, Paragraph 7.