

EXPLANATORY NOTE

CLAUSE 23 SCHEDULE 7: REMITTANCE BASIS: AMENDMENTS 482 TO 493

SUMMARY

1. Amendments 482 to 493 make miscellaneous changes to the way the remittance basis rules apply in various areas.
2. Amendments 483 and 493 clarify original provisions of the Bill on "relevant person" and mortgages respectively, following discussions with representative bodies.
3. Amendment 483 modifies the rules for determining whether a remittance has been made. A trustee of a settlement will only be treated as a "relevant person" if the individual or close family members can benefit from the settlement.
4. Amendment 493 extends the provisions allowing untaxed relevant foreign income to be used to make repayments on certain mortgages in place at 12 March 2008 without their constituting a taxable remittance. Subject to conditions, relief will be allowed for 'remortgaging', where a loan replaces a previous loan used to buy a property.
5. The remaining amendments make minor corrections to the legislation.

6. Among the issues covered are the timing of when a charge arises on remittances of certain capital payments (amendment 486), what is meant by the "sale" of an asset for the purposes of the legislation (amendments 487 and 488), and the meaning of "money" (amendments 489 to 491).

DETAIL OF THE AMENDMENTS

7. Amendment 482 makes a minor technical change to the rules in section 809K, which determine whether a remittance to the UK has been made. The original wording of the Bill covered cases where overseas income or gains were used in respect of a debt and included a debt for interest on money lent; but it was not clear that this applied to interest paid on a debt in all circumstances. The amendment puts this beyond doubt.
8. Amendment 483 narrows the scope of the section 809K provisions. It modifies the definition of "relevant person" for these purposes, so that a trustee of a settlement will only be treated as a relevant person if the individual or close family members are beneficiaries of the settlement.
9. Under the original wording, trustees of settlor-interested trusts were automatically treated as a relevant person, even

if the individual or close family members were not beneficiaries. Existing anti-avoidance legislation for trusts is already sufficient to stop abuse in respect of settlor-interested trusts.

10. Amendments 484 and 485 make minor corrections to the wording of section 809Q on mixed funds, by replacing the words "income or capital" by "income or gains" in several places.
11. Amendment 486 is concerned with the case where capital payments relating to items deemed as income or chargeable gains are remitted to the UK before the income or gain to which they relate is treated as arising. Under the original wording such payments might in certain circumstances become chargeable before the tax year in which the income or gain is treated as arising. The amendment ensures that cannot happen.
12. Amendment 487 closes a potential loophole in the current wording of section 809U. This provides that where an asset qualifying as exempt property is sold, the exemption will then cease. But the present wording does not address the case where only part of an asset is sold.
13. If, for example, a diamond bracelet is brought to the UK by a remittance basis user, it qualifies as exempt property under the exemption in section 809T(4) for items of

jewellery for personal use. The amendment ensures that where there is a partial disposal of the asset, it ceases to qualify for exemption. So, if the diamonds are removed and sold, the asset would no longer qualify for exemption.

14. Amendment 488 makes a minor adjustment to the meaning of "sold" in section 809U(3). The words "or otherwise converted into money" are added, to cover cases where an asset is disposed of in some manner other than a direct sale for cash.
15. Amendment 489 clarifies the meaning of "money", for the purposes of the wording added to section 809U(3) by amendment 7. It gives a list (not exhaustive) of items which are to be treated as money, including traveller's cheques and debt instruments. This aims to ensure that section 809U(3) works properly, whether an asset is paid for in money or in some form of 'money's worth'.
16. Amendment 490 mirrors amendment 489 in relation to section 809Y (Exempt property, other interpretation). It makes clear that "money", which is not "property" for the purposes of sections 809T to 809X, includes the list of items in amendment 490, such as traveller's cheques and debt instruments.
17. Amendment 491 makes a minor correction to the transitional arrangements for the section 809K rules for

determining whether a remittance has been made. By virtue of paragraph 82 of the Schedule the new rules do not apply where relevant foreign income of the individual was used to acquire property before 12 March 2008; or after 12 March but before 6 April, where the property had been brought to the UK before 6 April 2008.

18. The original wording of paragraph 82 might arguably have covered ceased source income arising before 12 March 2008, if it was accepted that this was "property" for the purposes of section 809K. That interpretation would mean that paragraph 82 would run counter to other rules in Schedule 7, which from 6 April 2008 make all ceased source income taxable when it is remitted.
19. The amendment prevents this, by ensuring that "property" in this context does not include money. "Money" for this purpose is given the same meaning as in section 809U.
20. Amendment 492 makes an adjustment to the rules in paragraph 86, under which certain payments of interest on offshore mortgages are not treated as taxable remittances where certain conditions are met. The amendment expands the list of situations in sub-paragraph (3) where 'grandfathering' is not applicable, to include an individual ceasing to own an interest in the property in question. In that case the terms of the loan would generally be changed

by the lender, so relief would cease automatically under subparagraph (3)(a). The amendment deals with any cases where that did not happen.

21. Amendment 493 extends 'grandfathering' relief under paragraph 86 so that remortgaging is covered in certain circumstances. Under the original rules, loans only qualified for exemption where they were made to enable an individual "to acquire an interest" in residential property. There would be no relief if the individual had switched the original mortgage (perhaps because a new lender was offering better terms), since the new loan would not serve to acquire the interest in the property.
22. The amendment extends the 'grandfathering' provisions, so that remortgaging loans can qualify where various conditions are met. The subsequent loan must have been made before 12 March 2008, and must have been made to enable the individual to repay another qualifying loan, and for no other purpose. Also, the money must have been received in the UK and so used before 6 April 2008, and repayment of the subsequent loan must have been secured on the relevant interest acquired in the residential property.
23. In effect, the terms of the provision require that the new loan would have qualified for grandfathering had it been taken out to purchase the property originally, and the

original loan(s) would have so qualified had they remained in force at 11 March 2008.

24. This means that subsequent loan(s) made for purposes other than simply paying off the original mortgage, for example for home improvements, do not qualify.

BACKGROUND

25. Amendment 483 on the definition of "relevant person" and amendment 493 on relief for remortgaging loans both reflect comments received from external stakeholders. They both extend the circumstances in which favourable tax treatment is available.
26. The other amendments are technical changes, designed to ensure that the new rules for the remittance basis in Schedule 7 work properly in the manner intended.