Section 809P(12) AS IN FORCE UNTIL 5 APRIL 2025

A. The Structure of the legislation

1. Until 5 April 2025, s 809P(12) provided as follows:

> "If the amount remitted (taken together with any amount previously remitted) would otherwise exceed the amount of the income or chargeable gains the amount remitted is limited to the amount which (when taken together with any amount previously emitted) is equal to the amount of the income or chargeable gains"

2. The purpose of s 809P(12) is explained in s 809K by reference to the whole body of sections of which s 809P forms part. Section 809K(2) states that ss 809L – 809Z6:

> "(a) explain what is meant by income or chargeable gains being "remitted to the United Kingdom" (section 809L – 809O),
> (b) Provide for the calculation of the amount remitted (s 809P)"

3. The charging provisions are in ITTOIA 2005 s 832 and TCGA 1992 Sch 1. Section 809K(1) provides:

> "Sections 809L – 809X6 apply for the purposes of….
>
> (d) Section 832 of ITTOIA 2005 (relevant foreign income charge on the remittance basis) and;
> (e) Schedule 1 to TCGA 1992 (UK resident individuals not domiciled in the UK)"

4. Section 832 provides as follows:

> "(2) For any tax year for which the individual is UK resident, income tax is charged on the full amount of so much (if any) of the relevant foreign income as is remitted to the UK…. in that year
> (4) See chapter A1 of Part 14 of ITA 2007 for the meaning of "remitted to the United Kingdom" etc." Chapter A1 includes all of ITA 2007 ss 809L – 809P.

5. TCGA 1992 Sch 1 para 1(2) provides:

> "The gains are treated as accruing to the individual only so far as, and at the time when, they are remitted to United Kingdom"

Para 5(3) then provides:

> "For the purposes of this Schedule any question as to whether, and when, amounts are remitted to the United Kingdom is determined in accordance with the rules in Chapter A1 of Part 14 of ITA 2007"

6. It is clear from this chargeability and remittance are separate concepts, the latter being dealt with by ITA 2007 ss 809L – 809Z6 and the former by ITTOIA 2005 s 832 and TCGA 1992 Sch 1. If the words "any amount previously remitted" was in some way meant to be qualified s 809P(12) would have needed to say so (as it has since 6 April). On the plain reading of the legislation until 5 April 2025 there is no such limitation.

B. <u>The suggested implication</u>

7. The suggested implication is that s 809P(12) (as it existed before 5 April 2025) should be read as if there were inserted after "previously remitted" the words "that has been charged to tax".

8. The statutory framework set out above makes the purpose of s 809P clear – i.e.to determine the quantum of remittance. It is not a charging section and the meaning of the words used in s 809P(12) is clear. In the light of this it may be suggested the insertion referred to above goes beyond purposive construction and could only be said to be the correction of an obvious error by Parliament. This last principle has recently been considered by FTT in <u>Louwman</u> [2025] UK FTT 295 and it is very difficult to see how the proposed insertion comes anywhere near the threshold required for that principle to apply.

9. A particular difficulty is what is comprehended by the words "has been charged to tax". At least four scenarios fall to be identified:

   (1) The previous remittance was liable to tax under ss 832 or Sch 1 but was not in fact charged because of a relief.
   (2) The previous remittance was liable to tax under ss 832 or Sch 1 but was not self-assessed and a discovery assessment is now time barred. This could be because the self-assessment was in accord with prevailing practice or because the applicable time limit for error has expired.
   (3) The previous remittance was during a period when the individual was temporarily non-resident but the temporary non-resident rule ("the TNR rule") did not apply. Such would be the position of the individual if the previous UK residence period had been less than 4 years (FA 2013 Sch 45 para 110).
   (4) The individual was, when he first left the UK, potentially within the TNR rule but his non-residence prior to return exceeded the five or six years requisite for that rule and the remittance was made during that extended period.

10. It is reasonable to infer that when s 809P(12) was enacted in 2008 Parliament would not have wanted the second scenario to result in a subsequent remittance not being taxable. An equally reasonable inference would have been that the contrary would have been wanted as respects the first scenario.

11. What would have been wanted as respects the third and fourth scenarios is a matter for speculation. However, it is to be noted that the TRF rules and the sections which apply them define specified circumstances in which actions during a period of non-residence result in tax should UK residence be resumed. ITTOIA 2005 s 832A performs this role for the remittance basis both before and after its amendment in 2013. It may be suggested it is impossible to say whether Parliament would have wanted s 809P(12) to go further and provide that remittance in circumstances not caught by s 832A could result in tax on return. This is particularly so given that gains (and since 2013 certain categories of income) that arise during the period of non-residence are not taxed even if remitted unless the TR rule applies. Parliament could have made such provision but given the wider context it may be suggested it is far from inevitable it would have chosen to do so.