RUDGE REVENUE REVIEW

ISSUE 2

When the Finance Bill was published the accompanying notes on clauses revealed that the provisions relating to the changes to the Remittance Basis and non-domicillaries were simply work in progress and that the Government expected to make substantial amendments at a later stage of the legislative process thus escaping full Parliamentary scrutiny. There is all the difference in the world between presenting for review through the Parliamentary process a Bill which the Government thinks is ready for enactment and then finding, through that process, that it is necessary to amend it and simply presenting a Bill which the Government knows is inadequate. The Finance Bill represents a further stage in the precipitate deterioration of the legislative process.

Whatever amendments are made to the non-domicillary rules, their complexity will cause immense difficulties for the sensible planning of an individual's affairs and will impose an expensive compliance burden. This issue of the Rudge Revenue Review applies the Finance Bill provisions to the affairs of a client which are, by comparison to those of most non-domicillaries, quite simple. It seeks to demonstrate how labyrinthine is the path through these complex new rules.

As always, we are happy to provide a guide through these and other matters of taxation affecting the private client.

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INHOSPITABLE SHORES

Even for non-domicillaries with quite straight forward financial affairs the new remittance rules are monstrously complicated and opaque

Introduction

Schedule 7 of the Finance Bill 2008 contains the Government's latest attempt at producing legislation to implement its proposed changes to the remittance basis. For the first time that we can recall, the Government published a substantial tranche of new legislation in the Finance Bill of fundamental importance to the UK economy affecting a large group of taxpayers which it acknowledged at the time of publication to be inadequate and to require substantial revision. The legislation already runs to fifty three pages and even for taxpayers with quite straightforward affairs, it is monstrously complex and opaque.

This review examines the new provisions by applying them to a non-domicillary whose affairs, by comparison to most, are quite simple; he has interests in property in only two countries and in only three classes of assets. Yet the reader who follows the calculation of his tax liability under the new rules to its end deserves to reward himself with a large glass of best Somersetshire cider.

Example

Caspian has been resident and ordinarily resident in the United Kingdom since 1985/1986, but he is domiciled in Narnia. Already a successful business man, when he took up residence in the United Kingdom he set up a financial company (Dawn Treader Enterprises Ltd) with offices in the City of London, which is incorporated in the Isle of Man but is resident for UK tax purposes in the UK. It pays no dividends retaining its trading profits. Before taking up residence in the UK and without reference to UK taxation, Caspian had settled money and shares (the "Caspian Trust") on trustees resident in the Island of Romandu which is a tax haven. The trustees have a wide discretion to benefit any one or more of the class of beneficial objects and Caspian is a member of that class. The trustees have established two bank accounts in Romandu; one for income and the other for capital. Romandu does not impose any direct taxes and has no double tax treaties.

On 6th April 2005 the trustees made a loan (interest free and repayable on demand) to Caspian of £500,000. The moneys were transferred from the trustees' capital bank account to Caspian's UK Bank Account. This loan remains outstanding. The market rate of interest which would have been paid on an equivalent loan from a commercial lender is five per cent in all relevant periods. Caspian's loan is secured on his UK residence.

The assets in the settlement and the annual income which arises in respect of them as at 6th April 2008 are as follows:-

Settlement Assets	Market Value £000	Income £000	Rate of Foreign Tax %
Various Narnia shares	2000	60	15
Capital Bank Account	1200	60	0
Income Account	900	45	0
Loan to Caspian	500	0	N/A
Total	**4,600**	**165**	

The Trustees have made the following capital gains over the life of the Trust.

	£000
2000/2001	200
2007/2008	200
2008/2009	1000

The gains in 2008/2009 arose on disposals of Narnian shares which took place on the 30th April 2008 resulting in total proceeds with a sterling equivalent of £1,200,000. The entire gain arose from an increase in value which took place after 5th April 2008.

Caspian's personal assets with their market values and the annual income to which they give rise are as follows:-

Personal Assets	Capital Value £000	Income £000	Rate of Foreign Tax %
UK residence	4,000	0	N/A
Shares in Dawn Treader Enterprises Ltd	20,000	0	N/A
UK Bank accounts	100	5	N/A
Narnian shares	3,000	90	15
Narnian real property	4,000	280	16
Narnian Original Capital Bank Account	500	25	0
Narnian Accumulated Income Account	900	45	0
Narnian Capital Proceeds Account	700	35	0
Total	**33,200**	**480**	

On 30th April 2008 Caspian sold a number of Narnian shares giving rise to proceeds of £1,500,000 and gains of £1,000,000. Due to an error in his instructions to his bankers the proceeds were paid into his Narnian Original Capital Bank account rather than the Narnian Capital Proceeds Bank Account. Unaware of this, on 1st May 2008 he transferred £500,000 from his Narnian Original Capital Bank Account to his United

Kingdom account from which he made a short term loan to a fledgling UK resident trading company (Enterprise Ltd") of which he was a controlling shareholder. This loan was repaid on 31st March 2009 and the repayment was made directly to his Narnian Original Capital Bank Account.

On 5th October 2008 the trustees lent Caspian's adult son, Rilian, who had never lived in the United Kingdom, £1,000,000 to fund the acquisition of a freehold property in the UK in which Rilian intended to stay on his annual visits to the UK of four to six weeks per annum in aggregate. The trustees transferred the cash from their capital bank account.

Narnia charges Income Tax on all Narnian source income and gains except on the interest income of non-residents. Capital gains are charged at sixteen per cent. Narnia's general Income Tax rate is a flat eighteen per cent on income above the sterling equivalent of £6,000.

Narnia has a double taxation treaty with the UK conforming to the OECD model treaty, (adopting the credit method under Article 23B) except that under the Narnian Treaty a contracting state may tax capital gains arising in respect of any assets situated in that state and the other contracting state must give credit for that tax. Under the treaty, rent on Narnian property, dividends from Narnian companies and Narnian source interest may be taxed in Narnia. Except in the case of holdings in Narnian companies of twenty five percent or more (which Caspian does not own) the double tax treaty restricts Narnian tax on dividends paid to a UK resident to fifteen per cent and Narnian tax on interest paid to a UK resident to ten per cent.

In completing Caspian's taxation return for 2008/2009, his accountant discovered the error in relation to the banking of the proceeds of Caspian's disposal on 30th April 2008. On his accountant's recommendation, Caspian elected for the Remittance Basis Charge to apply for 2008/2009 and nominated £166,000 of the capital gains arising on his disposal of shares on the 30th April 2008 as being gains to which new s.809G(2) was to apply. In this way the accountant hoped that the Remittance Basis Charge would be franked by the foreign tax credit in respect of Narnian tax charged on Caspian's disposal and Caspian's UK tax liability would be £11,000 ((£500,000 @ (18% - 16%)) + (£5,000 @ 20%).

ANTI-AVOIDANCE PROVISIONS WITHOUT APPLICATION

Because Caspian had not set up the Caspian Trust by reference to United Kingdom taxation, the transfer of assets abroad provisions in ITA 2007 Part 13, Chapter 2, does not apply to its income. The trustees had the power to benefit Caspian under the terms of the Caspian Trust so the income arising under the settlement is treated as the income of Caspian under ITTOIA 2005 s.624.

Because Caspian is not domiciled in a country of the United Kingdom in any relevant tax year, TCGA 1992 s.86 (the "Offshore Settlor Charge") will not apply to the settlement in any relevant year (TCGA 1992 s.86(1).

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THE CAPITAL PAYMENTS CHARGE

Section 87, however, had applied to the settlement since 1998/1999 when s.87(1) was amended. Until the changes made by the Finance Bill 2008 Schedule 7[1] came into effect, however, the application of s.87 did not result in any gains becoming chargeable because only Caspian and Rilian had received capital payments under the settlement and s.87(7) provided that a beneficiary was not to be charged to tax on chargeable gains treated under the capital payments charge as accruing to him in any year unless he was domiciled in the United Kingdom at some time in that year. Finance Bill 2008 Schedule 7, however, repeals the previous s.87 and inserts New ss.87 – 87C[2] and new s.90 and amends various other relevant sections of TCGA 1992. It is not entirely clear that these amendments do not create charges in relation to 2007/2008 and previous years but HMRC claim that they do not do so and in applying them to the example in this article we shall assume that that is correct.

Calculating the Section 2(2) Amounts

The first step is to determine the s.2(2) amounts for each tax year of the settlement and the capital payments received by beneficiaries of the settlement. The s.2(2) amount for a tax year is the amount upon which the trustees would have been chargeable to tax under s.2(2) for that year if they were resident and ordinarily resident in the United Kingdom less any amounts treated as accruing under s.86 for the year.[3]

Before any adjustments the amounts on which the trustees should have been assessable under TCGA 1992 s.2(2) and the capital payments of the Caspian Trust were as follows:-

	Gains which would have been chargeable on the trustees had they been UK resident	Capital Payments	
		Caspian	Rilian
	£000	£000	£000
2000/2001	200		
2005/2006		25	
2006/2007		25	
2007/2008	200	25	
2008/2009	1000	25	25

Finance Bill 2008 Schedule 7 para 109(2) provides that one reduces to nil any capital payment which would have been left out of account by virtue of TCGA 1992 s.87(6) as originally enacted. Section 87(6) provided that a capital payment must be left out of account

[1] It is assumed in this review that the Finance Bill will be enacted without amendment. In fact, of course, it is clear that it will have to be heavily amended before enactment

[2] Statutory references in this article prefixed by 'New' are to the statutory provision cited it is to be amended by Finance Bill 2008

[3] New ITA 2007 s.87(4)

to the extent that chargeable gains had been treated as accruing in an earlier year by reason of the payment.

The capital payments to Caspian in 2005/2006 to 2007/2008 would have resulted in gains of £25,000 per year being deemed to accrue to Caspian although those gains would not have been chargeable to Capital Gains Tax.[4] They are therefore left out of account for the purposes of the new rules.

Only £75,000 of the gains realised in 2000/2001 and 2007/2008 had been deemed to accrue under the old rules to beneficiaries of the settlement. Under Finance Bill 2008 Schedule 7 para 108 where TCGA 1992 s.87 applied to a settlement for any tax year before 2008/2009 and not all of the trust gains for the tax year 2007/2008 were attributed to beneficiaries of the settlement one has to apply the steps set out in para 108(2) as follows:-

Step 1
Calculate (in accordance with s.87 and, where appropriate s.88) the section 2(2) amount for each tax year (not later than the tax year 2007/2008) for which section 87 applied to the settlement.

That is done above.

Step 2
Find the total amount of chargeable gains treated under section 87 or section 89(2) as accruing to beneficiaries of the settlement in the tax year 2007/2008 or any earlier tax year ("Total Deemed Gains").

It can be seen from the above table that in each of the years 2005/2006 - 2007/2008 gains of £25,000 per year were deemed to accrue to Caspian so the Total Deemed Gains were £75,000.

Step 3
If the section 2(2) amount for the earliest tax year for which section 87 applied is less than or equal to the Total Deemed Gains, reduce the section 2(2) amount for that tax year to nil. Otherwise, reduce the section 2(2) amount by the amount of the total deemed gains.

As we have seen, s.87 has applied to the settlement since 1998/1999. The s.2(2) amounts for 1998/1999 were nil and so were less than the Total Deemed Gains. They therefore remain nil under this step.

Step 4
Reduce the Total Deemed Gains by the amount by which the section 2(2) amount was reduced under Step 3.

There is no reduction under this step because the s.2(2) amount for 1998/1999 was already nil.

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[4] TCGA 1992 s.87(7). N.B this is before amendment by Finance Bill 2008

Step 5
If the Total Deemed Gains is not nil, start again in Step 3. For this purpose, read references to the section 2(2) amount for the first tax year for which section 87 applied as references to the section 2(2) amount for the first tax year for which that section applied which is after the last tax year in relation to which Steps 3 and 4 have been undertaken.

So one returns to Step 3 and carries on for each year until either the Total Deemed Gains are reduced to nil or one has applied the provisions to the year 2007/2008. The result will be the same for 1998/1999. For 2000/2001 one returns to Step 3 and finds that the s.2(2) amount is greater than the Total Deemed Gains. Under Step 3 for that year one then reduces the s.2(2) amount by the Total Deemed Gains of £75,000 to £125,000.

The Total Deemed Gains are then reduced by the same amount to nil under Step 4. Because the Total Deemed Gains are now nil under Step 5 the process comes to an end. Having applied Finance Bill 2008 Schedule 7 paras 108 and 109, therefore, the only capital payments we are left with are those received by Caspian and Rilian in 2008/2009.

Matching the Section 2(2) Amounts to the Capital Payments

Now one applies the matching rules of New TCGA 1992 s.87A(2).

Step 1
Find the section 2(2) amount for the relevant tax year.

The relevant tax year is the year for which one wishes to determine whether chargeable gains accrue under s.87. In relation to our computation that is 2008/2009.

Step 2
Find the total amount of capital payments received by the beneficiaries from the trustees in the relevant tax year.

The capital payments in the year, which were received by Caspian and Rilian, were £50,000 in total.

Step 3
The section 2(2) amount for the relevant tax year is matched with:-

(a) if the total amount of capital payments received in the relevant tax year does not exceed the section 2(2) amount for the relevant tax year, each capital payment so received; and

(b) otherwise, the relevant proportion of each of those capital payments.

"The relevant proportion" is the section 2(2) amount for the relevant tax year divided by the total amount of capital payments received in the relevant tax year.

The s.2(2) amount is matched with the capital payments made to Caspian and Rilian in 2008/2009.

Step 4
If paragraph (a) of Step 3 applies:-

(a) reduce the section 2(2) amount for the relevant tax year by the total amount of capital payments referred to there; and

(b) reduce the amount of those capital payments to nil.

If paragraph (b) of that Step applies:-

(a) reduce the section 2(2) amount for the relevant tax year to nil; and

(b) reduce the amount of each of the capital payments referred to there by the relevant proportion of that capital payment.

Paragraph (a) of Step 3 applies so the s.2(2) amount for 2008/2009 is reduced to £950,000 (£1m - £50,000) and the capital payments are reduced to nil. It is these amounts which are used in the calculations in following years.

Step 5
Start again at Step 1 (unless subsection (3) applies).

Subsection (3) ibid applies, inter alia, if all of the capital payments received by beneficiaries from the trustees in the relevant tax year or any earlier tax year have been reduced to nil. That condition is satisfied because the capital payments of 2008/2009 have been reduced to nil under Step 4 and the capital payments of previous years have been taken out of account by Finance Bill 2008 Schedule 7 para 109.

The capital payments of 2008/2009 have therefore been matched on a LIFO basis with the gains made in 2008/2009 and not with the gains of 2000/2001 and 2007/2008. Being neither resident nor ordinarily resident in the United Kingdom, Rilian is not chargeable to Capital Gains Tax on the gains treated as accruing to him. Caspian is chargeable on the gains treated as accruing to him but he is assessable on the remittance basis so we now have to apply the remittance basis to these gains.

The Remittance Basis and the Capital Payments Charge

New ITA 2007 s.809K(1) provides that:-

(1) An individual's income is, or chargeable gains are, "remitted to the United Kingdom" if:-

(a) conditions A and B are met;

(b) condition C is met; or

(c) condition D is met.

Conditions C and D contain complex provisions relating to transactions involving persons who are not relevant persons and those provisions are not relevant to our example. Conditions A and B are given in s.809K(2) and (3) ibid. They are as follows:-

(2) Condition A is that:-

(a) money or other property is brought to, or received or used in, the United Kingdom by or for the benefit of a relevant person; or

(b) a service is provided in the United Kingdom to or for the benefit of a relevant person.

(3) Condition B is that:-

(a) the property, or consideration for the service, is (wholly or in part) the income or chargeable gains;

(b) the property or consideration is:-

(i) property of a relevant person; or

(ii) consideration given by a relevant person, that derives (wholly or in part, and directly or indirectly) from the income or chargeable gains,

(c) the income or chargeable gains are used outside the United Kingdom (directly or indirectly) in respect of a relevant debt; or

(d) anything deriving (wholly or in part, and directly or indirectly) from the income or chargeable gains is used as mentioned in paragraph (c).

Relevant persons are defined in New ITA 2007 s.809K. The definition includes the taxpayer himself, a child of the taxpayer and a close company in which the taxpayer is a participator.

New TCGA 1992 s.87B provides that gains treated as accruing to an individual under s.87 are foreign chargeable gains within the meaning of s.12 ibid and that for the purposes of New ITA 2007 ss.809K – 809Q relevant property and relevant benefits are to be treated as deriving from these chargeable gains. For these purposes property or a benefit is relevant if the capital payment by reason of which the chargeable gains are treated as accruing consists of:-

(a) The payment or transfer of the property or its becoming property to which s.60 (nominees and bare trustees) apply; or

(b) The conferring of the benefit.

Condition A is satisfied by virtue of sub-section (2)(a) in relation to the transfer of moneys by way of loan to Rilian because “money … has been … brought … to the United Kingdom … for the benefit of a relevant person.” It is assumed that Condition A cannot be satisfied in relation

to the transfer of moneys by way of loan to Caspian because although the definition of 'remitted' in s.809K is comprehensive it is not necessarily exhaustive and it is difficult to see how a thing can be remitted by virtue of a transaction taking place three years before it existed and without any reference to it.

Is Condition A satisfied by virtue of sub-section (2)(b) in relation to the trustees' conferring of a benefit on Caspian and Rilian through their continued omission to call in the loan? Refraining from calling in a loan is not aptly described as a service. Even if that were not the case, and sub-paragraph (2)(b) were satisfied, Condition B would not be satisfied. That is because in relation to a service Condition B requires that there should be consideration and Caspian and Rilian give no consideration for the continuance of the loan.

Can it be said that the transfer of moneys to Rilian is (wholly or in part) the income or chargeable gains? We first need to consider which gains are referred to in New ITA 2007 s.809K(3)(a)? They are the gains which are deemed to accrue to Caspian under s.87. The gains which accrue to him are not the trustees' gains themselves but an amount calculated by reference to those gains. So it is not true that "the property [the moneys lent to Rilian] … is (wholly or in part) the … chargeable gain [the gains treated as accruing to Caspian in 2008/2009]."

Is sub-section (3)(b) of Condition B satisfied? Is the condition satisfied that "[the moneys advanced to Rilian are] … property of a relevant person … that derives (wholly or in part, and directly or indirectly) from the … chargeable gains [the gains deemed to accrue to Caspian]"?

The moneys certainly became the property of a relevant person; that is Rilian. But do they derive from the chargeable gain which is deemed to accrue to Caspian? New TCGA 1992 s.87B(3) does not help with this question because the capital payment by which the chargeable gains accrue to Caspian (see sub-section (4) ibid) was not the making of a loan to Rilian but rather the continuance of the loan to Caspian. The moneys lent to Caspian surely do not derive from the chargeable gains deemed to accrue to Caspian under s.87. Rather, both the moneys and the gain derive from the actual gains realised by the trustees.

In summary, Condition A is not satisfied in relation to the advance of moneys to Caspian or to the continuance of the loans to Caspian and Rilian. Condition A is satisfied in relation to the advance of moneys to Rilian but Condition B is not satisfied in relation to that advance. Therefore, perhaps unexpectedly, the gains treated as accruing to Caspian have not been remitted to the United Kingdom. So it appears that even though a gain is deemed to accrue to Caspian by virtue of the capital payment being the benefit of the continuance of a loan to him which has been utilised in the United Kingdom there has been no remittance of this gain. It seems unlikely that this is how HMRC intended the legislation to work.

TRUST INCOME

The income of the settlement has been segregated outside the United Kingdom and has not been used in any way in relation to purchases of assets, the provision of services or in respect of a debt. Therefore, it does not fulfil either condition (A) or condition (B) in New ITA 2007 s.809K(2) and (3) and has not been remitted to the United Kingdom.

PERSONAL GAINS

New ITA 2007 s.809P(6) defines a mixed fund as:-

> "… money or other property which immediately before the transfer, contains or derives from –
> (a) more than one of the kinds of income and capital mentioned in sub-section (4) [ibid]; or
> (b) income or capital from more than one tax year."

There is a strange circularity in this definition. In order to know whether a fund is a mixed fund you must know whether it contains, or derives from, the various sorts of income set out in sub-section (4). One determines the composition of the fund from New ITA 2007 s.809Q. That section, however, only applies for the purposes of Step 1 in New ITA 2007 s.809P(3). In turn, the application of New s.809P is determined from whether various circumstances involving mixed funds exist.

To make sense of the provisions one has to cut the circle somewhere. So we shall start by assuming that Caspian's Narnian Original Capital Bank Account was a mixed fund and then applying the various provisions to determine of what that mixed fund was composed.

New s.809Q(2) ibid provides that the fund is to be treated as containing income or capital under the various categories set out in New s.809P(4) to the extent that it is just and reasonable to do so.

As the account consists of capital other than proceeds of capital disposals and the proceeds of Caspian's disposal on April 30, 2008 which has borne Narnian Capital Gains Tax at 16%, it will be just and reasonable to treat it under s.809P(2) as containing foreign chargeable gains of £1m arising from Caspian's disposal on 30th April 2008 (which fall within the category of New ITA 2007 s.809P(4)(h) "foreign chargeable gains subject to a foreign tax") with the remaining balance falling into the category of s.809P(4)(l) ibid "income or capital not within another paragraph [of sub-section (4) ibid]." One then applies the provisions of s.809P(3) to determine the nature of the money transferred on 1st May 2008. The result of doing so is that the foreign chargeable gains which have borne Narnian tax are matched first with the transfer of £500,000 on 1st May 2008. So the whole of the £500,000 is treated as being a transfer of the gains arising on the disposal on 30th April 2008.

Under New ITA 2007 s.809T property which is brought to, or received or used in, the United Kingdom in circumstances in which s.809K(2)(a) applies (the first limb of condition (A) for determining a remittance) is to be treated as not remitted to the United Kingdom if it is exempt property. The money transferred from the Narnian Original Capital Bank Account was not exempt property.

Caspian is a relevant person for the purposes of determining whether there has been a remittance.

Caspian has remitted the chargeable gain arising on his disposal because the transfer on May 1, 2008 satisfied the condition of New TA 2007 s.809K(2)(a) that:-

> "… money … [was] … brought to … the United Kingdom by … a relevant person."

Condition B was satisfied because that "property … [was] the … chargeable gain …"

Therefore, £500,000 of Caspian's capital gain of £1m realised on 30th April 2008 was remitted to the United Kingdom.

PERSONAL INCOME

Like the trust income, all of Caspian's relevant foreign income for the year which arose on his personal assets had been segregated in his Narnian Accumulated Income Account and had remained outside the United Kingdom. It had not been dealt with in any way which satisfied any of the remittance conditions (A) to (D) set out in New ITA 2007 s.809K. So none of this income had been remitted.

SUMMARY OF REMITTANCES OF INCOME AND CAPITAL GAINS

So the only parts of Caspian's foreign income and capital gains which have been remitted in 2008/2009 were the capital gains of £500,000 arising on April 30, 2008.

DEEMED REMITTANCES UNDER NEW ITA 2007 SECTION 809H

Where New ITA 2007 s.809H applies, however:-

> "Income Tax and Capital Gains Tax are charged, for that year and subsequent tax years, as if the income and chargeable gains treated under [New s.809I ibid] as remitted to the United Kingdom by the individual in that tax year had been so remitted (and income and chargeable gains of the individual that were actually remitted in that tax year had not been)."

So, where s.809H applies the actual remittances of income and gains determined under the complex remittance rules of New s.809K – s.809R are ignored except to the extent of determining the total remittances and the income and gains treated as remitted are identified under s.809I.

Section 809H applies if:-

> "(a) any of an individual's nominated income and gains is remitted to the United Kingdom in a tax year; and
> (b) any of the individual's remittance basis income and gains has not been remitted to the United Kingdom in or before that year."

An individual's nominated income and gains are the total income and chargeable gains nominated by him for the purposes of the remittance basis charge in any year up to and

including the year concerned and an individual's remittance basis income and gains are his foreign income and gains for all tax years up to the year concerned to which the new rules apply, less the nominated income and gains. Thus, Caspian's nominated income and gains and remittance basis income and gains are as set out below.

ITEM	NOMINATED INCOME & GAINS £000	REMITTANCE BASIS INCOME & GAINS £000	
Narnian Dividends:- Personal Caspian Trust		 90 60	 150
Narnian Bank Interest: Personal			105
Romandu Bank Interest: Trust			105
Narnian Property Income: Personal			280
Personal Gains	166		834
Section 87 gains			0
	166		1474

The computation is made simpler by the fact that this is the first year to which the new rules apply. It can be seen that the whole of the nominated income and gains has been remitted to the United Kingdom in 2007/2008 and that the only part of the remittance basis income and gains which has been remitted to the United Kingdom is that part of the personal gains which has not been nominated. The conditions for new ITA 2007 s.809H to apply, therefore, are satisfied.

To determine which of the Remittance Basis Income and Gains are deemed to have been remitted under New s.809H ibid we have to apply the steps set out in New s.809I ibid in the following way.

Step 1
Find the total amount of:-

(a) *the individual's nominated income and gains; and*

(b) *the individual's remittance basis income and gains,*

that have been remitted to the United Kingdom in the relevant tax year. This amount is "the relevant amount".

This total is £500,000 being the amount remitted of the personal gains.

Step 2
Find the amount of foreign income and gains of the individual for the relevant tax year that is within each of the categories of income and gains in paragraphs (a) to (h) of subsection (2). If none of ss.809B to 809D apply to the individual for that year, treat those amounts as nil (and accordingly go to Step 6).

The amount of the foreign income and gains for 2008/2009 within each of the categories of income are as follows:-

SUB-SUB-SECTION OF SUB-SECTION (2)	CATEGORY	AMOUNT £000
(a)	Relevant foreign earnings (other than those subject to a foreign tax)	0
(b)	Foreign specific employment income (other than income subject to a foreign tax)	0
(c)	Relevant foreign income (other than income subject to a foreign tax)	210
(d)	Foreign chargeable gains (other than gains subject to a foreign tax)	0
(e)	Relevant foreign earnings subject to a foreign tax	0
(f)	Foreign specific employment income subject to a foreign tax	0
(g)	Relevant foreign income subject to a foreign tax	430
(h)	Foreign chargeable gains subject to a foreign tax	1000

Step 3
Find the earliest paragraph for which the amount determined under Step 2 is not nil. If that amount does not exceed the relevant amount, treat the individual as having remitted the income or gains within that paragraph (and for that tax year).

Otherwise, treat the individual as having remitted the relevant proportion of each kind of income or gains within that paragraph (and for that tax year). "The relevant proportion" is the relevant amount divided by the amount determined under Step 2 for that paragraph.

The earliest paragraph under which there is an amount determined under Step 2 is paragraph (c). That amount does not exceed the relevant amount of £500,000 and so Caspian is treated as having remitted this income.

Step 4
Reduce the relevant amount by the amount taken into account under Step 3.

The relevant amount is therefore reduced to £290,000.

Step 5
If the relevant amount (as reduced under Step 4) is not nil, start again at Step 3. In Step 3, read the reference to the earliest paragraph of the kind mentioned there as a reference to the earliest such paragraph which has not previously been taken into account under that step.

As the relevant amount is not nil one starts again at Step 3 ignoring the relevant foreign income (other than income subject to a foreign tax) and applies Step 3 to Caspian's foreign income of £430,000 which has borne tax. £290,000 of this income, being the remaining balance of the relevant amount, is treated as having been remitted and this amount is apportioned amongst its constituent parts as follows:-

	TOTAL	**REMITTED £000**
Narnian Dividends	150	101
Narnian Property Income	280	189
		290

Caspian's Income Tax and Capital Gains Tax self-assessment for the year was, therefore, as follows:-

TOTAL LIABILITY

Income Tax	172,310
Capital Gains Tax	3,320
	175,630

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The detailed computation was as follows:-

Capital Gains Tax

Capital gains nominated under New ITA 2007 s.809B(3) assessed under New s.809G(2) ibid	166,000
Tax thereon at 18%	29,880
Double tax relief for Narnian tax 166,000 @ 16%	<26,560>
	3,320

Income Tax Charge

Assessable income	**£**
UK Bank Interest	5,000
Untaxed foreign interest	210,000
Narnian Dividends	101,000
Narnian Property Income	189,000
	505,000

Tax thereon

36,000 @ 20%	7,200
469,000 @ 40%	187,600
	194,800

Double tax relief on:-

Narnian dividends 101,000 @ 15%	15,150		
Narnian property income 189,000 @ 18%	34,020		
		49,170	
UK tax liability			145,630
Increase due to New ITA 2007 s.809G(4)			
30,000 – 3,320			26,680
			172,310

New ITA 2007 s.809G(4) provides for an additional liability equal to the difference between £30,000 and the increase in tax payable due to the income and/or gains assessable under s.809G(2) ibid. The effect of this provision is that where double tax relief is available on the income nominated to be taxed under s.809G(2) the liability under s.809G(4) ibid will be increased by the same amount. It is doubtful whether the Courts would accept that the purpose of the double taxation relief provisions can be defeated in this way but in this review we have applied a literal construction of the legislation.

AN UNPLEASANT SHOCK

Caspian's accountant had been expecting a liability of £11,000 ((£500,000 @ (18% - 16%)) plus (£5,000 @ 20%)). After such a hard journey to find that the actual liability was £175,630 was no doubt something of a shock. He had overlooked the deemed remittance rules in New ITA 2007 s.809H and the interaction of s.809G(4) with double tax relief. Caspian had also suffered from the fact that personal and annual capital allowances are not available when the remittance basis is claimed and the dividend upper rate does not apply to dividend income taxable on the remittance basis.

DON'T CONFUSE THE CUSTOMERS

Caspian's affairs are simpler than one is likely to find in real life. This review has shown that calculating a tax liability under the new remittance basis rules is extremely complicated. Even so, it has skated over a number of uncertainties in the construction of the legislation.

The logic of providing a special privilege to those with weak connections to the UK is to place a price on the privilege of residence here which balances the benefits of residence to the individual non-domicillary and the advantages to this country of his residing here which we would lose if he were to move to another jurisdiction. It is the first rule of effective pricing, that one's pricing structure should be understood by one's customers. Otherwise, they will deduct a risk premium from the price they are willing to pay to take account of the risk that they may be charged more than they think. The second rule of effective pricing is not to divert profits

away from yourself to third parties by making your pricing structure so complex that the customer has to pay for advice on the best course of action in relation to it. The new remittance basis transgresses both of these rules. We are used to stealth taxes. The Government is giving us a stealth dis-incentive.

NOTE: You should not act (or omit to act) on the basis of this Bulletin without specific prior advice.

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