These notes refer to the Finance Act 2012 (c.14) which received Royal Assent on 17 July 2012

FINANCE ACT 2012

EXPLANATORY NOTES

INTRODUCTION

Section 35: Foreign Currency Bank Accounts

Summary

1. Section 35 exempts individuals, trustees of settled property, and personal representatives of deceased persons from capital gains tax on gains made on withdrawals of money from bank accounts denominated in a foreign currency. The section takes effect from 6 April 2012.

Details of the Section

2. Subsection (4) of the section makes the main change. It replaces the existing section 252 of the Taxation of Chargeable Gains Act 1992 (TCGA) with a new provision.

New section 252 TCGA

3. Section 252(1) restricts the scope of section 251 TCGA. Section 251 exempts gains on certain debts, including credit balances on bank accounts, from tax on chargeable gains. Where the debt is a "foreign currency debt", section 252(1) limits this exemption to gains accruing to individuals, trustees of settled property and personal representatives of deceased persons.

4. Section 252(2) defines "foreign currency debt" as a credit balance on a bank account in a currency other than sterling.

5. Subsections (2), (3) and (5) of the section make other changes to the TCGA as a consequence of the main change in subsection (4).

6. Subsection (2) removes a redundant rule concerning the attribution of gains to members of non-resident companies in section 13(5)(c) that referred to the original version of section 252 TCGA.

7. Subsection (3) inserts a new section 251(5A) TCGA to make clear that relevant references in section 251 to debt include references to an interest in debts that a person holds, for example, as a joint owner of the account. It aligns section 251 with new section 252.

8. Subsection (5) repeals the rules in section 252A and Schedule 8A TCGA for calculating chargeable gains and allowable losses where individuals withdraw money from foreign currency bank accounts. The new section 252 prevents chargeable gains or allowable losses from arising to individuals on any such withdrawals, rendering these rules redundant.

9. Subsection (6) provides for the changes to the TCGA to apply from 6 April 2012.

Background Note

10. Under the TCGA, for capital gains tax purposes, gains and losses can arise on foreign currency bank accounts because the calculation must be made in sterling. If the exchange rate between sterling and the foreign currency in question changes between the time when the money was put into the account and the time when it is taken out, a gain or loss will arise.

11. At Budget 2011 the Government announced that it would reform the taxation of non-domiciled individuals, including measures to simplify aspects of the current remittance basis rules to remove undue administrative burdens. "Reform of the taxation of non-domiciled individuals: a consultation", issued on 17 June 2011, included a proposal to remove gains and losses on individuals’ foreign currency bank accounts from the scope of capital gains tax (CGT).

12. This section implements the simplification, and extends the exemption from CGT to trustees and personal representatives.

13. The original section 252 TCGA limits the exemption from CGT for foreign currency bank accounts to cases where individuals withdraw money that they have put into their account for personal expenditure abroad. The new section 252 replaces this with a broader exemption.