

## EXPLANATORY NOTE

### CLAUSE 23 SCHEDULE 7: REMITTANCE BASIS: AMENDMENTS 355 TO 357

**(Government amendments to provisions relating to the remittance basis charge and moveable property brought to the United Kingdom)**

#### INTRODUCTION

1. Amendments 355 to 357 make a number of changes to the qualifying conditions for property treated as not remitted to the UK.
2. Firstly, they provide a revised introductory section (809T) for the exempt property provisions.
3. Secondly, they set out in detail a number of provisions for the public access rule in sections 809V and 809VA of the Income Tax Act (ITA) 2007. This includes more information on when property qualifies under the public access test and how that test will work in the context of existing VAT relief schemes on works of art, collectors' pieces and antiques over 100 years old.
4. Thirdly, they set out further provisions for the personal use and repair rules in sections 809VB and 809VC of ITA respectively. These establish when property meets each of

these two rules. In the case of the repair rule, the provisions also allow for property to qualify under the repair rule when, in the same period of importation, the property has also been made available for public display.

5. The changes to s809W clarify the application of the 275-day limit for the purposes of the temporary importation rule by defining what is a 'countable day' for the purposes of that test. For example, property brought into the UK for personal use and property with a notional value of less than £1,000 are never brought within the test.
6. Finally, these amendments introduce a further definition to the list contained in section 809Z to cover references to the Commissioners of Her Majesty's Revenue and Customs.

### DETAIL OF THE AMENDMENTS

7. Amendment 355 amends subsections (3) to (5) of section 809T. Subsection (3) introduces a reference to new sections 809V and 809VA in respect of the public access rule. Subsection (4) specifies the types of property which meet the personal use rule under section 809VB.
8. Subsection (5) describes property which falls within the other exempt property rules, and refers to the relevant sections for the repair rule (809VC); the temporary

importation rule (809W); and the notional remitted amount (809X).

9. Amendment 356 replaces sections 809V and 809W with new sections 809V, 809VA, 809VB, 809VC, and 809W.
10. Section 809V introduces general provisions for the public access rule to apply. Subsection 1 states that the rule will be met if Conditions A to D are met. Subsection 2 sets out Condition A, which defines what type of property qualifies under the public access rule by reference to Council Directive 2006/112/EC, and in particular Annex IX to that Directive. It means the provisions for property falling within the public access rule mirror that for the various VAT relief schemes outlined in paragraph 6 of Budget Note 105.
11. Subsection 3 sets out a revised Condition B with provisions covering the availability of property for public access at an approved establishment, property in transit to, or in storage at, public access rule premises, or in transit from, or in storage at public access rule premises, when it is to be, is, or has been so made available at an approved establishment.
12. Subsection (4) defines when property is ‘available for public access’ – when it is on public display at the establishment, held by the establishment and made available to the public on request for viewing or for educational use, or held by the

establishment for public exhibition in connection with its sale.

13. Subsections (5) and (6) define references in subsections (3) and (4) to an ‘approved establishment’ and ‘public access rule premises’. The definition of ‘approved establishment’ in subsection (5)(a) is an approved establishment within the meaning of Group 9 of Schedule 2 to the Value Added Tax (Imported Goods) Relief Order 1984. The wording of paragraph (b) allows provision for any other person, premises or institution to be designated by the Commissioners as an approved establishment. This will allow other venues not currently featured in the relevant VAT relief provisions, such as commercial auction houses, to be designated as approved establishments.
14. ‘Public access rule premises’ are defined in subsection (6). Paragraph (a) covers premises in the UK at which the property is to be, or has been available for public access. Paragraph (b) covers other commercial premises in the UK used by the approved establishment for the storage of property available for public access.
15. Subsection (7) introduces Condition C which sets out the time limits for the public access rule. During the relevant period the property must meet Condition B for no more than

two years, or such longer period as the Commissioners may specify.

16. Subsections (8) and (9) define the terms ‘relevant period’ and ‘importation’. Subsection (8) provides that ‘the relevant period’ means the period beginning with the importation of the property, and ending when it ceases to be in the UK after that importation. Subsection (9) provides that ‘importation’ means the property is brought to, or received or used in the UK in circumstances in which section 809K(2)(a) applies, which means that it is imported by or for the benefit of a relevant person. These definitions reflect the fact that property may not be available for public access for the entire period that it is in the UK.
17. Subsection (10) introduces a new Condition D which specifies that the property must attract a relevant VAT relief.
18. Section 809VA provides for four new conditions, the meeting of any of which determines when property ‘attracts a relevant VAT relief’ in the context of the public access rule. This follows Budget Note 105 guidelines that the public access rule would be based on existing VAT and import duty relief schemes for works of art, etc. Subsection (2) sets out new Condition 1 which requires that article 5(1) of the Value Added Tax (Imported Goods) Relief Order 1984 applies in relation to the importation of the property.

Condition 2 in subsection (3) provides that property qualifies if article (5)(1) would apply if the requirements that (a) the importation be from a third country, and (b) the property be imported for a purpose other than sale, were disregarded. Condition 2 is necessary because failure to meet these requirements would normally disqualify the property from attracting relevant VAT relief.

19. Subsection (4) sets out new Condition 3 which requires that article 576(3)(a) of Commission Regulation (EEC) 2454/93 (relief from import duties for works of art etc imported for the purposes of exhibition, with a view to possible sale) applies in relation to the importation of the property. This is extended by Condition 4 in subsection (5). Condition 4 provides that the property qualifies if article 576(3)(a) would apply if the requirement that the importation be from a third country was disregarded. Condition 4 is necessary because failure to meet this requirement would normally disqualify the property from attracting a relevant VAT relief.
20. Subsection (6) provides for the property to qualify as attracting a relevant VAT relief for the purposes of the public access test where it does not meet Condition B at the time of its importation. In that case it is to be assumed for the purposes of section 809VA that the property was imported on the day during the relevant period when the property first meets Condition B. This subsection treats the

property as having been imported to the UK at the point it is made available, or is to be made available for public access, thereby deeming the relevant VAT relief provisions to apply. The new conditions and subsection (6) of section 809VA do not have any actual effect on VAT relief or import duty provisions.

21. Subsection (7) provides that the definitions of 'relevant period' and 'importation' have the same meaning as in section 809V, and 'imported' is to be read accordingly.
22. Section 809VB sets out the requirements for meeting the personal use rule. Subsection (1) provides that clothing, footwear, jewellery or watches meet the personal use rule if they are (a) property of a relevant person, and (b) are for the personal use of a relevant individual. Subsection (2) defines the terms 'relevant person' as having the meaning given by section 809L and 'relevant individual' as meaning an individual who is a relevant person by virtue of section 809L(2)(a), (b), (c) or (d). This covers the individual with foreign income or gains, or a husband, wife, civil partner, child or grandchild. This section has the effect that the property provided for can be owned by another relevant person, such as a close company, as long as it is for the personal use of a relevant individual.

23. Section 809VC sets out the requirements of the repair rule. Subsection (1) provides that the rule is met for the whole of the relevant period if the property meets the repair conditions during the whole of that period. Subsection (2) provides that property meets the repair rule for a part of the relevant period if (a) during the whole of that part of that period the property meets the repair conditions, and (b) during the whole of the other part of that period, or the whole of each other part, the property meets the repair conditions or the public access rule. This subsection covers the interaction between the repair rule and the public access rule. If, during the whole of the period the property is in the UK, it meets both the repair rule and the public access rules only, the repair rule conditions are still met.
24. Subsection (3) provides the requirements for the property to meet the repair conditions. Subsection (3)(a) provides that the repair conditions are met if the property is under repair or restoration. Subsection (3)(b) is met if the property is in transit from outside the UK to repair rule premises, in transit between such premises, or in storage before or after repair or restoration. Subsection (3)(c) is met if the property is in storage at such premises, in transit between such premises, or in transit from such premises to a place outside the UK after repair or restoration.

25. Subsections (4) and (5) set out the definitions of ‘repair rule premises’ and ‘restorer’ respectively. ‘Repair rule premises’ are (a) premises in the UK that are to be used, or have been used, for the repair or restoration of the property, or (b) other commercial premises in the UK used by the restorer for the storage of property before or after repair or restoration by the restorer. Subsection (5) defines ‘restorer’ as the person who is to carry out, or who has carried out, the repair or restoration of the property.
26. Subsection (6) specifies how property meets the repair conditions or the public access rule for the whole or part of a relevant period. If it meets those conditions or that rule (a) for the whole or part of the first day of the period or part period, (b) for the whole or part of the last day of the period or part period, and (c) on the whole of each other day of that period or part period, it meets the conditions or the rule. Subsection (7) provides that ‘relevant period’ has the same meaning as in section 809V.
27. Section 809W makes provision for the details of the temporary importation rule and the effect of the time limit. Subsection (1) provides the basic test, which is that property will meet the rule if the total number of ‘countable days’ is 275 days or fewer. The 275-day limit applies cumulatively to all periods of importation and not separately for each relevant period.

28. Subsection (2) defines ‘countable day’ as a day, or part of a day, on which property is in the UK by virtue of being brought to, or received or used in, the UK where section 809K(2)(a) applies (whether the current case, or a past case when the property was so brought, received or used). Subsection (3) sets out certain circumstances when a day is not a countable day. Subsection (3)(a) covers the situation where the property meets the personal use rule; subsection (3)(b) covers the case where the property meets the repair rule, and subsection (3)(c) covers the case where the notional remitted amount in relation to the property is less than £1,000.
29. Subsection (4) sets provides that a day, or part day, on which property meets the public access rule (‘the relevant day’) is not a countable day if any of conditions A to C is met.
30. Subsections (5) provides that Condition A is that the property meets the public access rule during the whole of the period of importation in which the relevant day falls.
31. Subsection (6) provides that Condition B is that (a) the property does not meet the public access rule during the whole of the period of importation in which the relevant day falls, so long as (b) that period of importation (i) begins with a period of no public access, and (ii) ends with a period of

public access which immediately follows that period of no public access. This covers the situation where property is imported under the temporary importation rule prior to a period of public access, and is then exported after the public access period.

32. Subsection (7) provides that Condition C is that (a) the property does not meet the public access rule during the whole of the period of importation in which the relevant day falls, and (b) during the parts, or each of the parts of the period during which it does not meet the public access rule, it meets the repair conditions. This covers the situation where the property meets the public access rule and the repair rule (and no other rule) during the whole of the period of importation.
33. Subsection (8) ensures that section 809VA(6) also applies for the purposes of this section.
34. Subsection (9) defines 'period of importation' as a period that (a) begins when the property is brought to, or received or used in, the UK in circumstances in which section 809K(2)(a) applies, and (b) ends when the property ceases to be in the UK after having been so brought, received or used.
35. Subsection (10) defines 'period of no public access' as a period which is not a period of public access and 'period of

public access' is defined as meaning a period during the whole of which property meets the public access rule.

36. Amendment 357 introduces new section 809Z(8). This ensures that references to 'the Commissioners' within new Chapter A1 means the Commissioners for Her Majesty's Revenue and Customs.

### **BACKGROUND**

37. The Government has made a number of provisions in respect of exempt property. Unlike other categories of exempt property, items qualifying under public access can be purchased abroad from untaxed employment income or capital gains, as well as relevant foreign income. The rule allows individuals to bring items into the UK without triggering a charge under the remittance basis if the purpose of the importation is public display or otherwise making the relevant items available to the public.
38. Property can only qualify under the other rules if it has been bought overseas from untaxed relevant foreign income. Property already in the UK before 6 April 2008 can be exported, for example on loan to a foreign institution,

without creating a remittance when it is re-imported to the UK.

39. As it is possible in one period of importation for property to be, for example, repaired in the UK before being made available for public access, or to be imported under the temporary importation rule and then made available for public access, the amendments set out in detail when property qualifies under the various rules. It also clarifies when periods of time spent in the UK should be treated as 'countable days' for the purposes of the 275-day limit.
40. On specific points:
- The effect of section 809V(5)(a) is that items on display in a private residence will not qualify under the public access rule.
  - The reference to 'commercial premises' in section 809V(6)(b) allows property to remain under the public access rule, if, for example, it is being held at the premises of a specialist shipper before being put on display in a museum or gallery.
  - Section 809VA(6) provides for circumstances where, at the initial importation, the property has not been made available for public access, for example, by being imported initially under the temporary importation rule.