HM TREASURY

HM Revenue & Customs

Statutory definition of tax residence and reform of ordinary residence:

a summary of responses

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Foreword

Tax residence has a significant bearing on an individual's tax liability. The current rules depend to a large extent on cases decided by the courts, many of which were decided some time ago and do not reflect modern work or travel patterns. As a result, the rules for determining whether an individual is tax resident in the UK can sometimes be vague or appear outmoded.

At Budget 2011, we launched a consultation on a statutory tax residence test for individuals. In this consultation, we made clear our desire that the rules for determining whether an individual is tax resident in the UK should be clear, objective and unambiguous. For the vast majority of people, a statutory residence test would not change their residence status. The clarity and certainty a statutory test would bring will also improve the predictability of this area of the UK tax system, making the UK a more attractive place for investors.

The consultation proposed statutory rules which will provide clear and consistent treatment to tax payers and was welcomed by professional bodies and interest groups. This response document provides a summary of the views they expressed and sets out how we have refined some of the detail of the consultation proposals. We are also providing draft legislation on the statutory residence test which aims to be transparent, objective and simple to use. It is intended to leave the residence status of the vast majority of people unaffected, but to bring greater clarity to individuals with more complex circumstances.

The consultation also asked for views on options to reform the concept of ordinary residence, which has a bearing on tax liability. After considering the range of views put forward, the Government announced at Budget 2012 that the concept of ordinary residence would be abolished for tax purposes. Overseas workday relief would be retained and placed on a statutory footing.

This is an opportunity for all interested parties to offer their views and work with the Government to ensure that the draft legislation meets its objectives. I would also like to thank all respondents to the consultation for their involvement so far.

David Gauke
Exchequer Secretary to the Treasury

June 2012

1 Introduction

1.1 The Government published "*Statutory definition of tax residence: a consultation*" on 17 June 2011 and the consultation closed on 9 September 2011.

1.2 The consultation raised a number of detailed issues requiring careful consideration to ensure the legislation achieves its aim of providing greater certainty for the taxpayer. On 6 December 2011 the Government announced that it would defer the introduction of the statutory residence test and reforms to ordinary residence until 6 April 2013 to give more time for further consultation, well in advance of implementation.

1.3 This document sets out the Government's response to the consultation. The aim of this response is to make clear how the feedback received during the consultation has informed policy development. It also contains further consultation questions on which the Government invites comments in order to refine the policy.

1.4 Finally, it contains draft legislation that takes into account the views expressed during consultation and sets out the detail of the test that the Government intends to introduce. The Government seeks views on the draft legislation and whether it will effectively deliver its policy objectives.

Policy intention

1.5 As set out in the consultation document the Government's policy objectives are to:

- introduce a statutory definition of tax residence (statutory residence test) that is transparent, objective and simple to use. This should not affect the residence status of the vast majority of people; and
- reform the concept of ordinary residence to provide greater simplicity and clarity.

Overview of the 2011 consultation: residence and ordinary residence

1.6 The consultation sought views on three main issues:

- a proposed framework for a statutory residence test;
- definitions for the proposed statutory residence test; and
- reforms to ordinary residence.

1.7 Respondents were invited to give their responses on these issues via six consultation questions which are reproduced below:

Residence test – Part A

Question 1: Do you think there are any other circumstances in which an individual should be conclusively non-resident? If so, what are those circumstances?

Residence test – Part B

Question 2: Do you think there are any other circumstances in which an individual should be conclusively resident? If so, what are those circumstances?

Residence test – Part C

Question 3(a): Do you think that these connection factors are appropriate and are there other connection factors that should be included?

Question 3(b): Does this part of the test provide a fair outcome? If not, why not?

Residence test

Question 4: Would the lack of a transitional rule as described in paragraph 3.57 (of the 2011 consultation document) leave significant uncertainty?

Residence definitions

Question 5(a): Do you think that the proposed definitions are appropriate?

Question 5(b): Would these definitions have an adverse impact for particular groups? If so, which groups and what would the impacts be?

Ordinary residence

Question 6(a): Should ordinary residence be abolished for all tax purposes other than overseas workday relief?

Question 6(b): If a new definition of ordinary residence was introduced, should it be restricted to non-domiciled individuals only?

Question 6(c): Is the proposed definition of ordinary residence appropriate? If not, are there alternatives that would not have a material Exchequer cost?

Overview of the Government's response

1.8 The Government is grateful to those who submitted responses for their time and effort. There were a large number of constructive and detailed comments, reflecting the fact that this will be a fundamental piece of legislation. A total of 117 responses were received from a mixture of organisations and individuals. Annex B contains a list of respondents.

1.9 Almost all respondents welcomed the Government's aim of introducing a statutory residence test and providing clarity for the taxpayer. In general, the format and structure of the proposed test were welcomed and seen as a significant step forward. A few argued that a pure day counting test would be preferable, mainly on the grounds that it would be simpler. However, most respondents felt that the proposal set out a clear way for the individual to determine their residence status and that it would provide increased certainty in a complex area.

1.10 A significant number of respondents felt that some of the day counting thresholds should be reconsidered and nearly all sought further clarification of the definitions used for various terms and concepts in the test.

1.11 There were also many representations on the proposals to reform ordinary residence. Views were mixed on the main options proposed but a majority were in favour of abolishing ordinary residence for tax purposes and felt it would represent a significant simplification of the tax system.

1.12 The Government is making a number of changes in response to the representations made. These are outlined in detail in Chapter 3 (statutory residence test) and Chapter 4 (ordinary

residence). Each of these chapters summarises the comments received and sets out the Government's response to those comments. They also set out a number of issues on which the Government seeks further views. The various changes are summarised in Chapter 5.

1.13 Chapter 6 contains draft legislation on the statutory residence test and reforms to ordinary residence.

Statement of Practice 1/09

1.14 The Government consulted on legislating Statement of Practice 1/09 ("SP1/09") as part of its wider consultation on reforms to non-domicile taxation, which was published in June 2011. Broadly speaking, SP1/09 provides a simplified set of rules for employees who are resident but not ordinarily resident in the UK and who carry out duties both in the UK and overseas under a single contract of employment.

1.15 In December 2011 the Government announced that legislating SP1/09 would be deferred by a year and would be effective from 6 April 2013. It will publish a separate consultation document outlining its proposals for SP1/09 and draft legislation later this year. As announced at Budget 2012, the existing SP1/09 will remain in force for the 2012-13 tax year.

2 Consultation proposals: statutory residence test

2.1 This chapter provides an overview of the statutory residence test which was proposed in the consultation published in June 2011. Chapter 3 then summarises the representations made during consultation and outlines the Government's response.

2.2 Please note that the draft legislation does not adopt the same Part A, B and C structure used in the consultation document. The draft legislation refers instead to the automatic overseas test (see Part A – conclusive non-residence), the automatic residence test (see Part B – conclusive residence) and the sufficient ties test (see Part C – other connection factors and day counting).

Consultation proposal (June 2011)

2.3 In consultation the Government proposed that the test would be divided into three parts:

- Part A (conclusive non-residence) contains factors that would be sufficient in themselves to make an individual not resident.
- Part B (conclusive residence) contains factors that would be sufficient in themselves to make an individual resident.
- Part C (other connection factors and day counting) contains other connection factors and day counting rules which will only need to be considered by those whose residence status is not determined by Part A or Part B.

Part A: conclusive non-residence

2.4 In some circumstances an individual should have certainty that they are not tax resident in the UK without having to take account of the connections they have with the UK. Therefore, Part A of the test will automatically determine that an individual is not resident in the UK for a tax year if they fall under any of the following conditions, namely they:

- were not resident in the UK in all of the previous three tax years and they are present in the UK for fewer than 45 days in the current tax year; or
- were resident in the UK in one or more of the previous three tax years and they are present in the UK for fewer than 10 days in the current tax year; or
- leave the UK to carry out full-time work abroad, provided they are present in the UK for fewer than 90 days in the tax year and no more than 20 days are spent working in the UK in the tax year.

Part B: conclusive residence

2.4.1 Equally, there are cases when an individual should have certainty that they are tax resident in the UK without the need to consider wider factors.

2.5 Provided Part A of the test does not apply, an individual will be automatically resident for the tax year under Part B if they meet any of the following conditions, namely they:

- are present in the UK for 183 days or more in a tax year; or
- have only one home and that home is in the UK (or have two or more homes and all of these are in the UK); or
- carry out full-time work in the UK.

Part C: other connection factors and day counting

2.6 Part C would apply only to those individuals whose residence status is not determined by Part A or Part B and, therefore, whose circumstances are less straightforward.

2.7 Under Part C an individual would simply need to compare the number of days they spend in the UK against a small number of clearly defined connection factors. Individuals who know how many days they spend in the UK and how many relevant connection factors they have would find it straightforward to assess whether they are resident.

2.8 The Government proposes that the following connection factors should be relevant to an individual's residence status, but only when linked to the amount of time the person spends in the UK:

- family – the individual's spouse or civil partner or common law equivalent (provided the individual is not separated from them) or minor children are resident in the UK;
- accommodation – the individual has accessible accommodation in the UK and makes use of it during the tax year (subject to exclusions for some types of accommodation);
- substantive work in the UK – the individual does substantive work in the UK (but does not work in the UK full-time);
- UK presence in previous year – the individual spent 90 days or more in the UK in either of the previous two tax years; and
- more time in the UK than in other countries – the individual spends more days in the UK in the tax year than in any other single country.

2.9 These connection factors would be combined with day counting into a "scale" to determine whether the individual is resident or not.

(i) Individuals not resident in all of the previous three tax years (arrivers)

2.10 If the individual was not resident in all of the three tax years preceding the year under consideration, the following connection factors may be relevant to their residence status, if they occur at any point in the tax year, namely the individual:

- has a UK resident family;
- has substantive UK employment (including self-employment);
- has accessible accommodation in the UK; and
- spent 90 days or more in the UK in either of the previous two tax years.

2.11 The way these connection factors are combined with day counting to determine residence status is as follows:

Days spent in UK	Impact of connection factors on residence status
Fewer than 45 days	Always non-resident
45 – 89 days	Resident if individual has **4 factors** (otherwise not resident)
90 – 119 days	Resident if individual has **3 factors or more** (otherwise not resident)
120 – 182 days	Resident if individual has **2 factors or more** (otherwise not resident)
183 days or more	Always resident

(ii) Individuals resident in one or more of the previous three tax years (leavers)

2.12 If the individual was resident in one or more of the three tax years immediately before the tax year under consideration, the following connection factors may be relevant to their residence status, if they occur at any point in the tax year, namely the individual:

- has a UK resident **family**;
- has substantive UK **employment** (including **self-employment**);
- has accessible **accommodation** in the UK;
- spent **90 days** or more in the UK in either of the previous two tax years; and
- spends **more days in the UK** in the tax year than in any other single country.

2.13 The way these connection factors are combined with day counting to determine residence status is as follows:

Days spent in UK	Impact of connection factors on residence status
Fewer than 10 days	Always non-resident
10 - 44 days	Resident if individual has **4 factors or more** (otherwise not resident)
45 – 89 days	Resident if individual has **3 factors or more** (otherwise not resident)
90 – 119 days	Resident if individual has **2 factors or more** (otherwise not resident)
120 – 182 days	Resident if individual has **1 factor or more** (otherwise not resident)
183 days or more	Always resident

3 Summary of consultation responses: statutory residence test

Overall structure of the statutory residence test

3.1 The consultation set out a structure which is designed to provide clarity for all taxpayers about their residence status. In general, the framework takes into account both the amount of time an individual spends in the UK and the other connections they have to the UK.

3.2 A small number of respondents argued that the test should be based on day counting alone, mainly on the grounds that it would be simpler. However, most respondents felt that the framework had merit and marked a significant step forward in providing certainty for the taxpayer.

3.3 There was strong support for the aim of providing a simple test for those with straightforward circumstances, especially where they spend little time in the UK in the tax year.

Government response

3.4 The Government remains committed to the structure proposed in consultation. It believes it provides a fair way of determining residence status and will prevent situations where individuals can become and remain non-resident despite retaining strong connections to the UK. At the same time it will not cause people to become resident if they have little connection to the UK.

3.5 The Government does not believe the test is complicated and taxpayers will be able to determine their residence status with clarity if they know how many days they have spent in the UK and which of the relevant connection factors they have.

3.6 However, the Government recognises that some of the conditions and definitions within the test require clarification. This is discussed in more detail in the sections below.

Part A (conclusive non-residence)

Box 3.A: Question 1

Do you think there are any other circumstances in which an individual should be conclusively non-resident? If so, what are those circumstances?

3.7 In general, respondents welcomed this part of the test and felt it was an important component in providing certainty for the taxpayer. There was widespread support for making individuals automatically non-resident when they spend very few days in the UK or when they work abroad full-time. However, many responses suggested amendments to the three conditions contained in Part A and posed questions about how the conditions would be defined.

Day count thresholds

3.8 Part A of the proposed test contains two conditions that would make an individual automatically non-resident in a tax year if the number of days they are present in the UK is below a certain threshold, namely:

- individuals who were not resident in all of the previous three tax years would be non-resident if they are present in the UK for fewer than 45 days in the current tax year; and
- individuals who were resident in one or more of the previous three tax years would be non-resident if they are present in the UK for fewer than 10 days in the current tax year.

3.9 Almost all responses strongly agreed that spending very little time in the UK should result in non-residence whatever the level of an individual's other connections to the UK.

3.10 There was, however, a general view that these conditions are too strict. Most respondents recognised that failure to meet these conditions would not mean that an individual would necessarily be resident but would, instead, need to consider Part B or C of the test to determine their residence status. However, a significant number still felt that the thresholds should be increased to provide more individuals with certainty that they would be automatically non-resident.

3.11 In particular, respondents felt that the 10-day threshold was unnecessarily tight and would, for example, prevent an individual with few or no connections to the UK being automatically non-resident under Part A if they returned to the UK for a two-week holiday.

3.12 There was no consensus on how far the thresholds should be increased. For the 10-day threshold proposals ranged from 20 days up to 90 days. For the 45-day threshold there was also a range of suggestions up to 90 days with some suggesting that a limit of 90 days would retain consistency with the so-called "91-day rule" in the current residence guidance.

Government response

3.13 The Government has noted the views expressed. However, it is important to stress that individuals who meet any of the conditions in Part A of the proposed framework would be automatically non-resident regardless of the number of connections they have to the UK. Therefore, increasing the day counting thresholds significantly would enable individuals to be non-resident even where they have major connections to the UK and spend a material amount of time in the UK. The Government does not think that this could be justified and emphasises that those with few connections to the UK who spend little time here in a tax year are likely to be non-resident under Part C in any event.

3.14 **The Government does not feel that any convincing evidence was put forward to support an increase in the 45-day threshold** for individuals who have not been resident in any of the previous three tax years and does not intend to increase this threshold. It will however slightly amend the threshold from fewer than 45 days to fewer than 46 days, as this will provide consistency with the adjusted day count thresholds in Part C of the test (see paragraph 3.163).

3.15 The arguments put forward for increasing the 10-day limit had more substance and the Government agrees that this limit is too low. **It will therefore increase the threshold to 15 days**. As a result an individual who had been resident in one or more of the previous three tax years would be automatically non-resident if they spent less than 16 days in the UK in the current tax year. The Government does not believe there is a justification for raising the limit further because this would represent a significant departure from the current principle that, once an individual has become resident, they must make a clean break with the UK in order to become non-resident.

Full Time Work Abroad (FTWA)

3.16 Part A of the proposed test also includes a condition that would make an individual automatically non-resident if they worked full-time abroad. This was universally welcomed.

3.17 However, there were some concerns about the way in which the condition was defined and whether it would enable those who qualify for full-time work abroad (FTWA) under current rules to continue to do so under the statutory test. These concerns are described in more detail below.

Qualifying period

3.18 The current rules for FTWA require an individual to leave the UK to work abroad full-time for at least a complete tax year. This same requirement was included in the definition outlined in the consultation document.

3.19 A substantial number of respondents pointed out that the qualifying period could have arbitrary results depending on when an individual left the UK: those leaving on 5 April would only have to work abroad for 366 days to meet the condition whereas those leaving very early in the tax year could be required to work abroad for almost two calendar years before a full tax year was completed. It was suggested that the qualifying period should be changed to until the end of a complete tax year or 18 calendar months, whichever was the shortest.

Government response

3.20 The Government recognises that the requirement to work abroad for a complete tax year can produce inconsistent outcomes. However, it believes that most employers will ensure that employees who are posted abroad satisfy the existing qualifying period, so it is unlikely that amending the qualifying period would have a material impact in practice. In addition, amending the qualifying period as suggested would be a relaxation of the current rules for some individuals. It would also be likely to add significant complexity to the legislation due to the interaction with split-year treatment.

3.21 Therefore the Government does not think there is a sufficiently strong argument for change and intends to retain a complete tax year as the relevant qualifying period.

Number of working days in the UK and definition of a working day

3.22 Under the consultation proposals an individual would be able to satisfy the FTWA condition provided they spent no more than 20 working days in the UK (and no more than 90 days of presence) in any one tax year. The consultation also proposed that a working day be defined as any day on which three hours or more of work is carried out.

3.23 This is a departure from the current rules for FTWA which take into account the distinction between "incidental" and "substantive" duties. At present there is no limit on the number of days on which "incidental duties" can be performed provided the individual spends no more than 90 days in the UK in the tax year. By contrast, days where "substantive" duties are carried out in the UK are limited. There is no absolute clarity on what this limit is but HMRC issued a statement in March 2011 indicating that, in general, it would accept that individuals undertaking fewer than 10 days of substantive duties in the UK would qualify for FTWA, subject to meeting the other qualifying conditions. Individuals undertaking 10 days or more of substantive duties may still qualify for FTWA but it will depend on the specific facts and circumstances of each case. There is no comprehensive definition of what constitutes "incidental" or "substantive duties". However, HMRC has published guidance stipulating that certain activities are usually considered to be "incidental duties", in particular time spent on training in the UK or undertaking certain "reporting duties". Overall, the current rules provide scope for some uncertainty.

3.24 In the consultation, the Government proposed that, for the purposes of the residence test, the distinction between "incidental" and "substantive duties" would be replaced by the simple three-hour rule. Provided that fewer than three hours of work were performed, it would not matter what type of duties were undertaken. Conversely, once the three-hour threshold was breached, it would count as a working day regardless of the type of work performed.

3.25 A number of respondents felt that the terms "incidental" and "substantive" were subjective and difficult to apply in practice and agreed that, in principle, this approach would be simpler and more objective.

3.26 However, a significant number of respondents raised concerns that the proposed definition of a working day would mean that incidental duties and, in particular, training and reporting duties, would in future be counted as UK work duties for the purposes of the test. As a result, some people who are currently FTWA might no longer qualify unless they, or their employer, altered their behaviour. It was suggested that, if the concept of incidental duties was to be removed, then training and reporting duties should be specifically excluded from the new definition of a working day.

3.27 Nearly all respondents also commented on the three-hour definition of a working day, with most questioning why this limit had been used. It was suggested that an average working day in the UK would be seven to eight hours and that employees on international assignments would generally work in excess of this.

3.28 Clarification was sought on how individuals would be expected to provide evidence of the number of hours worked and there was concern around the record keeping requirements that would arise for both employees and employers.

3.29 Many respondents also felt that the 20-day limit was too low. For example, they stated that it is common practice for some employees posted abroad to return to the UK for a number of days each month (for example to fulfil reporting duties) and the proposed limit would be insufficient to cover these visits. As a result, employees would be required either to scale back such visits to the UK or would be unable to qualify for FTWA. It was thought that the 20-day limit could cause particular difficulties in the year of departure from the UK, when it is more likely that an individual would need to return to the UK frequently.

3.30 A similarly large number of respondents asked how "work" would be defined and whether it would include activities such as dealing with phone calls and e-mails, reading work-related documents, travelling for work and even thinking about work.

Government response

3.31 The Government has noted the concerns raised over the move away from "incidental" and "substantive" duties and recognises that it could be seen by some as a tightening of the current rules. **However, the Government continues to believe that using a specific number of hours to define a working day is the best approach to achieve a clear and objective definition for the purposes of the test**. It does not intend to depart from this overall approach and none of the consultation responses suggested a better way to achieve an objective definition.

3.32 The Government also emphasises that an objective definition based on the number of hours worked will in some cases be favourable to the taxpayer. That is because, at present, any performance of substantive duties in the UK on a given day, no matter how little time it takes to carry them out, would cause that day to be a UK working day for the purposes of FTWA. In other words, undertaking five minutes of substantive duties would cause that day to be a working day. Under the consultation proposals this would not be the case.

3.33 **The Government does not believe it would be appropriate specifically to exclude training or reporting duties from the definition of a working day**. That is because it would be difficult to define such exclusions in legislation without opening up opportunities for avoidance. There would also be a significant risk of workers in some professions spending large amounts of time in the UK, to all intents and purposes carrying out their usual duties, while claiming to be undertaking "on the job" training. In addition, it is difficult to justify in principle why reporting duties should be excluded.

3.34 However, the Government does recognise that the consultation proposals on FTWA have the potential to cause a change in residence status for some employees and has noted the weight of concern. It also accepts that the new approach will create a new record keeping requirement for the individual.

3.35 It is therefore willing to consider ways to mitigate this impact and proposes two alternative options. The Government invites comments on the extent to which they would mitigate the concerns raised and which of these options would be preferable.

Option 1: increase the limit of working days permitted in the UK from 20 to 25 working days

3.36 The Government feels that the consultation proposal of 20 working days is a reasonable level for most individuals who are working abroad full-time and who, overall, can spend 90 days a year in the UK. The Government does not think that it would be appropriate to allow those claiming FTWA to work for substantial periods in the UK.

3.37 However, in recognition of the needs of business for employees to return to the UK for certain work-related purposes it would welcome views on raising this limit to 25 working days. This would allow employees who work full-time abroad greater flexibility and would mean that an employee could carry out two working days a month in the UK during the year. Various consultation responses suggested that this was a typical working pattern for employees who work abroad for multinational organisations but are required to "report back" to UK headquarters periodically. The overall number of days that can be spent in the UK would remain as 90 days.

Question 1. How far would increasing the number of working days allowed in the UK under the Full Time Work Abroad condition from 20 to 25 days mitigate concerns about the impact on employers and their employees?

Option 2: increase the number of hours that constitute a working day from 3 hours to 5 hours

3.38 The definition of a working day as three hours is not intended to represent a full working day but is, instead, meant to be indicative of a significant amount of work in a day. The three-hour limit is intended to provide a "safe haven" that enables a certain amount of work to be carried out on what is essentially a non-working day.

3.39 The Government is interested in views on increasing the limit from three to five hours. This would mean that only days on which at least five hours of work was performed in the UK would count as a UK working day for the purposes of FTWA.

3.40 The Government feels that an increase from three hours to five hours could offer an acceptable balance that would be closer to many individuals' perception of a "working day". Increasing the threshold to five hours could also help to reduce the concerns raised about record keeping requirements as it would be easier for an individual to recognise that they had spent a day working in the UK.

3.41 The Government believes that increasing the limit to five hours would enable an individual to carry out a reasonable level of work in the UK before meeting the definition of a UK work day, so does not think that it would be appropriate to consider a higher limit than this.

3.42 If this change were made, the definition of a working day for other purposes within the test would be amended in the same way. This would affect:

- the "full-time work in the UK" condition in Part B of the test (described in paragraphs 3.22, 4.14 and 4.15 of the 2011 consultation); and
- the "substantive UK employment" tie in Part C of the test (described in paragraphs 3.30, 4.23 and 4.40 of the 2011 consultation).

Question 2. How far would increasing the number of hours that constitute a working day from 3 to 5 hours mitigate concerns about the impact on employers and their employees? How far would it reduce record keeping requirements?

Question 3. Can you suggest any other ways to amend the definition of FTWA, in keeping with the requirement for an objective definition?

Definition of an average working week

3.43 A small number of respondents felt that the requirement to undertake an average 35-hour or more working week to qualify for FTWA should be amended, with some suggesting that it should be decreased to 30. Others pointed out that there is no hourly limit under the current rules and, instead, individuals are expected to undertake a standard pattern of hours that can either be compared to a typical UK working week or similar full-time employment in the country in which they are working.

3.44 There were also suggestions that FTWA should be available to part-time workers, with the number of UK work days reduced on a pro-rata basis.

3.45 A number of respondents sought clarification of some aspects of the proposed definition of FTWA, in particular:

- how rotational work patterns would be taken into account;
- whether a combination of employment and self-employment would count for calculating an average 35-hour or more week;
- whether sick leave and annual holiday would be included as part of time spent working; and
- whether an individual could have different, consecutive employments during a tax year and continue to qualify for FTWA in that tax year.

Government response

3.46 The Government does not propose to change the definition of an average working week from 35 hours or more. It believes this is a reasonable level and is unlikely to prevent individuals who currently qualify for FTWA from doing so under the statutory test. Many full-time employees will work more than this on average.

3.47 The Government does not believe it would be appropriate to extend FTWA to part-time workers because it would enable individuals to spend most of the week in the UK and have significant connections to the UK but still be automatically non-resident on the basis of FTWA. This would be a significant relaxation of the rules that would open FTWA status to a much wider group of workers. This would be likely to have a material Exchequer cost. Preventing any misuse would be difficult and could add significant complexity to the legislation. A part-time worker who is not eligible to claim FTWA will not necessarily be resident in the UK but will, instead, need to consider other parts of the test to determine their residence status.

3.48 The Government confirms that:

- the requirement will be to work an average of 35 hours or more a week across the whole of the period of full-time work. It will not be necessary to work 35 hours in every week during the period. This takes into account rotational work patterns provided that the average figure is met over the period of full-time work;

- the average 35-hour or more working week is intended to be indicative of full-time work. It can be made up of a combination of employment, undertaking the duties of an office, or carrying on any self-employed trade, profession or vocation;
- eligibility for FTWA will not be affected by holidays or sick leave. The period over which the average number of hours worked per week is calculated will be reduced to take into account holidays that are reasonable for an employment of that type in the country where the work takes place, as well as absences from work due to ill health or injury. If an individual is present in the UK at midnight due to holidays or sick leave, this is likely to be a day of presence in the UK;
- if an individual changes employment during the tax year, it will be possible to remain eligible for FTWA in that year provided the 35-hour or more average is met over the full year. Where there is a gap between employments, a maximum of 15 days will be discounted for the purpose of calculating the 35-hour or more average, as long as no work is undertaken throughout the period between employments; and
- where an individual holds more than one employment (or works for more than one trade) during the year – either consecutively or concurrently – the hours worked on all employments will be aggregated for the purposes of calculating whether they have met the 35-hour or more threshold and the restriction on working days permitted in the UK.

Other issues

3.49 A number of respondents asked whether voluntary work abroad would qualify for FTWA.

3.50 Some also requested confirmation that FTWA would be based on where work duties are carried out rather than the location of the employer.

Government response

3.51 FTWA will not generally be available for unpaid voluntary work that is performed abroad but individuals undertaking such posts may still be non-resident under Part C of the test depending on the number of days spent in the UK in a tax year and their other connections to the UK. Individuals who are either employed or engaged in a self-employed capacity by a voluntary organisation will continue to be eligible for FTWA provided the other conditions are met.

3.52 The Government confirms that the test of working full-time abroad will be based on where employment or self-employment duties are carried out. It will not depend on the residence of the employer or whether the employee has a UK or overseas employment contract.

Work

3.53 A variety of respondents asked for clarification about the definition of work as applied throughout the residence test. There were concerns that the definition would be too broad and could include activities that were related to work but which did not amount to undertaking work. There was also a demand for clarification of the extent to which work-related training and travel would constitute work under the new rules.

Government response

3.54 The Government proposes that, for the purposes of the residence test, an individual will be working if they are performing the duties of their office or employment or, in the case of the self-employed, doing something in the course of their trade. The Government believes this will ensure that the definition is not too broad.

Training

3.55 The Government has decided that any training provided or paid for by the employer that is undertaken to help the individual in performing duties of the employment, or that, in the case of the self-employed, is deductible from taxable profits, will be classed as work. Any training that is undertaken at the expense of the individual would not constitute work.

Travel

3.56 The Government proposes that any travel undertaken in the performance of the duties of employment will constitute work to the extent that the expenses of that travel would be an allowable deduction for tax purposes. In other words, all travel for which an individual could claim a tax deduction or exemption against employment income, or a deduction for the purposes of computing taxable profits, would constitute work.

3.57 This rule will apply to both domestic and international travel. In the domestic context, travel which will count as work because it is undertaken in the performance of duties would mainly be:

- travel from home to a temporary workplace; or
- travel between workplaces.

3.58 In the international context, this could include:

- travel from home to a temporary workplace in another country; or
- from a domestic workplace to a workplace in another country, such as business trips.

3.59 Ordinary commuting or private travel, both domestic and international, will fall outside this definition and so will not, of themselves, count as work. However, the Government proposes that if an individual carries out any duties of employment or trade during ordinary commuting and private travel, then this should count as work. For example, if an individual works for half an hour sending emails during a one-hour ordinary commuting journey, then there would be half an hour of work for the purposes of this test. The Government does not think there is any reason to distinguish between duties that are performed while commuting and duties that are performed in a fixed location, such as an office or home.

Location of work

3.60 The Government proposes the following rules to determine whether work carried out during travel is UK work or overseas work:

- any work in the UK from the point an individual leaves their starting UK location (e.g. home or office) to the point they reach an embarkation point in the UK would be UK work. In most cases this would be the point at which they board their transport;
- any work from the embarkation point onwards would be overseas work;
- conversely, for travel into the UK, any work from the point an individual reaches a disembarkation point in the UK would be UK work. In most cases, this point will be the point at which the individual disembarks from their transport; and
- where travel involves a land border, the work would be split into UK and overseas work at the point at which the border is crossed.

Summary

3.61 The definition of work outlined in this section would apply for all relevant purposes within the statutory residence test, namely full-time work abroad, full-time work in the UK, and the substantive employment connection factor in Part C of the test.

3.62 The Government considers that the definition will provide a clear rule for taxpayers bearing in mind the complexity and variety of working patterns.

3.63 As discussed above (paragraph 3.34) the Government recognises that there will be record keeping requirements for some individuals and would be interested in views about how this can be minimised without departing from the principle that the definition of work and a working day should be objective and clear.

International transportation workers

3.64 The consultation document did not propose any specific rules for international transportation workers, such as pilots, truck drivers and mariners. However, several responses raised questions about how they would be treated and contended that specific rules might be needed. Some suggested that international transportation workers based abroad could become resident too easily under the test.

Government response

3.65 The Government does not believe that the proposed test will have a disproportionate impact on international transportation workers who are based abroad. For example, an individual based outside the UK would be likely to be non-resident if they spent fewer than 90 days in the UK, especially if they had not been resident in the previous three tax years. However, the Government accepts that specific rules should apply to international transportation workers in respect of FTWA and FTWUK.

3.66 In particular, the Government is concerned that the FTWA condition could allow international transportation workers who are based in the UK to become non-resident too easily, for example if their family and home are in the UK but they spend much of their time travelling outside the UK or between the UK and other countries. In principle, it does not feel that a condition that is designed to provide certainty for employees who are posted abroad full-time should apply to international transportation workers, whose job is to travel between locations and whose working patterns are more complicated. **It therefore proposes that an individual who performs any work as an international transportation worker during a year should not be eligible for FTWA**. This will also ensure consistent treatment of workers who may have very similar connections to the UK but undertake different levels of international travel.

3.67 This does not mean that such individuals would necessarily be resident. They could still be automatically non-resident if they spent very few days in the UK in a tax year. Equally, they could be non-resident under Part C of the test.

3.68 **In a similar way the Government proposes to exclude an individual who performs any work as an international transportation worker during a year from access to the FTWUK condition**. As the vast majority of international transportation workers would not meet the requirements for this condition, this exclusion is unlikely to have any practical implications and will represent a simplification to the test for such workers.

3.69 International transportation workers who are automatically UK resident in the year of arrival in, or departure from, the UK as their only home is in the UK will still be eligible for split year treatment if the relevant conditions are met. Further detail on split year treatment is given in paragraphs 3.171 to 3.184.

3.70 For the purposes of the test, international transportation workers will be defined as workers whose job it is to work on board a vehicle as it makes international journeys. For example, this would include airline crew, ferry staff and lorry drivers. This would not include individuals who are otherwise working during a journey from one country to another or international travelling salespersons.

3.71 The Government has also considered how the definition of "work" should apply to this group. It does not propose a different definition and therefore all travel carried out by international transportation workers will count as work. However, it does think there should be different rules governing whether travel is UK or overseas work to provide simplicity for individuals who by definition spend much of their work time travelling. **The Government therefore proposes that, for this group, a UK work day would be any day in which a journey starts from the UK irrespective of the number of hours spent in the UK and overseas. Conversely, an overseas work day would be any day in which a journey starts in another country**. As international transportation workers are not eligible for FTWA or full-time work in the UK (FTWUK), this will only apply for the purpose of the "substantive employment" connection in Part C of the test.

3.72 Where an international transportation worker undertakes a journey that lasts more than one day, each day will be treated separately. This means, for example, that in a three day journey from the UK to New Zealand, only the first day will count as a UK work day. Where such a worker undertakes multiple journeys on the same day, for example a pilot flying from Heathrow to Paris and then to Nice before returning to Heathrow, if any of those journeys start in the UK, it will be a UK work day.

3.73 Certain international transportation workers may also be eligible to claim Seafarers Earnings Deduction (SED) which allows a deduction from earnings if the qualifying conditions, including days of absence from the UK and where duties are performed, are met. For both the SRT and SED, a day of absence from, or presence in, the UK is determined by where the individual is at the end of the day i.e. at midnight. However, the rules for determining the location of work duties will differ:

Table 3.A: Transportation workers – location of work under the SRT

UK workday	Overseas workday
Any journey that commences in the UK	Any journey that commences overseas
Multiple journeys made in one day if any of those journeys start in the UK	Multiple journeys made in one day if none of these journeys start in the UK
Where a journey lasts more than one day, each day will be treated as a separate journey, with the starting location determined by the individual's actual location at the start of the day	

Table 3.B: Seafarers Earnings Deduction – where duties are performed

Duties performed in UK	Duties performed overseas
Any journey between two UK ports	Any journey that begins or ends in a foreign port

3.74 The Government considers that these different approaches are unlikely to cause any particular difficulties for individuals either using the SRT to determine their residence status or meeting the qualifying conditions for a claim to SED; the rules are clearly defined for each purpose. Therefore, it does not propose to take steps to align these rules further.

Part B (conclusive residence)

Box 3.B: Question 2

Do you think there are any other circumstances in which an individual should be conclusively resident? If so, what are those circumstances?

3.75 The conditions proposed in consultation were that an individual would automatically be resident if they:

- are present in the UK for 183 days or more in a tax year;
- have only one home and that home is in the UK (or have two or more homes and all of these are in the UK); or
- carry out full-time work in the UK.

3.76 There were some suggestions that there should be a link between visa status and tax residence and that individuals who hold certain types of visa should be automatically resident.

3.77 A number of responses proposed that individuals should be able to elect to be automatically resident from the date of arrival in the UK. This was on the grounds that there may be cases where it is detrimental for an individual to be non-resident, for example where non-residence means they are unable to claim the personal allowance or other tax reliefs, or denies them the benefit of a double tax treaty.

3.78 There were no significant suggestions of other circumstances in which an individual should be automatically resident. However, there was comment on the three conditions proposed in the consultation document and, in particular, the definition of the "only home" condition.

Government response

3.79 The Government does not agree that tax residence should be automatically determined by immigration status. That is because visas are not necessarily indicative of a strong connection to the UK, for example some individuals require a UK visa even if their only intention is to carry out a small amount of work in the UK.

3.80 The Government does not believe there is a strong case for allowing individuals to elect to be resident. It would be likely to be used only where it would be beneficial to the taxpayer and could result in a cost to the Exchequer. It might also cause complications in respect of Double Taxation Agreements. As this issue was not raised by many respondents the Government has concluded that it is not a particular area of concern. It therefore does not intend to introduce such an election.

3.81 Overall, the Government will retain the conditions outlined in paragraph 3.75. It will not add any further conditions.

183 days of presence in the UK

3.82 The inclusion of this condition was welcomed as a continuation of existing law and practice, and was uncontroversial.

Only home

3.83 The "only home" condition generated a significant amount of comment. In particular, many respondents were concerned that this condition would set a very low bar that would

make a large number of people automatically resident when they did not have a significant connection to the UK.

3.84 Responses also sought further clarification of what was meant by "home" as it was felt to be a subjective term that could add uncertainty to the test.

3.85 Specific questions were raised on:

- whether a property could constitute an "only home" if the individual did not own it;
- whether the property would actually need to be used by the individual in order to count as an "only home";
- how this part of the test would apply to someone who owned a number of homes; and
- whether an individual would be conclusively resident if they had an only home in the UK for a short period, for example while selling a UK property before buying another property elsewhere, or in an interlude between selling an overseas home and buying another one.

Government response

3.86 The only home condition is not intended to set a low bar but is meant to be indicative of an individual who normally lives only in the UK. The vast majority of UK resident taxpayers will have only one place to live and this will be their home. It will typically be where they and their immediate family live for all, or the greater part, of their time.

3.87 The Government has carefully considered whether to further define in legislation what is meant by a home. It has concluded that it would be extremely difficult to provide a precise definition given the wide variety of living patterns adopted by individuals and their families. Any detailed definition would run the risk of inadvertently including or excluding certain individuals from the test because of the way in which they chose to live their lives. The Government is confident however, that the vast majority of people will know where their home is and whether that home is in the UK or overseas.

3.88 For the purposes of this test a home need not be a property that the individual owns. Many individuals do not own the home in which they live and the Government sees no reason why ownership or form of tenancy should make a difference. So, for example, a property that the individual rents would be capable of constituting a "home".

3.89 However, this condition does not mean that any accommodation in which the individual spends time – either in the UK or overseas - would be a home. For example, the Government does not consider that a holiday home, weekend home or temporary retreat should count as a "home" for the purposes of this condition.

3.90 The Government does not intend to stipulate that a property must be used by the individual during the tax year in order to count as a home. However, in general it is unlikely that a place would be considered a home if it is not actually used by the individual. In any event, it is likely that in such a situation the individual would have another home overseas and so would not have their only home in the UK.

3.91 Individuals who have a home in the UK and a home (or homes) overseas will not meet the only home condition and will not automatically be UK resident.

3.92 The Government wants to ensure that having a home in the UK does not make someone conclusively resident if it is the individual's only home for a short period. Therefore, an individual

will not fall under the "only home" condition if their only home (or homes) is in the UK for a period of fewer than 91 days.

3.93 If there is a continuous period of at least 91 days during which the individual's only home is in the UK and this period falls into two separate tax years, the individual would be treated as having an "only home" in both tax years (although in some cases split year treatment may apply to such individuals).

3.94 In addition, the Government confirms that where an individual is in the process of selling a home, it will not continue to count as a home for the purpose of the test after they have moved out of the property.

Full-time work in the UK (FTWUK)

3.95 The consultation document proposed that an individual should be classed as working full-time in the UK if they were employed or self-employed in the UK over a continuous period of 9 months, and no more than 25 per cent of their duties were carried on outside the UK during the period of full-time work.

3.96 There was little direct comment on this condition and there were no representations that individuals meeting this condition should not be automatically resident.

3.97 A number of respondents asked why the qualifying conditions for FTWUK were different to those for FTWA and suggested that the qualifying conditions should be harmonised.

Government response

3.98 The main purpose of this condition is to provide certainty for employers when they bring employees to the UK. Groups representing expatriate employers have emphasised that this is important and reduces administrative burdens. It is therefore helpful for employers if employees coming to the UK on secondment for a substantial period are automatically resident and, where relevant, have access to split-year treatment in the year of arrival and departure. In the absence of this condition, many employees who arrived in the UK late in the tax year would not have spent 183 days in the UK and might not be resident in the year of arrival.

3.99 The Government recognises that this condition may cause more employees to be UK resident in the year of arrival or departure than is currently the case. This will not generally have adverse tax consequences for such employees because the application of split year treatment (described in more detail in paragraphs 3.171 to 3.184) can act to treat the period of the tax year prior to arrival or after departure as a period of non-residence. However, split year treatment may not be available if the period of full-time work in the UK starts and finishes in the same tax year. This condition may also increase the number of cases of individuals being resident in both the UK and another country and hence claims for double taxation relief.

3.100 The Government continues to believe that setting a relatively short qualifying period will be helpful in providing certainty for employers. **However, the Government will consider increasing the qualifying period from 9 months (276 days) to 12 months and seeks views on this**. It believes this would enable more expatriate employees to claim split year treatment on arrival and departure, reducing the likelihood of employees being resident for the part of the tax year before arrival or after their departure and creating more claims for double tax relief. It would also be more consistent with expatriate employment practices. For example, many employers do not switch employees onto expatriate employment terms unless the posting is for at least 12 months.

3.101 The Government will retain the requirement that individuals who work full-time in the UK should be allowed to carry out up to 25 per cent of their duties outside the UK. It recognises that this does not mirror the requirement in FTWA that an individual must spend fewer than

20 days working in the UK. However, reducing the amount of foreign duties allowed for an individual claiming FTWUK (to bring it into line with FTWA) would make it harder for employees to qualify to be UK tax resident and this would reduce the certainty the Government is seeking to create for employers and expatriate employees.

3.102 This condition will apply to individuals who work 35 hours or more per week in the UK on average over the period of work. It will also apply where an individual carries out a combination of employment and self-employment which, taken together, meet the 35-hour or more average. This is consistent with the approach for FTWA (paragraph 3.43 to 3.48).

3.103 To enable individuals to calculate whether they have met the 35 hours or more weekly average, they will need to determine when the 276 day period of FTWUK begins and ends. In the majority of cases where an employee comes to the UK to commence a period of full time work for a specified period, the calculation can be made from the start of working in the UK. But to meet the test it is only necessary to find any period of 276 days that satisfies the conditions and that falls wholly or partly in the year being tested. This may lead to an individual being resident in the year of arrival because one day of the qualifying period falls into that year, although in many such cases the conclusive non residence tests in Part A will be engaged.

3.104 Both the period of work that must be undertaken to qualify for FTWUK and the calculation of the average number of hours worked per week may be reduced to take into account holiday entitlement and absences from work due to ill health or injury.

3.105 In determining whether a 276-day period has been met, a continuous period of work will be interrupted if there is a significant break between employments of 31 days or more where an individual does not carry out more than three hours of work on any day. Where a significant break occurs without a qualifying 276-day period having been found, the FTWUK condition will have to be tested in the period after work restarts.

Box 3.C: Illustrative example of how to calculate when FTWUK begins and ends

Ms Y visits the UK for one week in May 2014 to carry out a number of business engagements. On 1 November 2014 she returns to the UK to start a secondment for a period of two years. She works 20 hours a week for the first three months before increasing to 40 hours a week thereafter.

As there is a significant break of more than 31 days between the initial visit to the UK and the return on secondment, the initial visits are disregarded for the purposes of determining when the period of FTWUK commences.

As the secondment is intended to last 2 years, the 276 day period (40 weeks) is met, but the 35-hour weekly average will not be met from the date of arrival, as she will work:

12 weeks x 20 hours followed by 28 weeks x 40 hours = 1360/40 weeks = 34 hour weekly average.

However, from 15 November, Ms Y will work:

10 weeks x 20 hours followed by 30 weeks x 40 hours = 1400/40 = 35 hour weekly average.

As Ms Y will meet the requirements for FTWUK from 15 November she will be resident in the UK for 2014-15 and 2015-16. Split year treatment may be due in both the year of arrival and departure if the relevant conditions are met.

3.106 As for FTWA, unpaid voluntary work will not normally count as work for the purposes of this condition (see paragraph 3.51). An individual employed or engaged in a self-employed capacity by a voluntary organisation will be eligible for FTWUK as long as the other conditions are met. This will prevent the possibility of casual voluntary work (either in isolation or in addition to paid employment or self-employment) causing an individual to be automatically resident.

Question 4. Would there be significant benefits in increasing the qualifying period for FTWUK from 9 months to 12 months? What would the benefits be?

Part C (other connection factors and day counting)

Box 3.D: Question 3

(a) Do you think that these connection factors are appropriate and are there other connection factors that should be included?

(b) Does this part of the test provide a fair outcome? If not, why not?

Arrivers and leavers

3.107 The proposed test is designed so that it is harder to become non-resident when leaving the UK after a period of residence than it is easy to become resident when arriving in the UK. It therefore makes a distinction in a number of places between:

- "arrivers" individuals who were not resident in all of the previous three tax years; and
- "leavers" individuals who were resident in one or more of the previous three tax years.

3.108 Several respondents questioned whether it was right to make this distinction and suggested that doing so made the test more complex than necessary and could act as a disincentive to individuals becoming UK resident for fear it would be too hard to become non-resident subsequently.

3.109 Separately, several responses argued that the way the distinction between arrivers and leavers is defined is too harsh and would mean that an individual who was resident for a single year three years ago (and not resident in the intervening years) would be classed as a leaver and therefore in general find it more difficult to be non-resident – despite having been out of the UK for two full years. It was suggested that the look-back period should be reduced to lessen these impacts.

Government response

3.110 As set out in the consultation document, the proposed test reflects the principle that residence should have an adhesive nature. The Government stands by this distinction and believes that it is right that individuals who have built up significant connections to the UK should have to scale these back, or spend fewer days here, or a combination of the two, before they can relinquish residence.

3.111 The Government has considered the suggestion that the "look-back" period should be reduced and, in particular, whether this period could be reduced from three to two years.

3.112 However, the Government believes that the test provides a fair outcome and reducing the look-back period would be a relaxation that would be likely to have a significant impact on the overall balance of the test and enable some individuals to claim more generous treatment as "arrivers" rather than "leavers". The Government therefore has no plans to change its approach. The test still allows "leavers" to be non-resident while spending some time in the UK and

retaining connections here. This is more generous than the current requirement that a "distinct break" must be made before an individual can become non-resident.

Day counting levels

3.113 There were several representations that the day counting levels in Part C should be reassessed and that individuals should be able to have more connections with the UK before they became or remained resident. In particular, some suggested that it would be too easy for individuals who had not previously been resident to become so under the test.

Government response

3.114 The Government does not propose to make any significant changes to the day count levels or number of connections required to be resident. It believes that this part of the test gives fair outcomes. However, the Government will make some minor adjustments to day count levels in Part C and other areas of the test. These are described in paragraphs 3.163 below.

Connection factors

3.115 A number of respondents questioned whether some of the connection factors included in Part C of the test were appropriate:

- UK resident family and available accommodation: it was felt that having these connections as two separate factors equated to double counting because nearly all individuals who had UK resident family would automatically have accommodation available through that connection. In addition, separating this into two separate connections would unfairly penalise families who would always have one more connection than a single person;
- UK presence in either of the previous two tax years: some respondents felt that, as the test already takes into account an individual's residence status in previous years by reflecting the distinction between arrivers and leavers, the inclusion of time spent in previous years in Part C would represent double counting. It was also suggested that this factor added unnecessary complexity to the test; and
- More days spent in the UK in a tax year than any other single country: a number of respondents considered that this factor would be hard for HMRC to police or for individuals to evidence. It was also argued that there could be different outcomes for individuals who spent the same amount of time in the UK depending on whether they spent time travelling in one country (such as the US) or in many different countries (such as Europe).

Government response

3.116 The Government is content that the specified connection factors represent a significant connection to the UK and should therefore be relevant to residence status. In particular, the Government:

- does not agree that including UK resident family and available accommodation as two separate factors is double counting. An individual with available accommodation and a family in the UK does have a higher degree of connection to the UK than someone with available accommodation only and this further connection needs to be reflected in the test;
- is of the view that an individual who has spent more than 90 days in the UK in either of the previous two tax years has a continuing connection to the UK which

should be reflected in the test whether or not the individual was tax resident in those years; and

- considers that more days spent in the UK than elsewhere should remain as a connection. This factor only applies to "leavers" and supports the principle that residence should have an adhesive quality and that individuals who leave the UK should be required to significantly scale back their connections to the UK, time spent in the UK, or both, to lose residence.

3.117 **Therefore, the Government does not intend to remove any of these connection factors**.

Family

3.118 A high number of respondents felt that it was unfair that an individual's residence status should rely on that of their spouse or partner, especially as independent taxation has been a feature of the UK tax system since 1990. Additionally, a number of respondents suggested that this connection factor could lead to inter-dependency, where the residence status of each spouse or partner would be dependent on the residence status of the other.

3.119 Many respondents also commented on the inclusion of common-law partners within the definition of a UK resident family. This was felt to be unfair, as such partnerships are not normally recognised for tax relief purposes. Concerns were raised around how such relationships would be identified and how it was intended to differentiate between committed partnerships and more casual relationships.

3.120 A similarly high number of respondents commented on the inclusion of time spent with a minor child either within or outside the UK as a family connection. There were very strong views that including time spent outside the UK could act as a disincentive for individuals to spend time with their children, particularly where the children lived with a divorced or separated parent and the individual had little or no control over the children's residence. The inclusion of this factor was seen to be counter to the Government's policies to encourage parental responsibility.

3.121 Clarification was also sought on whether the definition of children included adopted children and step-children.

Government response

3.122 **The Government believes that the residence of an individual's spouse, partner and children is a significant indication of their level of connection to the UK. It will therefore retain this connection factor**. It emphasises that this is not a conclusive factor and would only lead to an individual becoming resident in combination with other connection factors and the amount of time spent in the UK.

3.123 The Government acknowledges that there may be a small number of cases where individuals are unable to determine their residence status due to the interaction with the residence status of their spouse, partner or minor child. In other words, there could be a circular situation where it would be impossible for one person to determine their residence without knowing the other person's status and vice versa. In such cases, the Government is content that each person should consider their residence without regard to the residence of the other i.e. the 'family' connection factor should be ignored and not count towards the number of relevant connection factors they have.

3.124 Many common-law partnerships are long-lasting stable relationships that are very similar to marriage. Excluding common-law partners as a connection to the UK could be seen to give some unmarried couples a tax advantage as they could find it easier to remain non-resident than an equivalent married couple. Although there can be some difficulty in determining when a relationship becomes a "common-law" equivalent to a marriage, with the introduction of tax

credits there are existing legal definitions of common-law partners and HMRC have significant experience of making such determinations. **The Government therefore believes that common-law partnerships should continue to be included in the definition of a family connection**.

3.125 The Government maintains that there is a principled reason to include time spent with a minor child outside the UK as a connection factor, as it indicates the strength of a relationship with a UK resident child. However, the Government recognises the weight of opinion that this connection may act as a disincentive for individuals to spend time with their children. **It will therefore amend this condition so that only time spent with a child in the UK will be taken into account.**

3.126 The Government confirms that the definition of a child includes a natural child of the parent or a child who has been adopted by the parent. However, it does not include step-children (provided they have not been adopted).

Education

3.127 The original consultation proposed that children resident in the UK mainly due to their attendance at an educational establishment should not be deemed to be a family connection if:

- the child spends fewer than 60 days in the UK not present at the educational establishment; and
- the child's main home is not in the UK.

3.128 A small number of respondents suggested that only children who attended boarding school would meet the requirements for this exclusion and thought that the conditions should be widened to take into account children attending day schools in the UK. As such children will spend weekends and occasional days away from their school, they are likely to exceed the 60-day limit. It is also more likely that their main home would be in the UK.

Government response

3.129 The Government intends that this exclusion should apply to minor children attending any educational establishment and should not be confined to boarding schools. It recognises that, as originally phrased, the exclusion would be unlikely to apply to children attending day schools in the UK. The Government will therefore amend the exclusion.

3.130 It will do so by replacing the criteria proposed in the consultation with a single criterion based on the number of days spent in the UK not present at the educational establishment outside term time. This means that weekends or other occasional days during term-time spent away from the educational establishment will not be taken in to consideration.

3.131 In restricting this condition to days outside term-time only, the Government feels that the threshold of 60 days is too generous and would enable children to spend a substantial period of time in the UK without being a connecting factor for the individual. **The Government does not think that this would be appropriate and accordingly intends to lower the limit to 20 days outside term-time**. It also thinks that the requirement that the child's main home should not be in the UK is no longer necessary.

3.132 **As a result, a child will not be treated as creating a family connection factor for the individual if they spend fewer than 21 days in the UK not present at the educational establishment outside term time.**

Accommodation

3.133 A significant number of respondents felt that the definition of accommodation needed to be clarified and, in particular, sought an explanation of the distinction between the "main

home" condition in Part B (conclusive residence) and "accommodation" in Part C (connecting factors) of the test.

3.134 Many also questioned why accommodation should be a connection to the UK if it was only used by an individual's family during the year and not by the individual. It was suggested that accommodation should only be a connection factor if it was actually used by the individual.

3.135 Clarification was also sought on whether accommodation had to be owned and whether holiday homes or similar types of accommodation would be within the definition.

3.136 A number of questions were raised on the categories of accommodation excluded from the definition:

- whether employer provided accommodation had to be used simultaneously by others and, if not, if there were any time limits on consecutive stays;
- why accommodation with a lease of less than 6 months was excluded: providing a de minimis limit for leased accommodation that was not available for other types of accommodation would be inconsistent and unfair;
- whether the exclusion for student accommodation should be amended to increase the age limit from 18 to 25 to cover accommodation for university students;
- what was meant by "short-term" accommodation in hotels; and
- the definition of "relatives" and whether this exclusion should be extended to accommodation provided by any individual for a short-term visit.

Government response

3.137 As set out in paragraph 3.86, the definition of an "only home" is designed to set a high bar for acquiring automatic residence and to be indicative of an individual normally living only in the UK. By contrast, accommodation is a much wider definition and is intended to capture any accommodation that is available to an individual to use as a place to live at some point during a year, and is so used by an individual for at least one night.

3.138 The Government agrees that it should not be relevant that a family member has accommodation in the UK, unless that accommodation is available to the individual and the individual actually spends at least one night there in a year. The definition has therefore been amended so that only accommodation that is actually used by the individual is taken into account.

3.139 The Government confirms that there is no requirement for the accommodation to be owned by an individual, it only has to be accommodation that is available while an individual is in the UK. This will include holiday homes and other similar types of accommodation. As confirmed in paragraph 3.89 this type of property is not captured by the meaning of "home" within Part B of the test.

3.140 The Government has also re-considered the types of accommodation excluded from the definition of available accommodation and believes there is scope to simplify the way in which this factor is defined and make it more consistent. It proposes a simple definition that an individual will have UK accommodation if:

- the individual has a place to live in the UK
- it is available to be used by them for a continuous period of at least 91 days in a tax year; and
- the individual spends at least one night in that place during the tax year.

3.141 Where there is a gap of fewer than 16 days between periods in the tax year in which a particular place is available to the individual, that place will continue to be treated as if it were available to the individual during that gap.

3.142 There will be an exception for accommodation held by relatives (other than the individual's spouse, partner or minor children). In theory such accommodation, for example, the parental home, may be available continuously and it would not be right to count such accommodation as a connection factor if the individual spent, say, a night or two with their parents at Christmas. Therefore, accommodation held by relatives will only count as a connection factor if the individual spends more than 15 nights there during the tax year.

3.143 The revised definition will generally exclude short stays in hotels and guesthouses because hotel rooms cannot be said to be available to an individual other than on nights which they are paid for. Only if the individual books a hotel room for at least 91 days continuously in a tax year (subject to the 16 day rule referred to above) will it be treated as being available accommodation under the test.

3.144 The changes mean that all accommodation will be treated in the same way regardless of the form of tenure or occupancy, including all types of employer provided accommodation. The Government considers that 90 days is a reasonable length of time for accommodation to be available before it becomes a relevant connection for residence purposes.

3.145 The Government no longer considers that it is necessary to exclude accommodation available to a minor child due to their attendance at a UK educational establishment. It believes boarding school accommodation should be relevant to the residence status of the child. However, it will not directly affect the residence status of the child's parents.

Substantive UK employment (including self-employment)

3.146 A small number of respondents felt that the definition of substantive employment or self-employment in the UK as 40 or more days in a tax year was too low and could result in those working in the UK for short periods of time becoming resident. Some were concerned that this could discourage entrepreneurs from coming to the UK to do business.

3.147 As in comments on full-time work abroad, several respondents argued that the definition of a working day as any day on which more than three hours of work was undertaken was too low. It was suggested that this should be increased to seven hours, in line with a normal working day.

Government response

3.148 The Government considers that the proposed 40-day threshold is reasonable. Substantive UK employment is one of a number of connection factors that may be relevant to residence status depending on the amount of time the individual spends in the UK. The Government does not believe it will make businessmen and entrepreneurs resident in the UK unless they have significant other connections to the UK.

3.149 As explained in paragraph 3.38 the definition of a working day as three hours of work in a day is intended to represent a reasonable amount of work, rather than a working day, and introduce an objective test that moves away from the current use of 'incidental' and 'substantive' duties. However, the Government acknowledges the concerns raised around this definition and paragraph 3.39 seeks views on possible changes.

Other definitions used in the test

Days of presence

3.150 The consultation document stated that, for the purposes of the test, there would be no change to the current definition of a day of presence in the UK. An individual will continue to be treated as being in the UK on any day where they are in the UK at midnight at the end of that day.

3.151 The Government believes that a clear objective definition of a day of presence will be simple to apply. It does not propose to amend the definition set out in the consultation document and the rule for day counting will remain as a midnight test.

3.152 However, it is concerned that, in some circumstances, this rule may be open to manipulation. The current rules require an individual to make a distinct break with the UK to be non-resident and it is only after that distinct break has occurred that their presence in the UK at midnight on any subsequent day is used to determine whether they have remained non-resident. However, under the new test there is no formal requirement to make a distinct break. Residence status is determined on a year-by-year basis by an objective assessment of relevant connection factors and days of presence in each tax year. It is possible that some may seek to avoid having days of presence in the UK by departing from the UK shortly before midnight on a regular basis. This could enable them to be non-resident without significantly reducing their connections with, or presence in, the UK. The Government would be particularly concerned if this happened when the individual otherwise had strong connections to the UK and essentially remained based in the UK.

3.153 To minimise the potential for manipulation in this way the Government is considering a targeted supplementary rule which would apply only to those who are present in the UK on a large number of days without ever being in the UK at midnight on those days. The Government would not want such a rule to affect those who legitimately commute to and from the UK frequently, especially if they do not have other significant ties to the UK. It should be clear for the vast majority of individuals that they do not need to consider any supplementary rule.

3.154 In deciding whether to introduce such a rule, the Government would be interested in views on whether it is needed and, if so, how it could be designed in a targeted way. It considers the following elements could be relevant:

- how many days the individual sets foot in the UK in the tax year without being here at midnight;
- how many days the individual is in the UK at midnight in the tax year;
- whether the individual had been resident in the preceding years; and
- whether the individual has other connection factors to the UK in the tax year.

Question 5. Do you think there is a risk of manipulation of the midnight rule? If so, how do you think it could be addressed in a targeted way?

Exceptional circumstances

3.155 Under current HMRC practice, days spent in the UK because of exceptional circumstances beyond an individual's control may be disregarded for some purposes. The consultation document did not include a provision for exceptional circumstances in the statutory test. Nearly all respondents felt very strongly that the test should allow for days to be disregarded where individuals are affected by exceptional circumstances.

Government response

3.156 The Government accepts that it is right to make provision for exceptional circumstances. It will therefore allow days of presence to be disregarded where an individual spends a day in the UK for reasons beyond their control such as:

- national or local emergencies, such as war, civil unrest or natural disasters; or
- sudden or life-threatening illness or injury.

3.157 Under current rules exceptional circumstances only apply for some day counting thresholds and do not apply to individuals who spend 183 days or more in the UK in the tax year (before considering exceptional days). Under the new statutory rules the Government proposes that days may be disregarded due to exceptional circumstances for all day counting elements in the test. This will include:

- the day counts in Part A of the test (conclusive non-residence) and the definition of FTWA;
- the 183 day count in Part B (conclusive residence); and
- day counting thresholds in Part C.

3.158 To minimise the risk of the provision being used too widely, the number of days that can be disregarded due to exceptional circumstances will be restricted to 60 days in any tax year.

3.159 The Government considers that the provision for exceptional circumstances will provide a fair rule for those who are forced to spend days in the UK for reasons beyond their control.

Variety of day counting thresholds

3.160 A small number of respondents commented on the variety of different day counting thresholds used in various places in the test and suggested that this increased complexity unnecessarily. One response suggested that the test could be simplified by replacing some of the counts with a defined term such as "substantial presence", which could be set at a single number throughout the test.

3.161 Some suggested the test would be easier to apply if some of the thresholds were adjusted slightly so that the number of days permitted in the UK before triggering one of the residence conditions would be a round number. For example, this could entail amending thresholds to "more than 90 days" rather than "90 days or less". They pointed out that this would be consistent with the existing concept of spending more than 90 days in the UK.

Government response

3.162 The Government does not propose to harmonise the number of day count thresholds within the test. The test has been designed to cover a wide range of different circumstances and changing the day counts in this way would be likely to have a significant impact on the residence outcome for some individuals.

3.163 However, the Government has decided to make slight adjustments to the day count thresholds in Part C of the test to make it easier to understand and apply. These changes are set out below in the second column.

Individuals resident in one or more of the previous three tax years

Impact of connection factors on residence	Days spent in UK	
	NEW PROPOSAL	Original proposal
Always non-resident	Fewer than 16 days	Fewer than 10 days
Resident if individual has 4 factors or more	16 – 45 days	10 - 44 days
Resident if individual has 3 factors or more	46 – 90 days	45 – 89 days
Resident if individual has 2 factors or more	91 – 120 days	90 – 119 days
Resident if individual has 1 factor or more	121 – 182 days	120 – 182 days
Always resident	183 days or more	183 days or more

Individuals not resident in all of the previous three tax years

Impact of connection factors on residence	Days spent in UK	
	NEW PROPOSAL	Original proposal
Always non-resident	Fewer than 46 days	Fewer than 45 days
Resident if individual has 4 factors	46 – 90 days	45 – 89 days
Resident if individual has 3 factors or more	91 – 120 days	90 – 119 days
Resident if individual has 2 factors or more	121 – 182 days	120 – 182 days
Always resident	183 days or more	183 days or more

3.164 In addition the connection factor for "UK presence in previous year" will be amended so that it applies where the individual spends **more than 90 days** in the UK in either of the previous years. The original proposal was for at least 90 days.

3.165 The family connection factor will also be amended so that it applies where the individual spends **more than 60 days** with a child who is resident in the UK (rather than at least 60 days).

Other features of the test

Split year treatment

3.166 Currently, if an individual is resident at any point in a tax year they are treated as resident for the whole year for the purposes of calculating their own tax liability. However, a concessionary treatment enables the tax year to be split into periods before and after arrival or departure in certain circumstances when an individual comes to, or leaves, the UK part way through a tax year. The UK tax on most income and gains arising before or after the split is limited to the amount that would be taxed if the individual were in fact non-resident during that part of the year.

3.167 The Government confirmed in the consultation document that it will place this concessionary treatment on a statutory footing. Although the intention is to replicate the current concessionary treatment as closely as possible, it will not be possible to recreate it exactly as the current rules rely on the subjective test of becoming "permanently" resident in the UK or "permanently" resident abroad. The consultation document therefore proposed that a tax year should be split into periods of residence and non-residence if a person:

- becomes resident by virtue of their only home being in the UK (arriving or returning);
- becomes resident by starting full-time employment in the UK (arriving or returning);

- establishes their only home in a country outside the UK and becomes tax resident in that country and does not come back to the UK in that tax year (leaving);
- loses UK residence by virtue of working full-time abroad (leaving); or
- returns to the UK following a period of working full-time abroad (returning).

3.168 The commitment to provide split year treatment was widely welcomed and, in general, respondents agreed that these are the situations in which it should apply. However, the condition that an individual should become tax resident in another country and not come back to the UK at all in the year of departure (third bullet point above) was criticised. It was pointed out that not all countries have a concept of tax residence and it may not always be possible for an individual to become resident in another country in the year they arrive there. It was also felt that preventing any return visits to the UK in a year of departure was unnecessarily harsh.

3.169 A small number of respondents noted that split year treatment would not apply to individuals who were non-resident under Part C of the test and that this would mean that such individuals could continue to be resident for the remainder of a tax year in which they left the UK. Some suggested this would be unfair and cause more instances of dual tax residence, which would be more costly and burdensome for individuals and employers.

3.170 A few respondents also sought clarification of whether an individual could claim split year treatment for arrival and departure in the same tax year, and whether it would be possible for an individual to elect for split year treatment not to apply.

Government response

3.171 The Government confirms that split year treatment will apply in the situations described in paragraph 3.167 with the exception of individuals returning to the UK following a period of working full-time abroad. In those situations, split year treatment will only be available if the individual satisfies one of the other conditions i.e. starts full-time employment in the UK or has their only home in the UK.

3.172 In addition to the situations above, split year treatment will be available to the spouses or partners of individuals who work full-time abroad, subject to certain conditions. This will recreate the existing so-called "trailing spouse" concession (contained in Extra Statutory Concession A78).

3.173 The situations in which split year treatment will apply are set out in more detail below.

Case 1: Starting full-time work abroad

3.174 In this case, to be eligible for split year treatment on departure:

- the individual must have been UK resident in the previous tax year (this includes where the previous year was a split year);
- from the point at which the individual starts to work full-time overseas they continue to work full-time until at least the end of the tax year; and
- be non-resident in the following tax year on the basis of working full-time abroad.

3.175 In the year of departure the number of working days permitted in the UK will be pro rated from the 20 work days permitted for a full tax year. Similarly the number of days of presence permitted will be pro rated from the 90 days for a full tax year.

3.176 There will be no specific condition that the individual must "leave" the UK to work full-time abroad other than that the individual must have been resident in the previous tax year and be non-resident in the year after departure by reason of FTWA.

Case 2: Accompanying spouses

3.177 In this case, to be eligible for split year treatment on departure:

- the individual must have a partner who satisfies the conditions for Case 1;
- the individual must have been UK resident in the previous tax year (this includes where the previous year was a split year);
- the individual joins their partner overseas in order to live with them while the partner is working full time overseas;
- from the point of departure their only or main home must be outside the UK for the remainder of the tax year;
- the number of days of presence allowed in the UK in the year of departure will be the same as for an individual working full-time abroad; and
- they must be non-resident in the tax year following departure.

3.178 For these purposes a partner will be a spouse, civil partner or common-law partner. As the Government intends to recognise common-law partners for the purposes of a family connection to the UK under the test (see paragraph 3.124), it is right that such relationships are also recognised for the purposes of split year treatment. This will ensure consistency across the test.

Case 3: Leaving the UK to live abroad

3.179 The Government accepts that the concept of tax residence does not exist in all jurisdictions and recognises that an individual may not settle in a country immediately after departure from the UK. It agrees that this should not be an impediment to an individual receiving split year treatment. Therefore the requirement will be that within six months of departure the individual's normal home is overseas.

3.180 The Government will also amend the condition on return visits to the UK and allow an individual to spend fewer than 16 days in the UK in the year of departure.

3.181 In addition, the following conditions will apply:

- the individual must have been resident in the previous tax year (this includes where the previous year was a split year);
- from the point of departure, the individual must have no home in the UK; and
- must be non-resident in the following year.

Case 4: Coming to live or work full-time in the UK

3.182 In this case, to be eligible for split year treatment on arrival:

- the individual must have been non-resident in the previous tax year (and the previous year must not have been a split year);
- The individual must be UK resident for the year under either the second or third automatic residence test (that is, by virtue of either having his only home in the UK, or of working full time in the UK);
- from the point of arrival the individual must continue to have their only home in the UK until at least the end of that tax year or continue to work-full time in the UK until at least the end of the tax year; and

- for the part of the year before the day on which the individual meets the only home test or starts to work full time in the UK the taxpayer does not have sufficient UK ties.

Other issues

3.183 The Government confirms that it will be possible for an individual to have split year treatment in consecutive tax years, provided they meet the other relevant conditions. However, it will not be possible for the same tax year to be split more than once or for individuals to elect for split year treatment not to apply.

3.184 Chapter 6 contains draft legislation on many of the various amendments that will be required to tax charging provisions to accommodate the new rules on split year treatment. This part of the draft legislation is not fully developed and should be considered to be "work in progress" that requires further refinement over the course of the summer. Despite this being 'work in progress' comments on the draft provisions would be welcomed. Further draft legislation will be exposed as part of Finance Bill 2013 later this autumn.

Death in year

3.185 The statutory residence test will need to cater for situations where an individual dies part way through the tax year. The Government considers that, without specific provisions, the proposed test could give unfair and unwelcome results depending on when in a tax year an individual dies. For example, an individual who had been UK resident for all, or most, of their lives but who died abroad early in the tax year after spending very few days in the UK in that year could be automatically non-resident under Part A of the statutory residence test. A number of changes have therefore been made to the way in which the test applies to individuals who die during the year:

- the conclusive non-residence test in Part A for individuals who have been resident in the UK in one or more of the previous three years and have spent fewer than 16 days in the UK cannot apply;
- the number of days that need to be taken into account in the day counting tests of Part C will be reduced on a pro-rata basis, based on the proportion of whole months left in the tax year following the month of death; and
- where an individual has been resident in the UK for the previous three years on the basis of satisfying one of the conditions in Part A of the test and, in the year of death their normal home was in the UK, they will remain UK resident for that year, regardless of circumstances.

Anti-avoidance

3.186 The consultation proposed a new anti-avoidance rule to counteract the risk of individuals creating artificial, short periods of non-residence to receive income free of tax when it accrues during a period of residence and would otherwise be liable to UK tax. This would be similar to the existing rule which applies to capital gains[1] which treats gains arising in a temporary period of non-residence as accruing to the taxpayer in the year of return.[2]

3.187 Respondents were generally content in principle with this proposal. However, some felt that further details were required to enable them to comment more fully. In particular, the consultation did not outline in detail what forms of income would be covered by the rule.

[1] Section 10A TCGA 1992.

[2] There are broadly similar provisions covering income withdrawals from certain pension schemes in sections 576A and 579CA ITEPA 2003 and remittances of foreign income in section 832 ITTOIA 2005.

Government response

3.188 The Government confirms that the new rule will be modelled on the existing capital gains rules and will apply where:

- an individual has been resident in four or more of the seven tax years prior to the tax year in which they become non-resident; and
- becomes resident again within five years of leaving.

3.189 Where those conditions are met, certain types of income that arise during the years of non-residence will be treated as arising instead in the year in which the individual becomes resident again.

3.190 The rule will cover the following types of income:

- distributions from close companies;
- lump sum benefits from employer-financed retirement benefit schemes; and
- chargeable event gains from life assurance contracts.

3.191 This will be in addition to the types of income and gains covered by the existing rules for temporary non-residents: certain income withdrawals from pension schemes, remittances and chargeable gains. However, the Government again confirms that it will not apply to ordinary earnings from employment or self-employment or to regular types of investment income such as bank interest or dividends from non-close companies.

3.192 The new rule would apply to income arising in the whole of the period of temporary non-residence (which would have the effect of deferring the assessment of post-departure gains arising in the year of departure) but would also ensure that gains realised in the overseas part of the year of departure or return are charged even if the individual is treaty non-resident in that part of the year.

3.193 Chapter 6 contains draft legislation on most of the temporary non-residence rules. This part of the draft legislation requires further refinement but comments on its current form would be welcomed. The draft legislation covering distributions from close companies will be published later in the summer.

Transitional rules

Box 3.E: Question

Would the lack of a transitional rule as described in paragraph 3.57 (of the consultation document) leave significant uncertainty?

3.194 In the consultation document the Government outlined a possible transitional rule to enable individuals to elect to apply the new statutory definition of residence to tax years prior to the introduction of the statutory residence test in limited circumstances. This would only be in cases where residence status in a year after introduction depended on the individual's residence status in a year prior to introduction. The Government's preliminary view was that such a transitional rule would not be required as most individuals would know their residence status for earlier years and many would have already filed Self Assessment returns declaring their residence status.

3.195 A significant number of respondents stated that the absence of such a transitional rule would undermine the key aim of the test to provide certainty. Although an individual may self-assess as non-resident for a particular year, they may subsequently be taken up for enquiry by HMRC or may

already be in dispute with HMRC. In such cases, if they were found to have been resident in a previous year, this could mean that they had misapplied the test for a number of years.

3.196 In addition, a number of other transitional rules were suggested by respondents. These included: applying the 20 day limit for FTWA to previous years to provide certainty; treating all individuals who need to consider Part C of the test as "arrivers" for the first three years; and transitional arrangements for employers, especially to allow FTWA to continue to apply to all those who are currently eligible.

3.197 Since the announcement that the introduction of the test will be deferred to April 2013, some external bodies have requested another transitional rule to reduce uncertainty in the 2012-13 tax year. This would allow individuals to elect to use the new statutory rules to determine residence for the 2012-13 tax year i.e. before implementation of the new rules.

Government response

3.198 The Government accepts that a limited transitional rule for prior years, as outlined in paragraph 3.57 of the consultation document, would reduce uncertainty for a significant number of taxpayers**. It will therefore include a transitional rule which will apply only for those parts of the test where the individual needs to know what their residence status was in one or more of the three years prior to the introduction of the test for the purpose of determining their residence in future years**. It will allow individuals to apply the new rules to those preceding years for this specific purpose only; the existing rules will continue to apply for determining actual residence status and tax liability in the earlier years. An individual will need to make a formal election to use this transitional rule.

3.199 The transitional rule will only be applicable to the following parts of the SRT:

- Part A – where residence in prior years affects whether the relevant threshold for automatic non-residence is 15 days or 45 days (see paragraph 3.8); and
- Part C – where residence in prior years affects which of the day counting "ladders" should be used to assess residence status (see paragraph 3.163).

3.200 The transitional rule will not apply for other tax purposes, such as the "17 out of 20 year" deemed domicile rule for inheritance tax[3] or the residence period which determines liability to pay the Remittance Basis Charge[4].

[3] Non-domiciled individuals who are tax resident in the UK for more than 17 out of the last 20 years are deemed to be UK-domiciled for inheritance tax (IHT) purposes. This means that they are liable to IHT on their worldwide assets.

[4] Individuals who are resident but not domiciled or not ordinarily resident in the UK are eligible to claim the remittance basis. This offers beneficial tax treatment on their foreign income and gains. Individuals who claim, the remittance basis and have been resident in 7 or more of the 9 tax years prior to the year of claim are liable to pay an annual charge of £30,000 (Remittance Basis Charge). From 6 April 2013 the Remittance Basis Charge will increase to £50,000 for those who were resident in 12 or more of the 14 tax years prior to the year of claim.

Box 3.F: Illustrative example of how the transitional rule would apply

Situation

The statutory residence test has been introduced in April 2013. Mr X is assessing his residence status for the 2013-14 tax year. He spent only 30 days in the UK in 2013-14 and thinks he may be automatically non-resident under Part A of the test. He needs to know his residence status in 2010-11, 2011-12 and 2012-13 because whether he was resident in one of those years will affect the number of days he can be present in the UK in 2013-14 and still be automatically non-resident.

In those tax years, Mr X self assessed as non-resident but HMRC may open an enquiry into those tax years.

How the transitional rule would work

For the purpose of assessing his residence status in 2013-14 only, Mr X would be able to apply the new statutory rules to 2010-11, 2011-12 and 2012-13. When Mr X applies the new rules he finds that he would have been non-resident in all those years. He therefore elects to use the transitional rule and notifies HMRC. This means he is treated as an "arriver" for the purposes of Part A and is automatically non-resident in 2013-14 because he spent fewer than 46 days in the UK.

The new rules would not affect his actual residence status in 2010-11, 2011-12 or 2012-13, nor would it affect any subsequent HMRC enquiry into those tax years.

3.201 The Government will not introduce any other transitional rules. In particular, it does not think that it would be appropriate to allow individuals to elect to apply the new statutory rules from April 2012. Rather than provide certainty, this would entail individuals opting to plan their residence on the basis of unlegislated rules that may be amended before final implementation. More fundamentally, it would mean that some individuals would assess their residence status in 2012-13 on the basis of one set of rules and others would use different rules. As tax residence is a vital factor in an individual's liability to UK tax and a foundation of the tax system, this would be very difficult to justify.

Other issues

Online assessment tool

3.202 The proposed online assessment tool to assist individuals with self-assessing their residence status was widely welcomed. A number of respondents sought confirmation that any residence ruling provided by the tool would be accepted by HMRC as binding, provided the individual had entered the correct information.

Government response

3.203 The assessment tool is intended to be an indicative tool to assist people in determining whether or not they are resident. For many people this will be a straightforward question and the tool will be able to give them a clear answer. The many and varied ways in which people live and work and the huge variety of different personal circumstances means, however, that the tool will not be able to give a binding ruling as each case will ultimately turn on its own facts.

National Insurance Contributions

3.204 The consultation document stated that the statutory residence test would not apply for the purposes of National Insurance Contributions (NICs). A number of respondents argued that

the definition of residence should be the same for tax and NICs purposes and that there was an opportunity to align the definitions at this stage.

Government response

3.205 Significant differences between the operation of tax and NICs would currently make it impractical to apply the statutory residence test to NICs. In particular, NICs are usually assessed on a pay period basis rather than annually. This means that an individual's residence position needs to be considered in a particular week or month. The statutory residence test is an annual test and could not be applied in this way.

3.206 The Government is separately considering the alignment of the operation of income tax and NICs. Any decision to align the definition of residence for income tax and NICs would need to be considered as part of that policy process and would be contingent on the way in which the operation of income tax and NICs is aligned.

3.207 **The Government therefore confirms that the statutory residence test will not apply for NICs purposes when it is implemented in 2013**.

4 Summary of consultation responses: ordinary residence

Box 4.A: Question 6

(a) Should ordinary residence be abolished for all tax purposes other than overseas workday relief?

(b) If a new definition of ordinary residence was introduced, should it be restricted to non-domiciled individuals only?

(c) Is the proposed definition of ordinary residence appropriate? If not, are there alternatives that would not have a material Exchequer cost?

Options for reform

4.2 The consultation document set out two options for the reform of ordinary residence:

- Option 1 – abolish ordinary residence for all tax purposes except overseas workday relief (OWR); and
- Option 2 – retain ordinary residence for all tax purposes and create a statutory definition.

4.3 A clear majority of those who commented were in favour of Option 1 on the grounds that it would represent a significant simplification to the current rules. They argued that the concept was outmoded and added unnecessary complexity and uncertainty to the tax system. In addition, all respondents agreed that OWR should be retained and argued that removing it would be likely to discourage expatriate employees from coming to the UK and would lead to an increase in employment costs for some employers.

4.4 A minority of respondents supported the option of retaining ordinary residence as a tax concept. This was mainly due to concerns that abolishing ordinary residence would change the current tax treatment for individuals classed as not ordinary resident in important respects, such as the transfer of assets abroad legislation[1], foreign service relief on termination payments[2] and Seafarers Earnings Deduction[3]. All those who supported retention welcomed the suggestion that any definition should be placed on to a statutory footing.

Government response

4.5 The Government agrees that abolishing ordinary residence would represent a major simplification and be in keeping with its aim of simplifying the tax system. It continues to believe that OWR is important to business and provides a significant administrative easement for expatriate secondees and their employers. The Government has therefore decided to abolish the

[1] Sections 714 to 751 of Chapter 2 of Part 13 of the Income Tax Act 2007 (ITA).
[2] Section 414 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).
[3] Section 378 of ITEPA.

concept of ordinary residence for tax purposes but it will retain OWR and put it on a statutory footing (Option 1). This decision was announced at Budget 2012.

4.6 The Government recognises that this will have an effect on the tax liability of some individuals but believes the impact will be limited. As set out in consultation, fewer than 300 people claim the general remittance basis purely as a result of being not ordinarily resident and so the number who stand to lose in this respect is small.

Consequential changes

4.7 The Government will make changes throughout the tax code to remove references to ordinary residence and replace them with references to residence. The Government accepts that this will change the population who are affected by certain legislative provisions. For example, it will mean that more individuals will be capable of falling under the Transfer of Assets Abroad rules. The Government has reviewed the many areas of legislation affected and concluded that these changes are reasonable and proportionate. The table below summarises the most significant provisions affected.

Table 4.A: Summary of main tax provisions affected by abolition of ordinary residence

Provision	Current application	Future application
General remittance basis	Available if tax resident and non-domiciled or not ordinarily resident	Available only if tax resident and non-domiciled
Overseas workday relief	Available if tax resident and ordinarily resident	Replaced with a statutory relief (see paragraph 4.5 above). Relief will only be available if non-domiciled (see paragraph 4.15 below).
Transfer of Assets Abroad	Applies to individuals who are ordinarily resident	Will applies to individuals who are tax resident
Seafarers Earnings Deduction	Available if ordinarily resident in the UK or tax resident in an European Economic Area state (other than the UK)	Available if tax resident in the UK (or resident in an EU or EEA state) or tax resident in an European Economic Area state (other than the UK)
Foreign service relief for termination payments	Applies in respect of earnings related to UK duties for individuals who are not ordinarily resident	Will apply only in respect of earnings for overseas duties.
Capital gains tax	Applies to UK gains if individual is tax resident or ordinarily resident	Will apply to UK gains only if individual is tax resident
Capital gains tax and temporary non-residence rule	Applies to individuals who are tax resident or ordinarily resident	Will apply to individuals who are tax resident
Taxable lump sums from pension schemes (ESC A10)	Applies in respect of earnings related to UK duties for individuals who are not ordinarily resident	Will apply only in respect of earnings for overseas duties.
Individual Savings Accounts (ISAs)	Available to individuals who are tax resident and ordinarily resident	Will apply to individuals who are tax resident. [4]
FOTRA securities	Applies where the holder is not ordinarily resident	Will apply where the holder is not tax resident

4.8 Chapter 6 contains draft legislation on most of the amendments proposed to provisions across the tax code as a result of abolishing ordinary residence. The Government is aware that the draft legislation does not contain an amendment for Seafarers Earnings Deduction.

[4] This change will be made in subsequent secondary legislation.

Legislation on this aspect will be made available in the autumn. The Government will continue to review the tax code to identify what, if any, further changes may be needed.

4.9 There a small number of places where the Government does not wish to change the law and the existing reference to ordinary residence will remain in place. These are:

- eligibility for blind person's allowance which is linked to ordinary residence in Scotland or Northern Ireland rather than in the UK (section 38 ITA 2007);
- exemption condition for income from Ulster Savings Certificates which is linked to ordinary residence in Northern Ireland (section 693 ITTOIA 2005); and
- certification of diplomatic exemption which is linked to ordinary residence outside the UK (section 841 ITA 2007).

Transitional provisions

4.10 In recognition that abolishing ordinary residence is a fundamental change to the tax system, **the Government will introduce transitional provisions to ensure that individuals who currently benefit from being not ordinarily resident do not lose out following abolition of ordinary residence**. These will allow those who currently receive a particular tax treatment as a result of their ordinary residence status to continue to do so following the commencement of the new legislation, for as long as they would have continued to receive it under the existing rules; this will be for a maximum of two complete tax years following commencement.

4.11 These transitional provisions will apply to instances in tax legislation where an individual can currently receive beneficial tax treatment or relief or be protected from tax charges due to being not ordinarily resident (NOR) and could stand to lose that treatment following abolition of ordinary residence in future. Specifically, there will be transitional grandfathering provisions for:

- overseas workday relief;
- remittance basis;
- Transfer of Assets Abroad;
- Seafarers Earnings Deduction; and
- foreign service relief.

4.12 The Government does not think transitional provisions are needed for any other tax provisions linked to ordinary residence but would welcome comments.

Question 6

(a) Will any of the consequential changes have a disproportionate impact on particular individuals, allowing for the fact that there will be transitional grandfathering provisions? If so, how would you suggest mitigating that impact?

(b) Do you think transitional provisions are needed for any other places where ordinary residence influences tax liability?

Non-domiciled individuals

4.13 In the consultation document the Government indicated that it was minded to limit access to OWR to non-domiciles only.

4.14 A small majority of respondents felt that access to OWR should be retained for UK domiciles on the grounds that excluding them could penalise British expatriates who had been abroad for many years (but were still UK-domiciled) and were assigned to the UK for relatively

short periods of time. The small number of UK-domiciled individuals who currently claim NOR status was also put forward as a reason for not excluding them from future relief. Separately, concerns were raised about possible costs to employers due to increased numbers of employees who might no longer be entitled to OWR under the new statutory rules.

Government response

4.15 The Government continues to think that allowing domiciled individuals to benefit from OWR runs the risk of opening up this beneficial treatment to a wider group than currently receive it. This would have a cost to the Exchequer. In addition, the Government is not convinced that there is a principled reason to allow UK domiciles to continue to claim beneficial tax treatment and does not feel that a compelling argument was put forward to support continued access to OWR for UK-domiciled individuals. Restricting OWR to non-domiciles would in theory create an incentive for employers to deploy non-domiciles rather than domiciles to the UK but in view of the small number of UK domiciled employees currently benefiting from OWR, the Government does not feel that this is a material concern.

4.16 **The Government therefore confirms that it will restrict the new statutory definition of OWR to non-domiciles only**.

Qualifying conditions – residence in previous years

4.17 The consultation document proposed that employees would be denied access to OWR if they had been UK resident in any of the previous five tax years ("five-year look-back period").

4.18 Many respondents felt that this would be a significant tightening of the current rules and particularly likely to affect internationally mobile employees who might have more than one assignment in the UK over a five-year period. They contended that multiple assignments to the UK were increasingly common for expatriate employees. Introducing a five-year look-back period without transitional rules could also mean that some employees would lose OWR earlier than expected with a consequent, unexpected cost to employers.

Government response

4.19 The Government believes that OWR should only be available to individuals who have not been previously resident in the UK or, if previously UK resident, have been non-resident for a distinct period. Individuals who have frequent assignments to the UK should not stand to benefit. However, the Government has noted the weight of objection to the five-year look-back and agrees that the length of the period is excessive. **It will therefore reduce the look-back period to three years. This means that employees will be denied access to the new statutory definition of OWR if they have been UK resident in any of the three tax years prior to coming to the UK to work**. The Government believes its revised proposal strikes an acceptable balance. Reducing the look-back period further would widen access to OWR with a consequent risk to the Exchequer.

Qualifying conditions – being based in the UK

4.20 The consultation document also proposed that OWR would be denied to individuals who were resident in the current tax year on the basis that their only home was in the UK ("only home qualifying condition").

4.21 Many argued that the only home condition was not appropriate and questioned its relevance to OWR. It was felt to discriminate against the less wealthy or younger workers who would commonly not retain a property abroad if assigned to the UK, and failed to take into account the general European preference for renting property. In such cases, individuals could have their only home in the UK and would be denied OWR contrary to the policy intention.

Government response

4.22 The Government reiterates that it is not possible to recreate the current "intention to settle" test fully in statute because it is subjective and uncertain. However, in principle, it thinks that OWR should not be denied to non-domiciled employees unless they are settled in the UK. This implies that they should be more than simply UK resident for a number of years. The only home qualifying condition was intended to be a proxy for the concept of being "based" in the UK but **the Government recognises that its original proposal could have unintentionally led to harsh outcomes for a significant number of employees. It will therefore change this condition**.

4.23 Instead individuals will not be eligible for OWR if they are "based" in the UK and it is reasonable to assume that they will continue to be based in the UK beyond the "three-year point". This point will be defined as the end of the second full tax year after the year in which they became resident. The Government proposes to outline a number of factors that would indicate that an individual is likely to be based in the UK beyond the three-year point and hence ineligible for OWR. These are:

- purchasing a home in the UK (with "home" being more than simply the purchase of a property);
- reaching an understanding that employment duties will be performed in the UK beyond the three-year point (either under one or a succession of contracts); or
- entering into other commitments in the UK that indicate an intention to be based in the UK beyond the three-year point.

4.24 It is not currently proposed that any of these factors would conclusively indicate that an individual is based in the UK and be denied OWR. Instead they would be indicative and there would be a presumption that, if they applied, the individual would be denied OWR unless they could show that they did not intend to be based in the UK beyond the three-year point.

4.25 The Government considers that this approach will provide an element of flexibility for employees and minimise the possibility of harsh outcomes. For example it would mean that a factor which extended only slightly beyond the three-year point could be disregarded. However, the Government would welcome views on whether some or all of these factors should be conclusive rather than indicative, bearing in mind that they might give harsh outcomes if they were. It would also welcome suggestions of any other factors that respondents think are strongly indicative that an individual will be based in the UK beyond the three-year point.

4.26 If an individual satisfies this condition when they first start working in the UK but breaches it in the second or third tax year of residence, OWR will be withdrawn only from the tax year in which the condition is breached onwards. Entitlement to OWR for earlier tax years will not be affected.

4.27 Overall, the Government thinks that this condition will continue to mean that most employees who come to work in the UK and leave before the three-year point will be entitled to claim OWR.

Question 7

(a) Would the revised approach be effective at restricting Overseas Workday Relief to employees who are not based in the UK?

(b) Do you think it could deny Overseas Workday Relief to significant groups of employees who benefit from it under current rules?

Question 8

(a) Do you think some or all of the factors determining whether an employee is based in the UK beyond the three-year point should be conclusive rather than indicative?

(b) Can you suggest any other factors which would strongly indicate that an employee will be based in the UK beyond the three-year point?

Duration of entitlement to OWR

4.28 The Government proposed in the consultation document that those qualifying under any new statutory definition should be entitled to OWR in the tax year in which they arrived in the UK and for a maximum of two full tax years following the year of arrival. This was broadly seen as acceptable by respondents and the Government will not change this aspect of the proposal.

5 Summary and next steps

Summary of changes

5.1 The main changes and clarifications that the Government will make to its proposals following the consultation in summer 2011 are summarised below:

Statutory residence test

- Part A: the threshold for automatic non-residence for individuals who have been resident in one or more of the previous three tax years will be raised from 10 to 15 days.
- Part A: the Government will consult further on two alternative options to amend the definition of Full Time Work Abroad:
    - Increasing the number of working days allowed in the UK from 20 to 25 working days.
    - Increasing the number of hours that constitute a working day from 3 to 5 hours.
- Part A: international transportation workers will be excluded from being eligible for Full Time Work Abroad.
- Part B: the Government will consult further on whether to increase the qualifying period for Full Time Work in the UK from 9 months to 12 months.
- Part B: international transportation workers will be excluded from being eligible for Full Time Work in the UK.
- Part C: the "family" connection factor will be amended so that only time spent with a child in the UK will be relevant.
- Part C: the definition of accommodation will be simplified and will apply where an individual has accommodation that is available to be used by them for a continuous period of at least 91 days in a tax year and the individual spends at least one night in that place during the tax year.
- Day counting: there will be a provision for exceptional circumstances which will allow days of presence to be disregarded where an individual spends a day in the UK for reasons beyond their control.
- Split year treatment: the conditions will be amended for individuals who leave the UK to live abroad. In particular, they will be able to spend up to 15 days in the UK in the part of the tax year after their departure.
- Split year treatment: this will also be available for the spouses or partners (civil and common-law equivalent) of individuals who work full-time abroad.
- Transitional rules: there will be a transitional provision to allow the new statutory rules to be applied to previous tax years only where the individual needs to know what their residence status was in a year prior to the introduction of the test to determine their residence in future years.

Reforms to ordinary residence

- Ordinary residence will be abolished for tax purposes but Overseas Workday Relief (OWR) will be retained and placed on a statutory footing.
- OWR will be restricted to non-domiciles only.
- The look-back period for OWR will be reduced from five years to three years. Individuals will therefore be denied access to OWR if they have been UK resident in any of the previous three tax years.
- OWR will be denied to individuals who can be expected to be "based" in the UK beyond the "three-year point". This replaces the previous proposal that it would be denied to individuals whose only home is in the UK.
- There will be grandfathering provisions to ensure that individuals who currently benefit from being not ordinarily resident do not lose out following abolition of ordinary residence.

Issues for further consultation

5.2 The questions for further consultation are as follows:

Statutory residence test

- Question 1: How far would increasing the number of working days allowed in the UK under the Full Time Work Abroad condition from 20 to 25 days mitigate concerns about the impact on employers and their employees?
- Question 2: How far would increasing the number of hours that constitute a working day from 3 to 5 hours mitigate concerns about the impact on employers and their employees? How far would it reduce record keeping requirements?
- Question 3: Can you suggest any other ways to amend the definition of FTWA, in keeping with the requirement for an objective definition?
- Question 4: Would there be significant benefits in increasing the qualifying period for FTWUK from 9 months to 12 months? What would the benefits be?
- Question 5: Do you think there is a risk of manipulation of the midnight rule? If so, how do you think it could be addressed in a targeted way?

Ordinary residence

- Question 6(a): Will any of the consequential changes have a disproportionate impact on particular individuals, allowing for the fact that there will be transitional grandfathering provisions? If so, how would you suggest mitigating that impact?
- Question 6(b): Do you think transitional provisions are needed for any other places where ordinary residence influences tax liability?
- Question 7(a): Would the revised approach be effective at restricting Overseas Workday Relief to employees who are not based in the UK?
- Question 7(b): Do you think it could deny Overseas Workday Relief to significant groups of employees who benefit from it under current rules?
- Question 8(a): Do you think some or all of the factors determining whether an employee is based in the UK beyond the three-year point should be conclusive rather than indicative?

- Question 8(b): Can you suggest any other factors which would strongly indicate that an employee will be based in the UK beyond the three-year point?

5.3 Draft legislation is included in Chapter 6 of this document. More detail about how to respond to these questions and comment on the legislation is included in Chapter 8.

Next steps

5.4 The Government welcomes views by 13 September 2012 on the issues raised in this document and the draft legislation.

5.5 Following this consultation a further draft of the legislation will be published in Finance Bill 2013 later in the autumn. A final version will be published shortly after Budget 2013 and will then be subject to parliamentary scrutiny in the usual way.

6 Draft legislation

6.1 This chapter contains draft legislation on the introduction of the statutory residence test and abolition of ordinary residence. The legislation reflects the Government's latest policy position.

6.2 The SRT legislation is in four principal parts:

- Part 1: the main rules of the test.
- Part 2: key concepts and definitions.
- Part 3: split year treatment – the main "cases" and rules for tax charging provisions.
- Part 4: anti-avoidance.

6.3 In general the Government considers that the SRT legislation is close to a final draft, subject to any changes that may be considered as a result of this consultation. However, the legislation on amendments to tax charging provisions in Part 3 and on anti-avoidance in Part 4 is at an earlier stage and the Government is aware that these parts will need refining, notwithstanding any other changes that may arise from this consultation. The anti-avoidance legislation on close company distributions is not yet included and will be published separately later.

6.4 The ordinary residence legislation is in four parts

- Part 1: changes to remittance basis of taxation, including Overseas Workday Relief.
- Part 2: consequential changes to income tax provisions.
- Part 3: consequential changes to Capital Gains Tax provision.
- Part 4: other consequential amendments.

6.5 In general the Government considers that the ordinary residence legislation is close to a final draft, subject to certain consequential changes which are not covered in this legislation, such as to Seafarers' Earnings Deduction. The Government recognises that changes will also be required to secondary legislation and plans to have draft legislation available in the autumn.

6.6 Following this consultation, a revised draft of the legislation will be published in autumn 2012 as part of Finance Bill 2013 for a further 12-week period of consultation.

1 Statutory residence test

Schedule 1 contains—

(a) provision for determining whether individuals are resident in the United Kingdom for the purposes of income tax, capital gains tax and (where relevant) inheritance tax and corporation tax,

(b) provision about split years, and

(c) provision about periods when individuals are temporarily non-resident.

SCHEDULE 1

Section 1

STATUTORY RESIDENCE TEST

PART 1

THE RULES

Introduction

1 (1) This Part of this Schedule sets out the rules for determining for the purposes of relevant tax whether individuals are resident or not resident in the UK.

(2) The rules are referred to collectively as "the statutory residence test".

(3) The rules do not apply in determining for the purposes of relevant tax whether individuals are resident or not resident in England, Wales, Scotland or Northern Ireland specifically (rather than in the UK as a whole).

(4) "Relevant tax" means—

(a) income tax,

(b) capital gains tax, and

(c) (so far as the residence status of individuals is relevant to them) inheritance tax and corporation tax.

Interpretation of enactments

2 (1) In enactments relating to relevant tax, a reference to being resident (or not resident) in the UK is, in the case of individuals, a reference to being resident (or not resident) in the UK in accordance with the statutory residence test.

(2) Sub-paragraph (1) applies even if the reference relates to the tax liability of an actual or deemed person who is not an individual (for example, where the liability of another person depends on the residence status of an individual).

(3) An individual who, in accordance with the statutory residence test, is resident (or not resident) in the UK "for" a tax year is taken for the purposes of any enactment relating to relevant tax to be resident (or not resident) there at all times in that tax year.

(4) But see Part 3 of this Schedule (split year treatment) for cases where the effect of sub-paragraph (3) is relaxed in certain circumstances.

(5) This Schedule has effect subject to any express provision to the contrary in any enactment.

The basic rule

3 An individual ("P") is resident in the UK for a tax year ("year X") if—

(a) the automatic residence test is met for that year, or

(b) the sufficient ties test is met for that year.

4 If neither of those tests is met for that year, P is not resident in the UK for that year.

The automatic residence test

5 (1) The automatic residence test is met for year X if P meets—
(a) at least one of the automatic UK tests, and
(b) none of the automatic overseas tests.

(2) There are 4 automatic UK tests.

(3) The first is that P spends at least 183 days in the UK in year X.

(4) The second is that P's only home is in the UK (or, if P has more than one home, all of them are in the UK) and that remains the case for—
(a) a period of at least 91 days, all or part of which falls within year X, or
(b) two or more separate periods within year X that together add up to at least 91 days.

(5) The third is that—
(a) P works full-time in the UK for a period of 276 days,
(b) during that period, there are no significant breaks from work,
(c) all or part of that period falls within year X, and
(d) more than 75% of the total number of days in year X when P does more than 3 hours' work are days when P does more than 3 hours' work in the UK.

(6) A "significant break from work" is a period of 31 days or more where—
(a) there is no day in the period on which P does more than 3 hours' work in the UK, and
(b) the reason for that state of affairs is not that P was absent from work because he or she was on annual leave or on sick leave.

(7) Sub-paragraph (5)(a) is satisfied so long as there is a period of 276 days for which P works full-time in the UK, even if P in fact works full-time there for longer than that.

(8) The fourth automatic UK test is that—
(a) P dies in year X,
(b) for each of the previous 3 tax years, P was resident in the UK by virtue of meeting the automatic residence test,
(c) even assuming P were not resident in the UK for year X, the tax year preceding year X would not be a split year as respects P (see Part 3 of this Schedule), and
(d) when P died, P's normal home was in the UK (even if P was living temporarily overseas at the time).

(9) If P is an international transportation worker at any time in year X, this paragraph has effect as if the third automatic UK test were omitted.

The automatic overseas tests

6 (1) There are 3 automatic overseas tests.

(2) The first is that—

(a) P was resident in the UK for one or more of the 3 tax years preceding year X, and
(b) the number of days in year X that P spends in the UK is less than 16.

(3) The second is that—
(a) P was resident in the UK for none of the 3 tax years preceding year X, and
(b) the number of days that P spends in the UK in year X is less than 46.

(4) The third is that—
(a) P works full-time overseas for year X,
(b) the number of days in year X on which P does more than 3 hours' work in the UK is less than 21, and
(c) the number of days in year X that P spends in the UK is less than 91.

(5) If P dies in year X, this paragraph has effect as if the first automatic overseas test were omitted.

(6) If P is an international transportation worker at any time in year X, this paragraph has effect as if the third automatic overseas test were omitted.

The sufficient ties test

7 (1) The sufficient ties test is met for year X if—
(a) P meets none of the automatic UK tests and none of the automatic overseas tests, but
(b) P has sufficient UK ties for that year.

(2) "UK ties" is defined in Part 2 of this Schedule.

(3) Whether P has "sufficient" UK ties for year X will depend on—
(a) whether P was resident in the UK for any of the previous 3 tax years, and
(b) the number of days that P spends in the UK in year X.

(4) The Tables in paragraphs 8 and 9 show how many ties are sufficient in each case.

Sufficient UK ties

8 The Table below shows how many UK ties are sufficient in a case where P was resident in the UK for one or more of the 3 tax years preceding year X—

Days spent by P in the UK in year X	*Number of ties that are sufficient*
More than 15 but fewer than 46	At least 4
More than 45 but fewer than 91	At least 3
More than 90 but fewer than 121	At least 2

Days spent by P in the UK in year X	*Number of ties that are sufficient*
More than 120	At least 1

9 The Table below shows how many UK ties are sufficient in a case where P was resident in the UK for none of the 3 tax years preceding year X—

Days spent by P in the UK in year X	*Number of ties that are sufficient*
More than 45 but fewer than 91	All 4
More than 90 but fewer than 121	At least 3
More than 120	At least 2

10 (1) If P dies in year X, paragraph 8 has effect as if the words "More than 15 but" were omitted from the first column of the Table.

(2) In addition, if the death occurs before 1 March in year X, paragraphs 8 and 9 have effect as if each number of days mentioned in the first column of the Table were reduced by the appropriate number.

(3) The appropriate number is found by multiplying the number of days, in each case, by—

$$\frac{A}{12}$$

where "A" is the number of whole months in year X after the month in which P dies.

(4) If, for any number of days, the appropriate number is not a whole number, the appropriate number is to be rounded up or down as follows—

(a) if the first figure after the decimal point is 5 or more, round the appropriate number up to the nearest whole number,

(b) otherwise, round it down to the nearest whole number.

PART 2

KEY CONCEPTS

Introduction

11 This Part defines some key concepts for the purposes of this Schedule.

Days spent

12 (1) If P is present in the UK at the end of a day, that day counts as a day spent by P in the UK.

(2) But it does not do so in the following two cases.

(3) The first case is where—

(a) P only arrives in the UK as a passenger on that day,

(b) P leaves the UK the next day, and

(c) between arrival and departure, P does not engage in activities that are to a substantial extent unrelated to P's passage through the UK.

(4) The second case is where—

(a) P would not be present in the UK at the end of that day but for exceptional circumstances beyond P's control that prevent P from leaving the UK, and

(b) P intends to leave the UK as soon as those circumstances permit.

(5) Examples of circumstances that may be "exceptional" are—

(a) national or local emergencies such as war, civil unrest or natural disasters, and

(b) a sudden or life-threatening illness or injury.

(6) The maximum number of days in year X to which sub-paragraph (2) may apply in reliance on sub-paragraph (4) is limited to 60 (so any days within sub-paragraph (4) above that number, whether involving the same or different exceptional circumstances, count as days spent by P in the UK).

(7) A day does not count as a day spent by P in the UK if P is not present in the UK at the end of that day.

13 Any reference to a number of days spent in the UK "in" a specified period is a reference to the total number of days spent there (in aggregate) in that period, whether continuously or intermittently.

Home

14 (1) A "home" may be any place (including a vehicle or vessel).

(2) A place may be P's home whether or not P holds any estate or interest in it (and references to "having" a home are to be read accordingly).

(3) A place that was P's home does not continue to count as such merely because P continues to hold an estate or interest in it after P has moved out.

Work

15 (1) P is considered to be "working" (or doing "work") at any time when P is doing something—

(a) in the performance of duties of an employment held by P, or

(b) in the course of a trade carried on by P (alone or in partnership).

(2) In deciding whether something is being done in the performance of duties of an employment, regard must be had to whether, if value were received by P for doing the thing, it would fall within the definition of employment income in section 7 of ITEPA 2003.

(3) In deciding whether something is being done in the course of a trade, regard must be had to whether, if expenses were incurred by P in doing the thing, the expenses could be deducted in calculating the profits of the trade for income tax purposes (assuming P were chargeable to income tax).

(4) Time spent travelling counts as time spent working if—

(a) the cost of the journey could, if it were incurred by P, be deducted in calculating P's earnings from that employment under ITEPA 2003 or, as the case may be, in calculating the profits of the trade under ITTOIA 2005, or

(b) P does something else during the journey that would itself count as work.

(5) Time spent undertaking training counts as time spent working if—

(a) in the case of an employment held by P, the training is provided or paid for by the employer and is undertaken to help P in performing duties of the employment, and

(b) in the case of a trade carried on by P, the cost of the training could be deducted in calculating the profits of the trade for income tax purposes (assuming P were chargeable to income tax).

(6) Sub-paragraphs (4) and (5) have effect without prejudice to the generality of sub-paragraphs (2) and (3).

(7) A voluntary post for which P has no contract of service does not count as an employment for the purposes of this Schedule.

Location of work

16 (1) Work is done where it is actually done, regardless of where the employment is held or the trade is carried on by P.

(2) But work done by way of or in the course of travelling by air or sea or via a tunnel under the sea—

(a) from an embarkation point overseas to a disembarkation point in the UK, or

(b) from an embarkation point in the UK to a disembarkation point overseas,

is assumed to be done overseas.

(3) This paragraph is subject to express provisions in this Schedule about the location of work done by international transportation workers.

Full-time work

17 (1) P works "full-time" in the UK or, as the case may be, overseas "for" a period if the number of hours per week that P works there, on average across the period, is 35 or more.

(2) In determining whether that test is met, the length of the period may be reduced to take account of—

(a) reasonable amounts of annual leave taken by P during the period, and

(b) absences from work at times during the period when P is on sick leave and cannot reasonably be expected to work as a result of the illness or injury.

(3) But no reduction is to be made for week-ends or public holidays.

(4) "Reasonable" amounts of annual leave are to be assessed having regard to (among other things)—

(a) the nature of the work, and

(b) the country or countries where P is working.

(5) If P holds more than one employment or carries on more than one trade during the period (whether consecutively or concurrently), the hours worked in the UK or, as the case may be, overseas with respect to each employment or trade are to be aggregated in determining whether P works there full-time for the period.

(6) If P changes employment during the period—

(a) any gap of up to 15 days between the two employments may be deducted from the length of the period in determining whether the test in sub-paragraph (1) is met, but

(b) paragraph (a) permits a deduction only if P does not work at all at any time between the two employments.

International transportation workers

18 (1) An "international transportation worker" is someone who—

(a) holds an employment, the duties of which consist of duties to be performed on board a vehicle, aircraft or ship as it makes international journeys, or

(b) carries on a trade, the activities of which consist of the provision of services on board a vehicle, aircraft or ship as it makes international journeys.

(2) But a person is not an international transportation worker by virtue of sub-paragraph (1)(b) unless, in order to provide the services, he or she has to be present (in person) on board the vehicle, aircraft or ship as it makes those journeys.

(3) Any duties or activities of a purely incidental nature are to be ignored in deciding whether the duties of an employment or the activities of a trade consist of duties or activities of a kind described in sub-paragraph (1)(a) or (b).

(4) "Ship" includes any kind of vessel.

UK ties

19 (1) What counts as a "UK tie" depends on whether P was resident in the UK for one or more of the 3 tax years preceding year X.

(2) If P was resident in the UK for one or more of those 3 tax years, each of the following ties counts as a UK tie—

(a) a family tie,

(b) an accommodation tie,

(c) a work tie,

(d) a 90-day tie, and

(e) a country tie.

(3) Otherwise, each of the following ties counts as a UK tie—

(a) a family tie,
(b) an accommodation tie,
(c) a work tie, and
(d) a 90-day tie.

Family tie

20 (1) P has a family tie for year X if—
(a) in year X, a relevant relationship exists at any time between P and another person, and
(b) that other person is someone who is resident in the UK for year X.

(2) A relevant relationship exists at any time between P and another person if at the time—
(a) P has a husband or wife or civil partner and they are not separated at the time,
(b) P and another person are living together as husband and wife or, if they are of the same sex, as civil partners, or
(c) P is a parent of a child under the age of 18.

(3) P does not have a family tie for year X by virtue of sub-paragraph (2)(c) if P sees the child in the UK on fewer than 61 days (in total) in—
(a) year X, or
(b) if the child turns 18 during year X, the part of year X before the day on which the child turns 18.

(4) A day counts as a day on which P sees the child if P sees the child in person for all or part of the day.

(5) "Separated" means separated—
(a) under an order of a court of competent jurisdiction,
(b) by deed of separation, or
(c) in circumstances where the separation is likely to be permanent.

21 (1) This paragraph applies in deciding for the purposes (only) of paragraph 20(1)(b) whether a person with whom P has a relevant relationship ("a family member") is someone who is resident in the UK for year X.

(2) A family tie based on the fact that a family member has, by the same token, a relevant relationship with P is to be disregarded in deciding whether that family member is someone who is resident in the UK for year X.

(3) A family member falling within sub-paragraph (4) is to be treated as being not resident in the UK for year X if the number of days that he or she spends in the UK in the part of year X outside term-time is less than 21.

(4) A family member falls within this sub-paragraph if he or she—
(a) is a child of P's who is under the age of 18,
(b) is in full-time education in the UK at any time in year X, and
(c) is resident in the UK for year X but would not be so resident if the time spent in full-time education in the UK in that year were disregarded.

(5) In sub-paragraph (4)—

(a) references to full-time education in the UK are to full-time education at a university, college, school or other educational establishment in the UK, and

(b) the reference to the time spent in full-time education in the UK is to the time spent there during term-time.

Accommodation tie

22 (1) P has an accommodation tie for year X if—

(a) P has a place to live in the UK,

(b) that place is available to P during year X for a continuous period of at least 91 days, and

(c) P spends at least one night at that place in that year.

(2) If there is a gap of fewer than 16 days between periods in year X when a particular place is available to P, that place is to be treated as continuing to be available to P during the gap.

(3) P is considered to have a "place to live" in the UK if—

(a) P has a home in the UK,

(b) P has a holiday home, week-end home, temporary retreat or something similar in the UK, or

(c) accommodation is otherwise available to P where P can live when P is in the UK.

(4) Accommodation may be "available" to P even if P holds no estate or interest in it and has no legal right to occupy it.

(5) If the accommodation belongs to a close relative of P, sub-paragraph (1)(c) has effect as if for "at least one night" there were substituted "a total of at least 16 nights".

(6) A "close relative" is—

(a) a parent or grandparent,

(b) a brother or sister,

(c) a child aged 18 or over, or

(d) a grandchild aged 18 or over,

in each case, whether by blood or half-blood or by marriage or civil partnership.

Work tie

23 (1) P has a work tie for year X if P works in the UK for at least 40 days (whether continuously or intermittently) in year X.

(2) For these purposes, P works in the UK for a day if P does more than 3 hours' work in the UK on that day.

(3) If P is an international transportation worker, P is assumed to do—

(a) more than 3 hours' work in the UK on any day on which P starts an international journey (as such a worker) that begins in the UK, and

(b) fewer than 3 hours' work in the UK on any other day.

(4) The assumption in sub-paragraph (3)(a) applies—

(a) whether or not P completes the journey on that day,

(b) regardless of how late in the day the journey begins, and
(c) whether or not P also starts other international journeys on the same day that begin overseas.

90-day tie

24 P has a 90-day tie for year X if P has spent more than 90 days in the UK in—
(a) the tax year preceding year X,
(b) the tax year preceding that tax year, or
(c) each of those tax years.

Country tie

25 (1) P has a country tie for year X if the country in which P spends the greatest number of days in year X is the UK.

(2) If—
(a) P spends the same number of days in two or more countries in year X, and
(b) that number is the greatest number of days spent by P in any country in year X,
P has a country tie for year X if one of those countries is the UK.

PART 3

SPLIT YEAR TREATMENT

Introduction

26 This Part—
(a) explains when, as respects an individual, a tax year is a split year,
(b) defines the overseas part and the UK part of a split year, and
(c) amends certain enactments to provide for special charging rules in cases involving split years.

27 Nothing in this Part, or in any special charging rules having effect by virtue of it, is intended to affect whether an individual falls to be regarded as resident in the UK for the purposes of double taxation arrangements.

28 Nothing in this Part, or in any special charging rules having effect by virtue of it, applies to individuals in their capacity as personal representatives or trustees of a settlement.

Definition of a "split year"

29 (1) As respects an individual, a tax year is a "split year" if—
(a) the individual is resident in the UK for that year, and
(b) the circumstances of the case fall within Case 1, Case 2, Case 3 or Case 4.

(2) The 4 Cases are described in paragraphs 30 to 33.

(3) In those paragraphs, the individual is referred to as "the taxpayer" and the tax year as "the relevant year".

Case 1: starting full-time work overseas

30 (1) The circumstances of a case fall within Case 1 if they are as described in sub-paragraphs (2) to (5).

(2) The taxpayer was resident in the UK for the previous tax year (whether or not it was a split year).

(3) On a day in the relevant year, the taxpayer starts to work full-time overseas for a period that continues to the end of the relevant year (whether or not it also continues beyond that point).

(4) In the part of the relevant year beginning with that day—

(a) the number of days on which the taxpayer does more than 3 hours' work in the UK does not exceed the permitted limit, and

(b) the number of days that the taxpayer spends in the UK does not exceed the permitted limit.

(5) The taxpayer is not resident in the UK for the next tax year because the taxpayer meets the third automatic overseas test for that year (see paragraph 6).

(6) The permitted limit is—

(a) for sub-paragraph (4)(a), the number found by reducing 20 by the appropriate number, and

(b) for sub-paragraph (4)(b), the number found by reducing 90 by the appropriate number.

(7) The appropriate number is the result of—

$$A \times \frac{B}{12}$$

where—

"A" is—

(a) 20, for sub-paragraph (4)(a), or

(b) 90, for sub-paragraph (4)(b), and

"B" is the number of whole months in the part of the relevant year before the day mentioned in sub-paragraph (3).

Case 2: accompanying spouse etc

31 (1) The circumstances of a case fall within Case 2 if they are as described in sub-paragraphs (2) to (6).

(2) The taxpayer was resident in the UK for the previous tax year (whether or not it was a split year).

(3) The taxpayer has a partner whose circumstances fall within Case 1 for the relevant year.

(4) On a day in the relevant year, the taxpayer joins the partner overseas so they can live together while the partner is working full-time overseas.

(5) In the part of the relevant year beginning with the deemed departure day—

(a) the taxpayer has no home in the UK at any time, or has homes in both the UK and overseas but spends the greater part of the time living in the overseas home, and

(b) the number of days that the taxpayer spends in the UK does not exceed the permitted limit.

(6) The taxpayer is not resident in the UK for the next tax year.

(7) The deemed departure day is the later of—
(a) the day mentioned in sub-paragraph (4), and
(b) the day on which the partner starts to work full-time overseas.

(8) "The permitted limit" has the same meaning as it has in paragraph 30(4)(b).

(9) "Partner" means—
(a) a husband or wife or civil partner,
(b) if the individual and another person are living together as husband and wife, that other person, or
(c) if the individual and another person of the same sex are living together as civil partners, that other person.

Case 3: leaving the UK to live abroad

32 (1) The circumstances of a case fall within Case 3 if they are as described in sub-paragraphs (2) to (7).

(2) The taxpayer was resident in the UK for the previous tax year (whether or not it was a split year).

(3) At the start of the relevant year the taxpayer's normal home was in the UK but—
(a) there comes a day in the relevant year when P ceases to have any home in the UK, and
(b) from then on, P has no home in the UK for the rest of that year.

(4) The circumstances do not fall within Case 1 or Case 2 for the relevant year.

(5) In the part of the relevant year beginning with the day mentioned in sub-paragraph (3)(a), the taxpayer spends fewer than 16 days in the UK.

(6) The taxpayer is not resident in the UK for the next tax year.

(7) By the end of the period of 6 months beginning with the day mentioned in sub-paragraph (3)(a), the taxpayer's normal home is overseas.

Case 4: coming to live or work full-time in the UK

33 (1) The circumstances of a case fall within Case 4 if they are as described in sub-paragraphs (2) to (5).

(2) The taxpayer was not resident in the UK for the previous tax year.

(3) Either or both of the following descriptions apply to the taxpayer—
(a) at the start of the relevant tax year, the taxpayer did not meet the only home test, but there comes a day in the relevant year when that ceases to be the case and the taxpayer then continues to meet the only home test for the rest of that year, or
(b) on a day in the relevant year the taxpayer starts to work full-time in the UK for a period that continues to the end of that year (whether or not it also continues beyond that point).

(4) For the part of the relevant year before that day (or earliest day if there is more than one), the taxpayer does not have sufficient UK ties.

(5) The taxpayer meets the second or third automatic UK test for the relevant year (see paragraph 5).

(6) The "only home test" is met if—
  (a) the taxpayer has only one home and that home is in the UK, or
  (b) the taxpayer has more than one home and all of them are in the UK.

(7) Paragraphs 4 to 9 (and Part 2 of this Schedule so far as it relates to those paragraphs) apply for the purposes of sub-paragraph (4) with the following adjustments—
  (a) references in those paragraphs and that Part to year X are to be read as references to the overseas part of the relevant year, and
  (b) each number of days mentioned in the first column of the Table in paragraphs 8 and 9 is to be reduced by the appropriate number.

(8) The appropriate number is found by multiplying the number of days, in each case, by—

$$\frac{A}{12}$$

where "A" is the number of whole months in the relevant year after the day (or earliest day) mentioned in sub-paragraph (4).

General rules for construing Cases 1 to 4

34 (1) This paragraph applies for the purposes of paragraphs 30 to 33.

(2) A reference to "the previous tax year" is to the tax year preceding the relevant year.

(3) A reference to "the next tax year" is to the tax year following the relevant year.

(4) At any given time—
  (a) a person's "normal home" is in the UK if the UK is where the person generally lives at the time (even if the person occasionally lives overseas or is living temporarily overseas at the time), and
  (b) a person's "normal home" is overseas if overseas is where the person generally lives at the time (even if the person occasionally lives in the UK or is living temporarily in the UK at the time).

(5) If calculation of the appropriate number results in a number of days that is not a whole number, the appropriate number is to be rounded up or down as follows—
  (a) if the first figure after the decimal point is 5 or more, round the appropriate number up to the nearest whole number,
  (b) otherwise, round it down to the nearest whole number.

The overseas part and the UK part

35 (1) "The overseas part" of a split year is the part of that year—
  (a) in Case 1, beginning with the day on which the taxpayer starts to work full-time overseas,

(b) in Case 2, beginning with the deemed departure day as defined in paragraph 31(7),

(c) in Case 3, beginning with the day on which the taxpayer ceases to have any home in the UK, and

(d) in Case 4, before the day (or earliest day) mentioned in paragraph 33(4).

(2) "The UK part" of a split year is the part of that year that is not the overseas part.

Special charging rules for employment income

36 ITEPA 2003 is amended as follows.

37 (1) In section 15 (earnings for year when employee UK resident), for subsection (1) substitute—

"(1) This section applies to general earnings for a tax year for which the employee is UK resident except that, in the case of a split year, it does not apply to any part of those earnings that is excluded.

(1A) General earnings are "excluded" if they—

(a) are attributable to the overseas part of the split year, and

(b) are neither—

(i) general earnings in respect of duties performed in the United Kingdom, nor

(ii) general earnings from overseas Crown employment subject to United Kingdom tax."

(2) After subsection (3) insert—

"(4) Any attribution required for the purposes of subsection (1A)(a) is to be done on a just and reasonable basis.

(5) The following provisions of Chapter 5 of this Part apply for the purposes of subsection (1A)(b) as for the purposes of section 27(2)—

(a) section 28 (which defines "general earnings from overseas Crown employment subject to United Kingdom tax"), and

(b) sections 38 to 41 (which contain rules for determining the place of performance of duties of employment).

(6) Subject to any provision made in an order under section 28(5) for the purposes of subsection (1A)(b), provisions made in an order under that section for the purposes of section 27(2) apply for the purposes of subsection (1A)(b) too."

38 In section 22 (chargeable overseas earnings for year when remittance basis applies and employee outside section 26), for subsection (7) substitute—

"(7) Section 15(1) does not apply to general earnings within subsection (1)."

39 (1) Section 23 (calculation of "chargeable overseas earnings") is amended as follows.

(2) In subsection (3), for step 1 substitute—

"*Step 1*

Identify—

(a) in the case of a tax year that is not a split year, the full amount of the overseas earnings for that year, and

(b) in the case of a split year, so much of that amount as is attributable to the UK part of that year."

(3) In that subsection, in step 2, for "those earnings" substitute "the earnings identified under step 1".

(4) After that subsection insert—

"(4) Any attribution required for the purposes of step 1 in subsection (3) is to be done on a just and reasonable basis."

40 (1) Section 24 (limit on chargeable overseas earnings where duties of associated employment performed in UK) is amended as follows.

(2) After subsection (2) insert—

"(2A) If the tax year is a split year as respects the employee, subsection (2) has effect as if for "the aggregate earnings for that year from all the employments concerned" there were substituted "so much of the aggregate earnings for that year from all the employments concerned as is attributable to the UK part of that year".

(3) After subsection (3) insert—

"(3A) Any attribution required for the purposes of subsection (2A) is to be done on a just and reasonable basis."

41 (1) Section 26 (foreign earnings for year when remittance basis applies and employee meets section 26A requirements) is amended as follows.

(2) In subsection (1), for the words from "if the general earnings" to the end substitute "if the general earnings meet all of the following conditions—

(a) they are neither—

(i) general earnings in respect of duties performed in the United Kingdom, nor

(ii) general earnings from overseas Crown employment subject to United Kingdom tax, and

(b) if the tax year is a split year as respects the employee, they are attributable to the UK part of the year."

(3) After subsection (5) insert—

"(5A) Any attribution required for the purposes of subsection (1)(b) is to be done on a just and reasonable basis."

(4) For subsection (6) substitute—

"(6) Section 15(1) does not apply to general earnings within subsection (1)."

42 In section 329 (deduction from earnings not to exceed earnings), after subsection (1) insert—

"(1A) If any of the earnings from which a deduction allowed under this Part is deductible are "excluded" within the meaning of section 15(1A)—

(a) the amount of the deduction allowed is a proportion of the amount that would be allowed under this Part if the tax year were not a split year, and

(b) that proportion is equal to the proportion that the "excluded" part of the earnings bears to the total earnings."

43 (1) Section 421E (income relating to securities: exclusions about residence etc) is amended as follows.

(2) For subsection (1) substitute—

"(1) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if the acquisition occurs in a tax year that is not a split year as respects the employee and—

(a) the earnings from the employment are not general earnings to which section 15, 22 or 26 applies (earnings for year when employee UK resident), or

(b) had there been any earnings from the employment, they would not have been general earnings to which any of those sections applied.

(1A) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if the acquisition occurs in the UK part of a tax year that is a split year as respects the employee and—

(a) the earnings from the employment attributable to that part of the year are not general earnings to which section 15, 22 or 26 applies (earnings for year when employee UK resident), or

(b) had there been any earnings from the employment attributable to that part of the year, they would not have been general earnings to which any of those sections applied.

(1B) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if the acquisition occurs in the overseas part of a tax year that is a split year as respects the employee."

(3) For subsection (2) substitute—

"(2) ..."

44 In section 474 (cases where Chapter 5 of Part 7 does not apply), for subsection (1) substitute—

"(1) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if the acquisition occurs in a tax year that is not a split year as respects the employee and—

(a) the earnings from the employment are not general earnings to which section 15, 22 or 26 applies (earnings for year when employee UK resident), or

(b) had there been any earnings from the employment, they would not have been general earnings to which any of those sections applied.

(1A) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if the acquisition occurs in the UK part of a tax year that is a split year as respects the employee and—

(a) the earnings from the employment attributable to that part of the year are not general earnings to which section 15, 22 or 26 applies (earnings for year when employee UK resident), or

(b) had there been any earnings from the employment attributable to that part of the year, they would not have been general earnings to which any of those sections applied.

(1B) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if the acquisition occurs in the overseas part of a tax year that is a split year as respects the employee."

45 (1) Section 554Z4 (residence issues) is amended as follows.

(2) ...

(3) ...

46 (1) Section 554Z9 (remittance basis: A is ordinarily UK resident) is amended as follows.

(2) ...

(3) ...

47 (1) Section 554Z10 (remittance basis: A is not ordinarily resident) is amended as follows.

(2) ...

(3) ...

Special charging rules for pension income

48 (1) Section 575 of ITEPA 2003 (foreign pensions: taxable pension income) is amended as follows.

(2) In subsection (1), after "subsections" insert "(1A),".

(3) After that subsection insert—

"(1A) If the person liable for the tax under this Part is an individual and the tax year is a split year as respects that individual, the taxable pension income for the tax year is the full amount of the pension income arising in the UK part of the year, subject to subsections (2) and (3) and section 576A."

(4) In subsection (2), after "tax year" insert "or, as the case may be, the UK part of the tax year".

Special charging rules for trading income

49 ITTOIA 2005 is amended as follows.

50 In section 6 (territorial scope of charge to tax), after subsection (2) insert—

"(2A) If the tax year is a split year as respects a UK resident individual, this section has effect as if, for the overseas part of that year, the individual were non-UK resident."

51 (1) Section 17 (effect of becoming or ceasing to be UK resident) is amended as follows.

(2) For subsection (1) substitute—

"(1) This section applies if—

(a) an individual carries on a trade otherwise than in partnership, and

(b) there is a change of residence.

(1A) For the purposes of this section there is a "change of residence" if—

(a) the individual becomes or ceases to be UK resident, or

(b) a tax year is, as respects the individual, a split year.

(1B) The change of residence occurs—

(a) in a case falling within subsection (1A)(a), at the start of the tax year for which the individual becomes or ceases to be UK resident, and

(b) in a case falling within subsection (1A)(b), at the start of whichever of the UK part or the overseas part of the tax year is the later part."

(3) In subsection (2), at the beginning insert "If this section applies and the individual does not actually cease permanently to carry on the trade immediately before the change of residence occurs,".

52 In section 849 (calculation of firm's profits or losses), after subsection (3) insert—

"(3A) For any tax year that is a split year as respects the partner, this section has effect as if the partner were non-UK resident in the overseas part of the year."

53 (1) Section 852 (carrying on by partner of notional trade) is amended as follows.

(2) For subsection (6) substitute—

"(6) If there is a change of residence, the partner is treated as permanently ceasing to carry on one notional trade when that change of residence occurs and starting to carry on another immediately afterwards."

(3) After subsection (7) insert—

"(8) Subsections (1A) and (1B) of section 17 apply for the purposes of subsection (6)."

54 (1) Section 854 (carrying on by partner of notional business) is amended as follows.

(2) For subsection (5) substitute—

"(5) If there is a change of residence, the partner is treated as permanently ceasing to carry on one notional business when that change of residence occurs and starting to carry on another immediately afterwards."

(3) After that subsection insert—

"(5A) Subsections (1A) and (1B) of section 17 apply for the purposes of subsection (5)."

Special charging rules for property income

55 In section 270 of ITTOIA 2005 (profits of property businesses: income charged), after subsection (2) insert—

"(3) If, as respects an individual carrying on an overseas property business, the tax year is a split year, tax is charged under this Chapter on so much of the profits referred to in subsection (1) as arise in the UK part of the tax year.

(4) Any apportionment required for the purposes of subsection (3) is to be done on a just and reasonable basis."

Special charging rules for savings and investment income

56 Part 4 of ITTOIA 2005 (savings and investment income) is amended as follows.

57 In section 368 (territorial scope of charges in respect of savings and investment income), after subsection (2) insert—

"(2A) If income arising to an individual who is UK resident arises in the overseas part of a split year, it is to be treated for the purposes of this section as arising to a non-UK resident."

58 In section 465 (person liable for tax on gains from life insurance etc: individuals), after subsection (1) insert—

"(1A) But if the tax year is a split year as respects the individual, the individual is not liable for tax under this Chapter in respect of gains arising in the overseas part of that year (subject to section 465B)."

59 In section 467 (person liable: UK resident trustees), in subsection (4), after paragraph (a) insert—

"(aa) is UK resident but the gain arises in the overseas part of a tax year that is, as respects the person who created the trusts, a split year,".

60 In section 468 (non-UK resident trustees and foreign institutions)—

(a) in subsection (3)(b), for "in the tax year in which" substitute "when", and

(b) in subsection (4)(b), for "in the tax year in which" substitute "when".

61 (1) Section 528 (reduction in amount charged under Chapter 9 of Part 4: non-UK resident policy holders) is amended as follows.

(2) In subsection (1), for the words from "the policy holder" to the end substitute "there are one or more days in the policy period that are days—

(a) on which the policy holder is not UK resident, or

(b) falling within the overseas part of a tax year that, as respects the policy holder, is a split year."

(3) In subsection (3), in the definition of "A", for "on which the policy holder was not UK resident in the policy period" substitute "in the policy period that are days within paragraph (a) or (b) of subsection (1)".

Special charging rules for miscellaneous income

62 In section 577 (territorial scope of charges in respect of miscellaneous income), after subsection (2) insert—

"(2A) If income arising to an individual who is UK resident arises in the overseas part of a split year, it is to be treated for the purposes of this section as arising to a non-UK resident."

Special charging rules for relevant foreign income charged on remittance basis

63 In section 832 of ITTOIA 2005 (relevant foreign income charged on remittance basis), for subsection (2) substitute—

"(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 United Kingdom—

(a) in that year, or

(b) in the UK part of that year, if that year is a split year as respects the individual."

Special charging rules for capital gains

64 TCGA 1992 is amended as follows.

65 (1) Section 2 (persons and gains chargeable to capital gains tax, and allowable losses) is amended as follows.

(2) After subsection (1A) (inserted by Schedule {jORs} to this Act) insert—

"(1B) If the year is a split year as respects an individual, the individual is not chargeable to capital gains tax in respect of any chargeable gains accruing to the individual in the overseas part of that year.

(1C) But subsection (1B)—

(a) does not apply to chargeable gains in respect of which the individual would have been chargeable to capital gains tax under section 10, had the individual been not resident in the UK for the year, and

(b) is without prejudice to section 10A."

(3) In subsection (2)—

(a) after "the year of assessment" insert "or, where subsection (1B) applies, the UK part of that year", and

(b) in paragraph (a), after "that year of assessment" insert "or that part (as the case may be)".

66 (1) Section 3A (reporting limits) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), after "year of assessment" insert "or, if that year is a split year as respects the individual, the UK part of that year", and

(b) in paragraph (b), after "in that year" insert "or, as the case may be, that part of the year".

(3) In subsection (2), after "year of assessment" insert "(or the UK part of such a year)".

67 (1) Section 12 (non-UK domiciled individuals to whom remittance basis applies) is amended as follows.

(2) After subsection (2) insert—

"(2A) If that tax year is a split year as respects the individual, the chargeable gains are treated as accruing to the individual in the part of the year (the overseas part or the UK part) in which the foreign chargeable gains are so remitted."

(3) In subsection (3), after "that year" insert "or, where applicable, that part of the year".

68 In section 13 (attribution of gains to members of non-resident companies), after subsection (3) insert—

"(3A) Subsection (2) does not apply in the case of a participator who is an individual if—

(a) the tax year in which the chargeable gain accrues to the company is a split year as respects the participator, and

(b) the chargeable gain accrues to the company in the overseas part of that year."

69 In section 16 (computation of losses), after subsection (3) insert—

"(3A) If the person is an individual and the year is a split year as respects that individual, subsection (3) also applies to a loss accruing to the individual in the overseas part of that year."

70 In section 16ZB (individual who has made election under section 16ZA: foreign chargeable gains remitted in tax year after tax year in which accrue), in subsection (1)(c), after "tax year" insert "or a part of the applicable tax year".

71 (1) Section 16ZC (individual who has made election under section 16ZA and to whom remittance basis applies) is amended as follows.

(2) In subsection (3)—

(a) in paragraph (a), after "that year" insert "or, if that year is a split year as respects the individual, in the UK part of that year", and

(b) in paragraph (b), after "that year" insert "or they are so remitted in that year but it is a split year as respects the individual and they are so remitted in the overseas part of the year".

(3) In subsection (7), in the definiton of "relevant allowable losses", after "tax year" insert "or a part of the tax year".

72 In section 86 (attribution of gains to settlors with interest in non-resident or dual resident settlements), in subsection (4)(a), after "the year" insert "or if, as respects the settlor, the year is a split year, in the UK part of that year".

73 In section 87 (non-UK resident settlements: attribution of gains to beneficiaries), after subsection (6) insert—

"(7) If the relevant tax year is a split year as respects a beneficiary of the settlement—

(a) the amount on which the beneficiary is chargeable to capital gains tax by virtue of this section for that year (in respect of the settlement) is a portion of the amount on which the

beneficiary would have been so chargeable if the relevant tax year had not been a split year, and

(b) the portion is the portion attributable to the UK part of the relevant tax year calculated on a time apportionment basis."

74 (1) Schedule 4C (transfers of value: attribution of gains to beneficiaries) is amended as follows.

(2) In paragraph 9(1)—

(a) for "sub-paragraphs (2) to (4)" substitute "sub-paragraphs (2) to (5)", and

(b) for "sub-paragraph (4)" substitute "sub-paragraph (4) or (5)".

(3) In paragraph 9, after sub-paragraph (4) insert—

"(5) This sub-paragraph applies to a capital payment if (and to the extent that)—

(a) the tax year in which it is received (or treated as received) is a split year as respects the beneficiary receiving it, and

(b) it is received (or treated as received) by the beneficiary in the overseas part of that year."

Definitions in enactments relating to income tax and CGT

75 (1) Section 288 of TCGA 1992 (interpretation) is amended as follows.

(2) In subsection (1), insert the following definition in the appropriate place—

""split year", as respects an individual, means a tax year that, as respects that individual, is a split year within the meaning of Part 3 of Schedule 1 to the Finance Act 2013 (statutory residence test: split year treatment);".

(3) After subsection (1ZA) insert—

"(1ZB) A reference in this Act to "the overseas part" or "the UK part" of a split year is to be read in accordance with Part 3 of Schedule 1 to the Finance Act 2013 (statutory residence test: split year treatment)."

76 In Part 2 of Schedule 1 to ITEPA 2003 (index of defined expressions), insert the following entries in the appropriate places—

"the overseas part	section 989 of ITA 2007",
"split year	section 989 of ITA 2007", and
"the UK part	section 989 of ITA 2007".

77 In Part 2 of Schedule 4 to ITTOIA 2005 (index of defined expressions), insert the following entries in the appropriate places—

"the overseas part	section 989 of ITA 2007",

"split year	section 989 of ITA 2007", and
"the UK part	section 989 of ITA 2007".

78 In section 989 of ITA 2007 (definitions for purposes of Income Tax Acts), insert the following definitions in the appropriate places—

""the overseas part", in relation to a split year, has the meaning given in Part 3 of Schedule 1 to FA 2013 (statutory residence test: split year treatment);",

""split year", in relation to an individual, means a tax year that, as respects that individual, is a split year within the meaning of Part 3 of Schedule 1 to FA 2013 (statutory residence test: split year treatment);", and

""the UK part", in relation to a split year, has the meaning given in Part 3 of Schedule 1 to FA 2013 (statutory residence test: split year treatment);".

79 In Schedule 4 to that Act (index of defined expressions), insert the following entries in the appropriate places—

"the overseas part	section 989",
"split year	section 989", and
"the UK part	section 989".

PART 4

ANTI-AVOIDANCE

Introduction

80 This Part—

(a) explains when an individual is to be regarded for the purposes of certain enactments as temporarily non-resident,

(b) defines the year of departure and the period of return for the purposes of those enactments,

(c) makes consequential amendments to certain enactments containing special charging rules for temporary non-residents, and

(d) inserts some more special charging rules for temporary non-residents in certain cases.

Meaning of temporarily non-resident

81 (1) An individual is to be regarded as "temporarily non-resident" if—

(a) the individual has sole UK residence for a residence period,

(b) immediately following that period (referred to as "period A"), one or more residence periods occur for which the individual does not have sole UK residence,

(c) at least 4 out of the 7 tax years immediately preceding the year of departure were either—

(i) a tax year for which the individual had sole UK residence, or
(ii) a split year that included a residence period for which the individual had sole UK residence, and

(d) the temporary period of non-residence is shorter than 5 years.

(2) Terms used in sub-paragraph (1) are defined below.

Residence periods

82 In relation to an individual, a "residence period" is—
(a) a tax year that, as respects the individual, is not a split year, or
(b) the overseas part or the UK part of a tax year that, as respects the individual, is a split year.

Sole UK residence

83 (1) An individual has "sole UK residence" for a residence period consisting of an entire tax year if—
(a) the individual is resident in the UK for that year, and
(b) there is no time in that year when the individual is Treaty non-resident.

(2) An individual has "sole UK residence" for a residence period consisting of part of a split year if—
(a) the residence period is the UK part of that year, and
(b) there is no time in that part of the year when the individual is Treaty non-resident.

(3) An individual is "Treaty non-resident" at any time if at the time the individual falls to be regarded as resident in a country outside the UK for the purposes of double taxation arrangements having effect at the time.

Temporary period of non-residence

84 In relation to an individual, "the temporary period of non-residence" is the period between—
(a) the end of period A, and
(b) the start of the next residence period after period A for which the individual has sole UK residence.

Year of departure

85 "The year of departure" is the tax year consisting of or including period A.

Period of return

86 "The period of return" is the first residence period after period A for which the individual has sole UK residence.

Consequential amendments

87 In TCGA 1992, for section 10A substitute—

"10A Temporary non-residents

(1) This section applies if an individual ("the taxpayer") is temporarily non-resident.

(2) The taxpayer is chargeable to capital gains tax as if gains and losses within subsection (3) were chargeable gains or, as the case may be, losses accruing to the taxpayer in the period of return.

(3) The gains and losses are—

(a) all the chargeable gains and losses accruing to the taxpayer in the temporary period of non-residence,

(b) all the chargeable gains that would, applying the assumptions in subsection (4), have been treated under section 13 or 86 as accruing to the taxpayer in that period, and

(c) any losses that would, applying those assumptions, have been allowable in the taxpayer's case under section 13(8) in that period.

(4) The assumptions are—

(a) the taxpayer was resident in the UK for the tax year in which the chargeable gain (or loss) accrued in the temporary period of non-residence, and

(b) that tax year was not a split year as respects the taxpayer.

(5) Subsection (2) is subject to sections 10AA and 86A.

(6) The reference in subsection (3)(c) to any losses that would have been allowable in the taxpayer's case is a reference to so much of sum A as does not exceed sum B, where—

"sum A" is the aggregate of the losses that would have been available in accordance with section 13(8) for reducing gains accruing to the taxpayer by virtue of section 13 in the relevant tax year, and

"sum B" is the amount of the gains that would have accrued to the taxpayer in that tax year applying the assumptions in subsection (4).

(7) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the taxpayer for the year of return, any foreign chargeable gains falling within subsection (3)(a) that were remitted to the United Kingdom at any time in the temporary period of non-residence are to be treated as remitted to the United Kingdom in the period of return.

(8) This section does not apply to a gain or loss in respect of which the individual is chargeable to capital gains tax apart from this section (and could not cease to be so chargeable by the making of any claim under section 6 of TIOPA 2010).

(9) Part 4 of Schedule 1 to the Finance Act 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(10) In this section—

"foreign chargeable gains" has the meaning given by section 12(4);

"remitted to the United Kingdom" has the same meaning as in Chapter A1 of Part 14 of ITA 2007;

"the year of return" means the tax year that consists of or includes the period of return.

10AA Section 10A: supplementary

(1) Section 10A(2) does not apply to a gain or loss accruing on the disposal by the taxpayer of an asset if—

(a) the asset was acquired by the taxpayer in the temporary period of non-residence,

(b) it was so acquired otherwise than by means of a relevant disposal that by virtue of section 58, 73 or 258(4) is treated as having been a disposal on which neither a gain nor a loss accrued,

(c) the asset is not an interest created by or arising under a settlement, and

(d) the amount or value of the consideration for the acquisition of the asset by the taxpayer does not fall, by reference to any relevant disposal, to be treated as reduced under section 23(4)(b) or (5)(b), 152(1)(b), 153(1)(b), 162(3)(b) or 247(2)(b) or (3)(b).

(2) "Relevant disposal" means a disposal of an asset acquired by the person making the disposal at a time when that person was resident in the United Kingdom and was not Treaty non-resident.

(3) Subsection (1) does not apply if—

(a) the gain is one that (ignoring section 10A) would fall to be treated by virtue of section 116(10) or (11), 134 or 154(2) or (4) as accruing on the disposal of the whole or part of another asset, and

(b) that other asset meets the requirements of paragraphs (a) to (d) of subsection (1), but the asset in respect of which the gain actually accrued or would actually accrue does not.

(4) Section 10A(2) does not apply to a gain or loss that has fallen to be brought into account in the taxpayer's case by virtue of section 10 or 16(3).

(5) Nothing in any double taxation relief arrangements is to be read as preventing the taxpayer from being chargeable to capital gains tax in respect of any chargeable gains treated by virtue of section 10A(3)(a) as accruing to the taxpayer in the period of return (or as preventing a charge to that tax from arising as a result).

(6) Nothing in any enactment imposing any limit on the time within which an assessment to capital gains tax may be made prevents any

assessment for the year of departure from being made in the taxpayer's case at any time before the end of the second anniversary of the 31 January next following the year of return.

(7) "The year of return" has the same meaning as in section 10A."

88 (1) Section 86A (attribution of gains to settlor in section 10A cases) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), omit "for any intervening year or years", and

(b) in paragraph (b), for "non-residence period" substitute "temporary period of non-residence".

(3) ...

(4) ...

89 (1) Section 96 (payment by and to companies) is amended as follows.

(2) In subsection (9A), for "is an intervening year" substitute "falls within the temporary period of non-residence".

(3) ...

90 (1) Schedule 4C (transfers of value: attribution of gains to beneficiaries) is amended as follows.

(2) In paragraph 6(1)(b), for "year of return" substitute "period of return".

(3) In paragraph 12...

(4) In paragraph 12A(1)...

91 In ITEPA 2003, for section 576A substitute—

"576ATemporary non-residents

(1) This section applies if a person is temporarily non-resident.

(2) Any relevant withdrawals within subsection (3) are to be treated for the purposes of section 575 as if they arose in the period of return.

(3) A relevant withdrawal is within this subsection if—

(a) it is paid to the person in the temporary period of non-residence, and

(b) ignoring this section, it is not chargeable to tax under this Part (or would not be if a DTR claim were made in respect of it).

(4) A "relevant withdrawal" is an amount paid under a relevant non-UK scheme that—

(a) is paid to the person in respect of a flexible drawdown arrangement relating to the person under the scheme, and

(b) would, if the scheme were a registered pension scheme, be "income withdrawal" or "dependants' income withdrawal" within the meaning of paragraphs 7 and 21 of Schedule 28 to FA 2004.

(5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the person for the year of return, any relevant withdrawal within

subsection (3) that was remitted to the United Kingdom in the temporary period of non-residence is to be treated as remitted to the United Kingdom in the period of return.

(6) This section does not apply to a relevant withdrawal if—

(a) it is paid to or in respect of a relieved member of the scheme and is not referable to the member's UK tax-relieved fund under the scheme, or

(b) it is paid to or in respect of a transfer member of the scheme and is not referable to the member's relevant transfer fund under the scheme.

(7) Nothing in any double taxation relief arrangements is to be read as preventing the person from being chargeable to income tax in respect of any relevant withdrawal treated by virtue of this section as arising in the period of return (or as preventing a charge to that tax from arising as a result).

(8) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when a person is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(9) In this section—

"double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;

"DTR claim" means a claim for relief under section 6 of that Act;

"flexible drawdown arrangement" means an arrangement to which section 165(3A) or 167(2A) of FA 2004 applies;

"remitted to the United Kingdom" has the same meaning as in Chapter A1 of Part 14 of ITA 2007;

"the year of return" means the tax year that consists of or includes the period of return.

(10) The following expressions have the meaning given in Schedule 34 to FA 2004—

"relevant non-UK scheme" (see paragraph 1(5));

"relieved member" (see paragraph 1(7));

"transfer member" (see paragraph 1(8));

"member's UK tax-relieved fund" (see paragraph 3(2));

"member's relevant transfer fund" (see paragraph 4(2))."

92 In ITEPA 2003, for section 579CA substitute—

"579CA Temporary non-residents

(1) This section applies if a person is temporarily non-resident.

(2) Any relevant withdrawals within subsection (3) are to be treated for the purposes of section 579B as if they accrued in the period of return.

(3) A relevant withdrawal is within this subsection if—

(a) it is paid to the person in the temporary period of non-residence, and

(b) ignoring this section, it is not chargeable to tax under this Part (or would not be if a DTR claim were made in respect of it).

(4) A "relevant withdrawal" is any income withdrawal or dependants' income withdrawal paid to the person under a registered pension scheme in respect of a flexible drawdown arrangement relating to the person under the scheme.

(5) Nothing in any double taxation relief arrangements is to be read as preventing the person from being chargeable to income tax in respect of any relevant withdrawal treated by virtue of this section as accruing in the period of return (or as preventing a charge to that tax from arising as a result).

(6) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when a person to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(7) In this section—

"double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;

"DTR claim" means a claim for relief under section 6 of that Act;

"flexible drawdown arrangement" means an arrangement to which section 165(3A) or 167(2A) of FA 2004 applies;

"the year of return" means the tax year that consists of or includes the period of return."

93 In ITTOIA 2005, for section 832A substitute—

"832ASection 832: temporary non-residents

(1) This section applies if an individual is temporarily non-resident.

(2) Treat any of the individual's relevant foreign income within subsection (3) that is remitted to the United Kingdom in the temporary period of non-residence as remitted to the United Kingdom in the period of return.

(3) Relevant foreign income is within this subsection if—

(a) it is relevant foreign income for the UK part of the year of departure or an earlier tax year, and

(b) section 832 applies to it.

(4) Any apportionment required for the purposes of subsection (3)(a) is to be done on a just and reasonable basis.

(5) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax in respect of any relevant foreign income treated by virtue of this section as remitted to the United Kingdom in the period of return (or as preventing a charge to that tax from arising as a result).

(6) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(7) In this section, "double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010."

Distributions to participators etc in close companies

94 ...

Chargeable event gains

95 In Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc), after section 465A insert—

"465B Temporary non-residents

(1) This section applies if an individual is temporarily non-resident.

(2) The individual is liable for tax under this Chapter for the year of return in respect of any gain that meets the conditions in subsection (3).

(3) The conditions are—

(a) the gain arose in the temporary period of non-residence,

(b) it arose from a policy issued, or a contract made, before the start of that period,

(c) the chargeable event giving rise to it was neither a death nor a chargeable event treated as occurring under section 525(2),

(d) no-one is liable under section 466 or 467, or by virtue of section 468, in respect of the gain, and

(e) the individual would have been liable under section 465 in respect of it, applying the assumptions in subsection (4).

(4) The assumptions are—

(a) the individual was UK resident for the tax year in which the gain arose, and

(b) that tax year was not a split year as respects the individual.

(5) The amount of any gain in respect of which the individual is liable for tax by virtue of subsection (2) is the amount on which tax would have been charged under this Chapter applying the assumptions in subsection (4).

(6) That amount is treated as income of the individual for the year of return.

(7) This section does not apply to a gain if—

(a) in relation to the policy or contract from which the gain arises, a terminal event occurs in the temporary period of non-residence or in the period of return,

(b) the chargeable event giving rise to the gain occurred before that terminal event, and

(c) a person (whether or not the individual) is liable for tax under this Chapter (including by virtue of this section) in respect of any gain resulting from the terminal event.

(8) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being liable for tax under this Chapter in respect of any gain in respect of which the individual is liable for tax by virtue of subsection (2) (or as preventing a charge to tax on that gain from arising under this Chapter).

(9) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(10) In this section—

"terminal event" means an event mentioned in section 499(3);

"year of return" means the tax year that consists of or includes the period of return."

96 In section 552 of ICTA (information: duties of insurers), in subsection (13), for "section 541A" substitute "section 465B or 541A".

Lump sum payments under pension schemes etc

97 ITEPA 2003 is amended as follows.

98 In Chapter 2 of Part 6 (employer-financed retirement benefits), after section 394 insert—

"394ATemporary non-residents

(1) This section applies if an individual is temporarily non-resident.

(2) Any benefits within subsection (3) are to be treated for the purposes of section 394(1) as if they were received by the individual in the period of return.

(3) A benefit is within this subsection if—

(a) this Chapter applies to it,

(b) it is in the form of a lump sum,

(c) it is received by the individual in the temporary period of non-residence, and

(d) ignoring this section—

(i) no charge to tax arises by virtue of section 394(1) in respect of it, but

(ii) such a charge would arise if the existence of any double taxation relief arrangements were disregarded.

(4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.

(5) Subsection (2) does not affect the operation of section 394(1A) (and, accordingly, "the relevant year" for the purposes of section 394(1A) remains the tax year in which the benefit is actually received).

(6) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax in respect of any benefit treated by virtue of this section as received in the period of return (or as preventing a charge to that tax from arising as a result).

(7) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(8) In this section—

"double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;

"DTR claim" means a claim for relief under section 6 of that Act."

99 In Chapter 2 of Part 7A (employment income provided through third parties: treatment of relevant step for income tax purposes), after section 554Z4 insert—

"554Z4A Temporary non-residents

(1) This section applies if A is temporarily non-resident.

(2) Any relevant step within subsection (3) is to be treated for the purposes of section 554Z2 as if it were taken in the period of return.

(3) A relevant step is within this subsection if—

(a) it is the payment of a lump sum to a relevant person (see section 554C(2)),

(b) the lump sum is a relevant benefit provided under a relevant scheme,

(c) the step is taken in the temporary period of non-residence, and

(d) ignoring this section—

(i) no charge to tax arises by virtue of section 554Z2 by reason of the step, but

(ii) such a charge would arise if the existence of any double taxation relief arrangements were disregarded.

(4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.

(5) Nothing in any double taxation relief arrangements is to be read as preventing A from being chargeable to income tax in respect of any relevant step treated by virtue of this section as taken in the period of return (or as preventing a charge to that tax from arising as a result).

(6) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(7) In this section—

"double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;

"DTR claim" means a claim for relief under section 6 of that Act;

"relevant benefit" has the same meaning as in Chapter 2 of Part 6;

"relevant scheme" means an employee-financed retirement benefits scheme (within the meaning of that Chapter) or a superannuation fund to which section 615(3) of ICTA applies."

100 In that Chapter, after section 554Z11 insert—

"554Z11A Temporary non-residents

(1) This section applies if A is temporarily non-resident.

(2) Any amount within subsection (3) is to be treated for the purposes of section 554Z9(2) or (as the case may be) 554Z10(2) as if it were remitted to the United Kingdom in the period of return.

(3) An amount is within this subsection if—

(a) it is all or part of a relevant benefit provided to a relevant person (see section 554C(2)) under a relevant scheme,

(b) it is provided in the form of the lump sum,

(c) it is remitted to the United Kingdom in the temporary period of non-residence, and

(d) ignoring this section—

(i) no charge to tax arises by virtue of section 554Z9(2) or 554Z10(2) in respect of it, but

(ii) such a charge would arise by virtue of one of those sections if the existence of any double taxation relief arrangements were disregarded.

(4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.

(5) Nothing in any double taxation relief arrangements is to be read as preventing A from being chargeable to income tax in respect of any income treated by virtue of this section as remitted to the United Kingdom in the period of return (or as preventing a charge to that tax from arising as a result).

(6) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(7) In this section—

"double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;

"DTR claim" means a claim for relief under section 6 of that Act;

"relevant benefit" has the same meaning as in Chapter 2 of Part 6;

"relevant scheme" means an employee-financed retirement benefits scheme (within the meaning of that Chapter) or a superannuation fund to which section 615(3) of ICTA applies;

"remitted to the United Kingdom" has the same meaning as in Chapter A1 of Part 14 of ITA 2007."

101 In Chapter 3 of Part 9 (United Kingdom pensions: general rules), after section 572 insert—

"572ATemporary non-residents

(1) This section applies if an individual is temporarily non-resident.

(2) Any pension within subsection (3) is to be treated for the purposes of section 571 as if it accrued in the period of return.

(3) A pension is within this subsection if—

(a) section 569 applies to it,

(b) it is in the form of a lump sum,

(c) it accrued in the temporary period of non-residence, and

(d) ignoring this section—

(i) it is not chargeable to tax under this Chapter, but

(ii) it would be so chargeable if the existence of any double taxation relief arrangements were disregarded.

(4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.

(5) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax in respect of any pension treated by virtue of this section as accruing in the period of return (or as preventing a charge to that tax from arising as a result).

(6) Part 4 of Schedule 1 to FA 2013 (statutory residence test: anti-avoidance) explains—

(a) when an individual is to be regarded as "temporarily non-resident", and

(b) what "the temporary period of non-residence" and "the period of return" mean.

(7) In this section—

"double taxation relief arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;

"DTR claim" means a claim for relief under section 6 of that Act."

102 (1) In Chapter 1 of Part 11 (pay as you earn: introduction), section 683 is amended as follows.

(2) After subsection (3) insert—

"(3ZA) "PAYE employment income" for a tax year does not include any taxable specific income treated as paid or received in that tax year by section 394A or 554Z4A (temporary non-residents)."

(3) For subsection (3B) substitute—

"(3B) "PAYE pension income" for a tax year does not include any taxable pension income that is treated as accruing in that tax year by section 572A or 579CA (temporary non-residents)."

PART 5

MISCELLANEOUS

Interpretation

103 In this Schedule—

"annual leave", in relation to an individual who carries on a trade, means reasonable amounts of annual holiday (and "reasonable" is to be assessed having regard to the annual leave to which an employee might be entitled if doing similar work);

"corporation tax" includes any amount assessable or chargeable as if it were corporation tax;

"country" includes a state or territory;

"double taxation arrangements" means arrangements that have effect under section 2(1) of TIOPA 2010;

"employment"—

(a) has the meaning given in section 4 of ITEPA 2003, and

(b) includes an office within the meaning of section 5(3) of that Act;

"enactment" includes—

(a) an Act of the Scottish Parliament,

(b) a Measure or Act of the National Assembly for Wales,

(c) any Northern Ireland legislation as defined by section 24(5) of the Interpretation Act 1978, and

(d) any Orders in Council, orders, rules, regulations, schemes warrants, byelaws and other instruments made under an enactment (including anything mentioned in paragraphs (a) to (c) of this definition);

"individual" means an individual acting in any capacity (including as trustee or personal representative);

"overseas" means anywhere outside the UK;

"split year", as respects an individual, means a tax year that is, as respects that individual, a split year within the meaning of Part 3 of this Schedule;

"trade" also includes—

(a) a profession or vocation,

(b) anything that is treated as a trade for income tax purposes, and

(c) the commercial occupation of woodlands (within the meaning of section 11(2) of ITTOIA 2005);

"UK" means the United Kingdom, including the territorial sea of the United Kingdom;

"whole month" means the whole of January, the whole of February and so on, except that the period from the start of a tax year to the end of April is to count as a whole month.

104 A reference in this Schedule to a number of days being less than a specified number includes a case where the number of days is nil.

Consequential amendments

105 (1) TCGA 1992 is amended as follows.

(2) Omit section 9.

(3) In section 288 (interpretation)—

(a) in subsection (1), insert the following definition at the appropriate place—

""resident" means resident in accordance with the statutory residence test in Part 1 of Schedule to the Finance Act 2013;", and

(b) in the Table in subsection (8), omit the entry for the expressions "resident" and "ordinarily resident".

106 In section 27 of ITEPA 2003 (UK-based earnings for year when employee not UK resident), in subsection (1), for "in which" substitute "for which".

107 In section 465 of ITTOIA 2005 (gains from contracts for life insurance etc: liability of individuals), in subsection (1), for "in the tax year" substitute "for the tax year".

108 (1) Chapter 4 of Part 2 of FA 2005 (trusts with vulnerable beneficiary) is amended as follows.

(2) In section 28 (vulnerable person's liability: VQTI), for subsection (4) substitute—

"(4) Where the vulnerable person is non-UK resident for the tax year, his or her income tax liability for the purposes of determining TLV1 and TLV2 is to be computed in accordance with the Income Tax Acts on the assumption that—

(a) he or she is UK resident for the tax year,

(b) that year is not, as respects him or her, a split year within the meaning of Part 4 of Schedule 1 to FA 2013, and

(c) he or she is domiciled in the United Kingdom throughout that year."

(3) In section 30 (qualifying trusts gains: special capital gains tax treatment)—

(a) in subsection (2)(a) and (b), for "during" substitute "for", and

(b) omit subsection (5).

(4) In section 31 (UK resident vulnerable persons: amount of relief), in subsection (1), for "during" substitute "for".

(5) In section 32 (non-UK resident vulnerable persons: amount of relief), in subsection (1), for "during" substitute "for".

(6) In section 41—

(a) in subsection (1), insert the following definitions in the appropriate places—

""non-UK resident" means not resident in the United Kingdom in accordance with the statutory residence test in Part 1 of Schedule 1 to FA 2013,", and

""UK resident" means resident in the United Kingdom in accordance with the statutory residence test in Part 1 of Schedule 1 to FA 2013.", and

(b) omit subsection (2).

109 In ITA 2007, omit sections 829 to 832.

Commencement

110 (1) Parts 1 and 2 of this Schedule have effect for determining whether individuals are resident or not resident in the UK for the tax year 2013-14 or any subsequent tax year.

(2) Part 3 of this Schedule has effect in calculating an individual's liability to income tax or capital gains tax for the tax year 2013-14 or any subsequent tax year.

(3) Part 4 of this Schedule has effect if the year of departure is the tax year 2013-14 or a subsequent tax year.

(4) Without limiting the generality of sub-paragraph (3), the amendments of Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc) made by Part 4 of this Schedule do not apply unless the policy or contract in question falls within sub-paragraph (5).

(5) A policy or contract falls within this sub-paragraph if—

(a) it is issued or made on or after 6 April 2013,

(b) it is varied on or after that date so as to increase the benefits secured (any exercise of rights conferred by the policy or contract being regarded for this purpose as a variation),

(c) there is an assignment (or assignation) to the individual concerned (whether or not for money or money's worth) on or after that date of rights, or a share of rights, conferred by the policy or contract, or

(d) all or part of the rights conferred by the policy or contract become held on or after that date as a security for a debt of the individual concerned.

Transitional provision

111 (1) This paragraph applies if—

(a) year X or, in Part 3 of this Schedule, the relevant year is the tax year 2013-14, 2014-15 or 2015-16, and

(b) it is necessary to determine under this Schedule whether an individual was resident or not resident in the UK for a tax year before the tax year 2013-14 (a "pre-commencement tax year").

(2) The question is to be determined in accordance with the rules in force for determining an individual's residence for that pre-commencement tax year (and not in accordance with the statutory residence test).

(3) But an individual may by notice in writing to HMRC elect, as respects one or more pre-commencement tax years, for the question to be determined instead in accordance with the statutory residence test.

(4) A notice under sub-paragraph (3)—

(a) must be given no later than the first anniversary of the end of year X or, in a Part 3 case, the relevant year, and

(b) is irrevocable.

112 (1) The existing temporary non-resident provisions, as in force immediately before the day on which this Act is passed, continue to have effect on and after that day in any case where the year of departure (as defined in those provisions) is a tax year before the tax year 2013-14.

(2) Where those provisions continue to have effect by virtue of sub-paragraph (1)—

(a) the question of whether a person is or is not resident in the UK for the tax year 2013-14 or a subsequent tax year is to be determined in accordance with Part 1 of this Schedule, but

(b) the effect of Part 3 is to be ignored.

(3) The existing temporary non-resident provisions are—

(a) section 10A of TCGA 1992 (chargeable gains),

(b) section 576A of ITEPA 2003 (income withdrawals under certain foreign pensions),

(c) section 579CA of that Act (income withdrawals under registered pension schemes), and

(d) section 832A of ITTOIA (relevant foreign income charged on remittance basis).

1 Ordinary residence

Schedule 1 contains provision removing or replacing rules relating to ordinary residence.

SCHEDULE 1

Section 1

ORDINARY RESIDENCE

PART 1

INCOME TAX AND CAPITAL GAINS TAX: REMITTANCE BASIS OF TAXATION

Remittance basis restricted to non-doms

1 Chapter A1 of Part 14 of ITA 2007 (remittance basis) is amended as follows.

2 In section 809A (overview of Chapter), omit "or are not ordinarily UK resident".

3 In section 809B (claim for remittance basis to apply)—

(a) in subsection (1)(b), omit "or is not ordinarily UK resident in that year", and

(b) for subsection (2) substitute—

"(2) The claim must state—

(a) whether the individual's foreign income and gains for the tax year include relevant foreign earnings or foreign specific employment income, and

(b) if so, whether the individual meets the requirements of section 26A of ITEPA 2003 for that year."

4 In section 809D (application of remittance basis without claim where unremitted foreign income and gains under £2,000)—

(a) in subsection (1)(b), omit "or is not ordinarily UK resident in that year", and

(b) in subsection (1A), omit "the individual is not domiciled in the United Kingdom in that year and".

5 In section 809E (application of remittance basis without claim: other cases), in subsection (1)(b), omit "or is not ordinarily UK resident in that year".

Treatment of relevant foreign earnings

6 ITEPA 2003 is amended as follows.

7 (1) In section 22 (chargeable overseas earnings for year where remittance basis applies and employee ordinarily UK resident), in subsection (1), for paragraph (b) substitute—

"(b) the employee does not meet the requirements of section 26A for that year."

(2) Accordingly, in the heading of that section, for "**ordinarily UK resident**" substitute "**outside section 26**".

8 In section 23 (calculation of "chargeable overseas earnings"), in subsection

(2), for paragraph (aa) substitute—

"(aa) the employee does not meet the requirements of section 26A for that year,".

9 (1) In section 26 (foreign earnings for year when remittance basis applies and employee not ordinarily UK resident), in subsection (1), for "is not ordinarily UK resident in" substitute "meets the requirements of section 26A for".

(2) Accordingly, in the heading of that section, for "**not ordinarily UK resident**" substitute "**meets section 26A requirements**".

10 After that section insert—

"26A Section 26: the employee requirements

(1) An employee meets the requirements of this section for a tax year ("year X") if—

(a) it is a qualifying tax year, and

(b) during the affected residence period, the employee's situation does not fall within subsection (4) at any point.

(2) Year X is a "qualifying tax year" if—

(a) the employee was non-UK resident for each of the previous 3 tax years, or

(b) the employee was UK resident for the previous tax year but non-UK resident for each of the 3 tax years before that, or

(c) the employee was UK resident for the previous 2 tax years but non-UK resident for each of the 3 tax years before that.

(3) "The affected residence period" is as follows—

(a) for a case within subsection (2)(a), it is year X,

(b) for a case within subsection (2)(b), it is year X and the previous tax year, and

(c) for a case within subsection (2)(c), it is year X and the previous 2 tax years.

(4) An employee's situation falls within this subsection if—

(a) the employee is based in the United Kingdom for the time being, and

(b) it is reasonable to assume that he or she will continue to be based there up to and beyond the 3-year cut-off point.

(5) "The 3-year cut-off point" is the end of the period of 3 years that began when the affected residence period began.

26B Meaning of "based" in the UK

(1) For the purposes of section 26A, an employee is "based" in the United Kingdom for the time being if the employee is—

(a) living there for all or a substantial part of his or her time,

(b) working or studying there full-time or for a substantial part of his or her time (despite living elsewhere), or

(c) otherwise spending so much time there that it is reasonable to regard him or her as being based there.

(2) Accordingly, an employee may be based in the United Kingdom and in another country at the same time (for example, if the employee is living in France but working full-time in the United Kingdom).

(3) An employee may be considered to be based in the United Kingdom even if his or her family is living elsewhere.

(4) Subsection (5) lists steps that, if taken by or for the benefit of an employee whether before or during the affected residence period, are likely to indicate that the employee will continue to be based in the United Kingdom up to and beyond the 3-year cut-off point.

(5) The steps are—

(a) purchasing a home in the United Kingdom,

(b) reaching an understanding that the employee is to perform duties of employment in the United Kingdom for a period that would go beyond the 3-year cut-off point (whether those duties would be performed under one contract or a succession of contracts), or

(c) entering into other commitments (whether personal, professional, educational, financial or otherwise) that indicate an intention to be based in the United Kingdom up to and beyond the 3-year cut-off point.

(6) But—

(a) the absence of any such steps does not of itself indicate that the employee will not continue to be based in the United Kingdom up to and beyond the 3-year cut-off point, and

(b) nothing in subsection (5) limits the factors that may be taken into account in deciding whether it is reasonable to assume that the employee will continue to be based in the United Kingdom up to and beyond that point."

11 (1) Section 41C (foreign securities income) is amended as follows.

(2) In subsection (4), for paragraph (b) substitute—

"(b) the individual does not meet the requirements of section 26A for the year (reading references there to the employee as references to the individual),".

(3) In subsection (6), for paragraph (b) substitute—

"(b) the individual meets the requirements of section 26A for the year (reading references there to the employee as references to the individual), and".

12 In section 271 (limited exemption of removal benefits and expenses: general), in subsection (2)—

(a) in paragraph (a), for "ordinarily UK resident" substitute "outside section 26", and

(b) in paragraph (b), for "not ordinarily UK resident" substitute "meets section 26A requirements".

13 (1) In section 554Z9 (remittance basis: A is ordinarily UK resident), in

subsection (1), for paragraph (c) substitute—

"(c) A does not meet the requirements of section 26A for the relevant tax year (reading references there to the employee as references to A),".

(2) Accordingly, in the heading of that section, for "**A is ordinarily UK resident**" substitute "**A does not meet section 26A requirements**".

14 (1) In section 554Z10 (remittance basis: A is not ordinarily resident), in subsection (1), for paragraph (c) substitute—

"(c) A meets the requirements of section 26A for the relevant tax year (reading references there to the employee as references to A)."

(2) Accordingly, in the heading of that section, for "**A is not ordinarily resident**" substitute "**A meets section 26A requirements**".

15 (1) Section 690 (employee non-resident etc) is amended as follows.

(2) In subsection (1), for paragraph (a) substitute—

"(a) is either non-UK resident for the tax year or is UK resident but meets the requirements of section 26A for the tax year, and".

(3) In subsection (2A), for "not ordinarily resident in" substitute "meets the requirements of section 26A for".

Consequential amendments

16 In section 266A of ICTA (life assurance premiums paid by employer), in subsection (8)—

(a) in paragraph (a), for "employee resident and ordinarily resident, but not domiciled, in UK" substitute "remittance basis applies and employee outside section 26", and

(b) in paragraph (b), for "employee resident, but not ordinarily resident, in UK" substitute "remittance basis applies and employee meets section 26A requirements".

17 In section 12 of TCGA 1992 (non-UK domiciled individuals to whom remittance basis applies), for subsection (1) substitute—

"(1) This section applies to foreign chargeable gains accruing to an individual in a tax year ("the foreign chargeable gains") if section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year."

18 In section 726 of ITA 2007 (non-UK domiciled individuals to whom remittance basis applies), for subsection (1) substitute—

"(1) This section applies in relation to income treated under section 721 as arising to an individual in a tax year ("the deemed income") if section 809B, 809D or 809E (remittance basis) applies to the individual for that year."

19 In section 730 of that Act (non-UK domiciled individuals to whom

remittance basis applies), for subsection (1) substitute—

"(1) This section applies in relation to income treated under section 728 as arising to an individual in a tax year ("the deemed income") if section 809B, 809D or 809E (remittance basis) applies to the individual for that year."

20 In section 735 of that Act (non-UK domiciled individuals to whom remittance basis applies), in subsection (1)—

(a) at the end of paragraph (a) insert "and",

(b) at the end of paragraph (b) omit "and", and

(c) omit paragraph (c).

21 In section 809F of that Act (effect on what is chargeable), in subsection (4), for "If the individual is not domiciled in the United Kingdom in that year, the" substitute "The".

22 In section 809YD of that Act (chargeable gains accruing on sales of exempt property), in subsection (3), omit "and P is not domiciled in the United Kingdom in that year".

23 In section 809Z7 of that Act (interpretation of Chapter)—

(a) in subsection (2)(d), omit "if the individual is not domiciled in the United Kingdom in that year,", and

(b) in subsection (3)(a), for "is ordinarily UK resident in" substitute "does not meet the requirements of section 26A of ITEPA 2003 for".

Commencement

24 The amendments made by this Part of this Schedule have effect in relation to an individual's foreign income and gains for the tax year 2013-14 or any subsequent tax year.

Savings

25 (1) This paragraph applies to an individual who is not ordinarily resident in the United Kingdom at the end of the tax year 2012-13.

(2) Enactments relating to income tax or capital gains tax have effect, in relation to any eligible foreign income and gains of the individual, as if the amendments made by this Part of this Schedule had not been made.

(3) "Eligible foreign income and gains" means—

(a) if the individual was not ordinarily resident in the United Kingdom in the tax year 2011-12, foreign income and gains for the tax year 2013-14,

(b) otherwise, foreign income and gains for the tax year 2013-14 and the tax year 2014-15.

(4) Where, by virtue of this paragraph, it is necessary to determine whether an individual is (or is not) ordinarily resident in the United Kingdom at a time on or after 6 April 2013, the question is to be determined as it would have been in the absence of this Schedule.

Interpretation

26 References in this Part of this Schedule to an individual's "foreign income and gains" for a tax year are to be read in accordance with section 809Z7 of ITA 2007 (interpretation of remittance basis rules).

PART 2

INCOME TAX: ARISING BASIS OF TAXATION

ICTA

27 In section 614 of ICTA (exemptions and reliefs in respect of income from investments etc of certain pension schemes)—

(a) in subsection (4), for "not domiciled, ordinarily resident or resident" substitute "not domiciled and not resident", and

(b) in subsection (5), for "not domiciled, ordinarily resident or resident" substitute "not domiciled and not resident".

ITEPA 2003

28 ITEPA 2003 is amended as follows.

29 In section 56 (application of Income Tax Acts in relation to deemed employment), in subsection (5)—

(a) in paragraph (a), omit ", ordinarily resident", and

(b) in paragraph (b), omit "or ordinarily resident".

30 In section 61G (application of Income Tax Acts in relation to deemed employment), in subsection (5)—

(a) in paragraph (a), omit ", ordinarily resident", and

(b) in paragraph (b), omit "or ordinarily resident".

31 In section 341 (travel at start or finish of overseas employment), in subsection (3), for "resident and ordinarily resident in the United Kingdom" substitute "UK resident".

32 In section 342 (travel between employments where duties performed abroad), in subsection (6), for "resident and ordinarily resident in the United Kingdom" substitute "UK resident".

33 In section 370 (travel costs where duties performed abroad: employee's travel), in subsection (6), omit "in which the employee is ordinarily UK resident".

34 In section 376 (foreign accommodation and subsistence costs and expenses (overseas employments)), in subsection (1)(b), for "resident and ordinarily resident in the United Kingdom" substitute "UK resident".

35 (1) Section 378 (deductions from seafarers' earnings: eligibility) is amended as follows.

(2) ...

(3) ...

36 In section 413 (exception in certain cases of foreign service), in subsection

(3A), before paragraph (a) insert—

"(za) for service in or after the tax year 2013-14, earnings for a tax year that are earnings to which section 15 applies and to which that section would apply even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year,".

37 (1) In section 681A (foreign benefits of consular employees), for subsection (4) substitute—

"(4) Condition C is that—

(a) the officer or employee is a permanent employee of that state, or

(b) the officer or employee was non-UK resident for each of the 2 tax years preceding the tax year in which the officer or employee became a consular officer or employee in the United Kingdom of that state."

(2) The amendment made by this paragraph does not apply to a person who became a consular officer or employee in the United Kingdom before 6 April 2013.

38 (1) In Schedule 2 (approved share incentive plans), in paragraph 8(2), omit paragraph (b) and the "and" immediately before it.

(2) The amendments made by this paragraph do not apply to plans that have been approved before the day on which this Act is passed.

39 (1) In Schedule 3 (approved SAYE option schemes), in paragraph 6(2)—

(a) insert "and" at the end of paragraph (c), and

(b) omit paragraph (ca), including the "and" at the end of it.

(2) The amendments made by this paragraph do not apply to schemes that have been approved before the day on which this Act is passed.

40 In Schedule 5 (enterprise management incentives), in paragraph 27(3)(b), omit "and ordinarily resident".

ITTOIA 2005

41 ITTOIA 2005 is amended as follows.

42 In section 154A (certain non-UK residents with interest in 3½% War Loan 1952 Or After), in subsection (1)(a), omit "ordinarily".

43 In section 459 (transfer of assets abroad), in subsection (2), for "an individual ordinarily UK resident" substitute "a UK resident individual".

44 In section 468 (non-UK resident trustees and foreign institutions), for subsection (2) substitute—

"(2) Chapter 2 of Part 13 of ITA 2007 (which prevents avoidance of tax where a UK resident individual benefits from a transfer of assets) applies with the modifications specified in subsection (3) or (4)."

45 In section 569 (anti-avoidance: transfer of assets abroad), in subsection (2), for "an individual ordinarily UK resident" substitute "a UK resident individual".

46 (1) In section 636 (calculation of undistributed income), in subsection (2)(b), for ", resident and ordinarily resident" substitute "and resident".

(2) The amendment made by this paragraph does not apply in calculating income arising under a settlement in tax years ending before 6 April 2013.

47 In section 648 (income arising under a settlement), in subsection (1)(b), for ", resident and ordinarily resident" substitute "and resident".

48 In section 651 (meaning of "UK estate" and "foreign estate"), in subsection (3), omit "or not ordinarily UK resident".

49 In section 664 (the aggregate income of the estate), in subsection (2)(b)(i), omit "who was ordinarily UK resident".

50 (1) Section 715 (interest from FOTRA securities held on trust) is amended as follows.

(2) In subsection (1)(b), for "person not ordinarily UK resident" substitute "non-UK resident person".

(3) In subsection (2)—
(a) for "person not ordinarily UK resident" substitute "non-UK resident person", and
(b) for "is ordinarily UK resident at the time when" substitute "is UK resident for the tax year in which".

(4) In relation to a FOTRA security issued before 6 April 2013, the amendments made by this paragraph apply only if the security was acquired by the trust on or after that date.

51 (1) In section 771 (relevant foreign income of consular officers and employees), for subsection (4) substitute—

"(4) Condition C is that—
(a) the officer or employee is a permanent employee of that state, or
(b) the officer or employee was non-UK resident for each of the 2 tax years preceding the tax year in which the officer or employee became a consular officer or employee in the United Kingdom of that state."

(2) The amendment made by this paragraph does not apply to a person who became a consular officer or employee in the United Kingdom before 6 April 2013.

ITA 2007

52 ITA 2007 is amended as follows.

53 In section 465 (overview of Chapter 2 and interpretation), in subsection (4), omit "and ordinary residence".

54 (1) Section 475 (residence of trustees) is amended as follows.

(2) For subsection (1) substitute—

"(1) This section applies for income tax purposes and explains how to work out, in relation to the trustees of a settlement, whether or not the single person mentioned in section 474(1) is UK resident."

(3) In subsection (2), for "both UK resident and ordinarily UK resident" substitute "UK resident".

(4) In subsection (3), for "both non-UK resident and not ordinarily UK resident" substitute "non-UK resident".

55 (1) Section 476 (how to work out whether settlor meets condition C) is amended as follows.

(2) In subsection (2)(b), omit ", ordinarily UK resident".

(3) In subsection (3)(b), omit ", ordinarily UK resident".

(4) The amendment made by sub-paragraph (2) does not apply if the person died before 6 April 2013.

(5) The amendment made by sub-paragraph (3) does not apply if the settlement was made before 6 April 2013.

56 In section 643 (non-residents), in subsection (1), omit "and is not ordinarily UK resident during that year".

57 In section 718 (meaning of "person abroad" etc), in subsection (2)(b), for "neither UK resident nor ordinarily UK resident" substitute "non-UK resident".

58 In section 720 (charge to tax on income treated as arising under section 721), in subsection (1), omit "ordinarily".

59 (1) Section 721 (individuals with power to enjoy income as a result of relevant transactions) is amended as follows.

(2) For subsection (1) substitute—

"(1) Income is treated as arising to an individual in a tax year for income tax purposes if Conditions A to C are met."

(3) After subsection (3) insert—

"(3A) Condition C is that the individual is UK resident for the tax year."

(4) In subsection (5)(b), omit "ordinarily".

60 In section 727 (charge to tax on income treated as arising under section 728), in subsection (1), omit "ordinarily".

61 (1) Section 728 (individuals receiving capital sums as a result of relevant transactions) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), omit the "and" at the end of sub-paragraph (iii), and

(b) at the end of paragraph (b) insert ", and

(c) the individual is UK resident for the tax year."

(3) In subsection (3)(b), omit "ordinarily".

62 In section 732 (non-transferors receiving benefit as a result of relevant transactions), in subsection (1)(b), for "ordinarily UK resident receives a benefit" substitute "UK resident for a tax year receives a benefit in that tax year".

63 (1) In section 749 (restrictions on particulars to be provided by relevant lawyers), in subsection (2), omit "ordinarily".

(2) The amendment made by this paragraph applies only if the transfer is made or, in the case of an associated operation, the transfer is made and the associated operation is effected on or after 6 April 2013.

64 In section 812 (case where limit on liability of non-UK residents is not to apply), in subsection (1)(a), omit "ordinarily".

65 (1) In section 834 (residence of personal representatives), in subsection (3), omit ", ordinarily UK resident".

(2) The amendment made by this paragraph does not apply if D died before 6 April 2013.

66 (1) In section 858 (declarations of non-UK residence: individuals)—

(a) in subsection (3)(a) and (b), for "not ordinarily UK resident" substitute "non-UK resident", and

(b) in subsection (4), omit "ordinarily".

(2) The amendments made by this paragraph apply to the making of declarations on or after 6 April 2014, and any declarations made before that date continue to have effect in respect of interest paid on or after that date as if those amendments had not been made.

67 (1) In section 859 (declarations of non-UK residence: Scottish partnerships)—

(a) in subsection (3), for "not ordinarily UK resident" substitute "non-UK resident", and

(b) in subsection (4), omit "ordinarily".

(2) The amendments made by this paragraph apply to the making of declarations on or after 6 April 2014, and any declarations made before that date continue to have effect in respect of interest paid on or after that date as if those amendments had not been made.

68 (1) In section 860 (declarations of non-UK residence: personal representatives), in subsection (3), for "not ordinarily UK resident" substitute "non-UK resident".

(2) The amendment made by this paragraph applies only if the deceased died on or after 6 April 2014.

69 (1) Section 861 (declarations of non-UK residence: settlements) is amended as follows.

(2) In subsection (3)(b)(i) and (iii), omit "ordinarily".

(3) In subsection (4)—

(a) in paragraphs (b) and (d), omit "ordinarily", and

(b) in paragraph (f), for "an ordinarily" substitute "a".

(4) The amendments made by this paragraph apply to the making of declarations on or after 6 April 2014, and any declarations made before that

date continue to have effect in respect of interest paid on or after that date as if those amendments had not been made.

Commencement

70 (1) The amendments made by this Part of this Schedule have effect for the purposes of a person's liability to income tax for the tax year 2013-14 or any subsequent tax year.

(2) Sub-paragraph (1) is without prejudice to any provision in this Part of the Schedule about the application of a particular amendment.

Savings

71 (1) This paragraph applies to an individual who is not ordinarily resident in the United Kingdom at the end of the tax year 2012-13.

(2) The provisions listed in sub-paragraph (3) have effect, in relation to such an individual and a qualifying tax year, as if the amendments made to or with respect to those provisions by this Part of this Schedule had not been made.

(3) The provisions are—

(a) section 378 of ITEPA 2003 (deduction from seafarers' earnings),

(b) section 413 of that Act (exception for payments and benefits on termination of employment etc in certain cases involving foreign service),

(c) section 414 of that Act (reduction in other cases of foreign service), and

(d) Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad).

(4) But, in the case of provisions within paragraphs (a) to (c) of sub-paragraph (3), this paragraph applies only if service in the employment in question began before the start of the tax year 2013-14.

(5) "Qualifying tax year" means—

(a) if, at any time in the tax year 2011-12, the individual was not ordinarily resident in the United Kingdom, the tax year 2013-14,

(b) otherwise, the tax year 2013-14 and the tax year 2014-15.

(6) Where, by virtue of this paragraph, it is necessary to determine whether an individual is (or is not) ordinarily resident in the United Kingdom at a time on or after 6 April 2013, the question is to be determined as it would have been in the absence of this Schedule.

PART 3

CAPITAL GAINS TAX: ACCRUALS BASIS OF TAXATION

TCGA 1992

72 TCGA 1992 is amended as follows.

73 (1) Section 2 (persons and gains chargeable to capital gains tax, and allowable losses) is amended as follows.

(2) In subsection (1), for the words from "during any part" to the end substitute "if the residence condition is met".

(3) After that subsection insert—

"(1A) The residence condition is—

(a) in the case of an individual, that the individual is resident in the United Kingdom for the year in question,

(b) in the case of personal representatives of a deceased person, that the single and continuing body mentioned in section 62(3) is resident in the United Kingdom,

(c) in the case of the trustees of a settlement, that the single person mentioned in section 69(1) is resident in the United Kingdom during any part of the year in question, and

(d) in any other case, that the person is resident in the United Kingdom when the gain accrues."

74 In section 10 (non-resident with United Kingdom branch or agency), in subsection (1), for "in which he is not resident and not ordinarily resident in the United Kingdom but" substitute "if the residence condition is not met (see section 2(1A)) but the person".

75 (1) Section 13 (attribution of gains to members of non-resident companies) is amended as follows.

(2) In subsection (2), omit "or ordinarily resident".

(3) In subsection (10), for "neither resident nor ordinarily resident" substitute "not resident".

(4) In subsection (13)(b), omit "or ordinarily resident".

76 In section 16 (computation of losses), in subsection (3), for "during no part of which he is resident or ordinarily resident in the United Kingdom" substitute "where the residence condition is not met (see section 2(1A))".

77 In section 62 (death: general provisions), in subsection (3), omit ", ordinary residence,".

78 In section 65 (liability for tax of trustees or personal representatives), in subsection (3)(b), for "become neither resident nor ordinarily resident" substitute "cease to be resident".

79 In section 67 (provisions applicable where section 79 of the Finance Act 1980 has applied), in subsection (6)(a), in paragraph (b) of the substituted subsection (1), for "becomes neither resident nor ordinarily resident" substitute "ceases to be resident".

80 (1) Section 69 (trustees of settlements) is amended as follows.

(2) In subsection (2), omit "and ordinarily resident".

(3) In subsection (2B)(c), omit ", ordinarily resident".

(4) In subsection (2E), for the words from "and ordinarily resident" to the end substitute "in the United Kingdom, then for the purposes of this Act it is treated as being not resident in the United Kingdom".

81 In section 76 (disposal of interests in settled property), in subsection (1B)(a), for "neither resident nor ordinarily resident" substitute "not resident".

82 In section 80 (trustees ceasing to be resident in UK), in subsection (1), for "neither resident nor ordinarily resident" substitute "not resident".

83 (1) Section 81 (death of trustee: special rules) is amended as follows.

(2) In subsection (1)(b), omit "and ordinarily resident".

(3) In subsection (3)(b), omit "and ordinarily resident".

(4) In subsection (4)(b), omit "and ordinarily resident".

(5) In subsection (5)(a), omit "and ordinarily resident".

84 In section 82 (past trustees: liability for tax), in subsection (3)(b), for "become neither resident nor ordinarily resident" substitute "cease to be resident".

85 In section 83 (trustees ceasing to be liable to UK tax), in subsection (1), omit "and ordinarily resident".

86 (1) Section 83A (trustees both resident and non-resident in a year of assessment) is amended as follows.

(2) In subsection (3)(a), omit "and ordinarily resident".

(3) In subsection (4)—

(a) in paragraph (a), for "neither resident nor ordinarily resident" substitute "not resident", and

(b) in paragraph (b), omit "and ordinarily resident".

87 In section 84 (acquisition by dual resident trustees), in subsection (1)(b), omit "and ordinarily resident".

88 In section 85 (disposal of interests in non-resident settlements), in subsection (1), for "neither resident nor ordinarily resident" substitute "not resident".

89 (1) Section 86 (attribution of gains to settlors with interest in non-resident or dual resident settlements) is amended as follows.

(2) In subsection (1)(c), for the words from "either resident" to the end substitute "resident in the United Kingdom for the year".

(3) For subsection (2) substitute—

"(2) The condition as to residence is that—

(a) there is no time in the year when the trustees are resident in the United Kingdom, or

(b) there is such a time but, whenever the trustees are resident in the United Kingdom during the year, they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom."

(4) In subsection (3), omit "and ordinarily resident".

90 (1) Section 87 (non-UK resident settlements: attribution of gains to beneficiaries) is amended as follows.

(2) In subsection (1), for the words from "the trustees" to the end substitute "there is no time in that year when the trustees are resident in the United Kingdom".

(3) In subsection (4)(a), omit "and ordinarily resident".

91 In section 88(1) (gains of dual resident settlements)—

(a) in paragraph (a), omit "and ordinarily resident", and

(b) in paragraph (b), omit "and ordinary residence".

92 (1) Section 96 (payments by and to companies) is amended as follows.

(2) In subsection (3), omit "or ordinarily resident".

(3) In subsection (4), in each of paragraphs (a) and (b), omit "or ordinarily resident".

(4) In subsection (5)(b), omit "or ordinary residence".

93 In section 97 (supplementary provisions), in subsection (1)(a), for "neither resident nor ordinarily resident" substitute "not resident".

94 In section 99 (application of Act to unit trust schemes), in subsection (1)(c), omit "and ordinarily resident".

95 In section 106A(5A) (identification of securities: capital gains tax)—

(a) in paragraph (a), for "neither resident nor ordinarily resident" substitute "not resident", and

(b) in paragraph (b), omit "or ordinarily resident".

96 (1) Section 159 (non-residents: roll-over relief) is amended as follows.

(2) In subsection (2)(b), omit "or ordinarily resident".

(3) In subsection (5), in the definition of "dual resident", omit "or ordinarily resident".

97 (1) Section 166 (gifts to non-residents) is amended as follows.

(2) In subsection (1), for "neither resident nor ordinarily resident" substitute "not resident".

(3) In subsection (2)(a), omit "or ordinarily resident".

98 (1) Section 167 (gifts to foreign-controlled companies) is amended as follows.

(2) In subsection (2)(a), for "neither resident nor ordinarily resident" substitute "not resident".

(3) In subsection (3), for the words from "or ordinarily resident" to "nor ordinarily resident" substitute "in the United Kingdom is to be regarded as not resident".

99 (1) Section 168 (emigration of donee) is amended as follows.

(2) In subsection (1)(b), for "becomes neither resident nor ordinarily resident" substitute "ceases to be resident".

(3) In subsection (4), for "becoming neither resident nor ordinarily resident" substitute "ceasing to be resident".

(4) In subsection (5)—

(a) in paragraph (a), for "becoming neither resident nor ordinarily resident" substitute "ceasing to be resident", and

(b) in paragraph (b), omit "or ordinarily resident".

100 In section 169 (gifts into dual resident trusts), in subsection (3)(a), omit "and ordinarily resident".

101 In section 199 (exploration or exploitation assets: deemed disposals), in subsection (2), for "who is not resident and not ordinarily resident in the United Kingdom" substitute "in respect of whom the residence condition (see section 2(1A)) is not met".

102 In section 228 (employee share ownership trusts: conditions for roll-over relief), in subsection (6)(a)...

103 (1) Section 261 (section 260 relief: gifts to non-residents) is amended as follows.

(2) In subsection (1), for "neither resident nor ordinarily resident" substitute "not resident".

(3) In subsection (2)(a), omit "or ordinarily resident".

104 In Schedule 1 (application of exempt amount and reporting limits in cases involving settled property), in paragraph 2(7)(a), omit "and ordinarily resident".

105 (1) Schedule 4A (disposal of interest in settled property: deemed disposal of underlying assets) is amended as follows.

(2) In paragraph 5(1) and (2), omit "and ordinarily resident".

(3) In paragraph 6(1)—

(a) for "in the relevant" substitute "as respects the relevant", and

(b) for the words from "either" to the end substitute "met the residence condition set out in section 2(1A)".

(4) If any of the previous 5 years of assessment mentioned in paragraph 6(1) of Schedule 4A ends before 6 April 2013, the test in that paragraph is to be applied, as respects any such year ending before that date, as if that paragraph had not been amended by sub-paragraph (3).

106 (1) Schedule 4C (transfers of value: attribution of gains to beneficiaries) is amended as follows.

(2) In paragraph 1A(3), for the words from "the beneficiary" to the end substitute ", as respects that year, the beneficiary meets the residence condition set out in section 2(1A)".

(3) In paragraph 4—

(a) in sub-paragraph (1), omit "and ordinarily resident", and

(b) in sub-paragraph (2), omit "and ordinarily resident".

(4) In paragraph 5(1)—

(a) in paragraph (a), omit "and ordinarily resident", and

(b) in paragraph (b), omit "and ordinary residence".

(5) In paragraph 9(3)(a)(i), omit "and ordinarily resident".

(6) In paragraph 10(1), omit "and ordinarily resident".

107 (1) Schedule 5 (attribution of gains to settlors with interest in non-resident or dual resident settlement) is amended as follows.

(2) In paragraph 2A(4)—

(a) in paragraph (a), for "become on or after 17th March 1998 neither resident nor ordinarily resident" substitute "cease on or after 17 March 1998 to be resident", and

(b) in paragraph (b), omit "and ordinarily resident".

(3) In paragraph 9(4)—

(a) in paragraph (a), for "become on or after 19th March 1991 neither resident nor ordinarily resident" substitute "cease on or after 19 March 1991 to be resident", and

(b) in paragraph (b), omit "and ordinarily resident".

(4) The amendments made by this paragraph apply to changes in the residence status of trustees on or after 6 April 2013.

108 (1) Schedule 5A (settlements with foreign element: information) is amended as follows.

(2) In paragraph 2(1)—

(a) in paragraph (c), for "neither resident nor ordinarily resident" substitute "not resident", and

(b) in paragraph (d), omit "and ordinarily resident".

(3) In paragraph 3—

(a) in sub-paragraph (1)—

(i) in paragraph (a), for "neither resident nor ordinarily resident" substitute "not resident", and

(ii) in paragraph (b), omit "and ordinarily resident", and

(b) in sub-paragraph (3), for "either resident or ordinarily resident" substitute "resident".

(4) In paragraph 4—

(a) in sub-paragraph (1)—

(i) in paragraph (a), for "neither resident nor ordinarily resident" substitute "not resident", and

(ii) in paragraph (b), omit "and ordinarily resident", and

(b) in sub-paragraph (3), for "either resident or ordinarily resident" substitute "resident".

(5) In paragraph 5(1)—

(a) in paragraph (a), for the words from "become" to "ordinarily resident" substitute "cease at any time (the relevant time) on or after the commencement day to be resident", and

(b) in paragraph (b), omit "and ordinarily resident".

(6) The amendments made by this paragraph apply as follows—

(a) the amendments made by sub-paragraph (2) apply in relation to transfers of property made on or after 6 April 2013,

(b) the amendments made by sub-paragraphs (3) and (4) apply in relation to settlements created on or after that date, and

(c) the amendments made by sub-paragraph (5) apply to changes in the residence status of trustees on or after that date.

109 (1) Schedule 5B (enterprise investment scheme: re-investment) is amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (1)(d), omit "or ordinarily resident", and

(b) in sub-paragraph (4)(a), omit "or ordinarily resident".

(3) In paragraph 3(3)(b), omit "or ordinarily resident".

(4) In paragraph 19(1), in the definition of "non-resident", for "neither resident nor ordinarily resident" substitute "not resident".

(5) The amendments made by this paragraph apply in cases where the accrual time is on or after 6 April 2013 (even if the qualifying investment was made before that date).

110 In Schedule 7C (reliefs for transfers to approved share plans), in paragraph 8, for paragraph (a) substitute—

"(a) the claimant would be chargeable to capital gains tax under section 2(1) (persons and gains chargeable to capital gains tax) in respect of the gain, or".

Commencement

111 (1) The amendments made by this Part of this Schedule have effect in relation to a person's liability to capital gains tax for the tax year 2013-14 or any subsequent tax year.

(2) Sub-paragraph (1) is without prejudice to any provision in this Part of this Schedule about the application of a particular amendment.

PART 4

OTHER AMENDMENTS

FA 1916

112 In FA 1916, omit section 63 (exemption from taxation of municipal securities issued in America).

F(No.2)A 1931

113 (1) In section 22 of F(No.2)A 1931 (provisions in cases where Treasury has power to borrow money), in subsection (1)(a) and (b), omit "ordinarily".

(2) Nothing in sub-paragraph (1) limits the power conferred by section 60(1) of FA 1940.

(3) Subject to sub-paragraph (5), the amendment made by sub-paragraph (1) does not affect a pre-commencement security (nor the availability of the relevant exemption).

(4) Sub-paragraph (5) applies to a person who becomes the beneficial owner of a pre-commencement security (or an interest in such a security) on or after 6 April 2013.

(5) If obtaining the relevant exemption is conditional on being not ordinarily resident in the United Kingdom, any enactment conferring the exemption is to have effect (in relation to a person to whom this sub-paragraph applies) as if obtaining the exemption were conditional instead on being not resident in the United Kingdom.

(6) In this paragraph—

"pre-commencement security" means a FOTRA security (as defined in section 713 of ITTOIA 2005) issued before the day on which this Act is passed;

"the relevant exemption", in relation to a pre-commencement security, means the exemption for which provision is made in the exemption condition (as defined in that section).

TMA 1970

114 In section 98 (special returns etc), in subsection (4E)(d)...

115 In Schedule 1A (claims etc not included in returns), in paragraph 2(6), omit "or not ordinarily resident".

IHTA 1984

116 (1) Section 157 of IHTA 1984 (non-residents' bank accounts) is amended as follows.

(2) For subsection (2) substitute—

"(2) This section applies to a person who is not domiciled and not resident in the United Kingdom immediately before his death."

(3) In subsection (3), for ", resident or ordinarily resident" substitute "or resident".

(4) In subsection (4)—

(a) in paragraph (a), omit "or ordinarily resident", and

(b) in paragraph (b), omit "or ordinarily resident" and "and ordinarily resident".

(5) The amendments made by this paragraph do not apply if the person dies before 6 April 2013.

FA 2004

117 FA 2004 is amended as follows.

118 In section 185G (disposal by person holding directly), in subsection (3)(a), omit ", ordinarily resident".

119 In section 205 (short service refund lump sum charge), in subsection (3), omit ", ordinarily resident".

120 In section 205A (serious ill-health lump sum charge), in subsection (3), omit ", ordinarily resident".

121 In section 206 (special lump sum death benefits charge), in subsection (3), omit ", ordinarily resident".

122 In section 207 (authorised surplus payments charge), in subsection (3), omit ", ordinarily resident".

123 In section 208 (unauthorised payments charge), in subsection (4), omit ", ordinarily resident".

124 In section 209 (unauthorised payments surcharge), in subsection (5), omit ", ordinarily resident".

125 In section 217 (persons liable to lifetime allowance charge), in subsection (5), omit ", ordinarily resident".

126 In section 237A (liability of individual to annual allowance charge), in subsection (2), omit ", ordinarily resident".

127 In section 237B (liability of scheme administrator), in subsection (8), omit ", ordinarily resident".

128 In section 239 (scheme sanction charge), in subsection (4), omit ", ordinarily resident".

129 In section 242 (de-registration charge), in subsection (3), omit ", ordinarily resident".

FA 2005

130 In section 30 of FA 2005 (qualifying trust gains: special capital gains tax treatment), in subsection (1), for paragraph (c) substitute—

"(c) the trustees are resident in the United Kingdom during any part of the tax year, and".

F(No.2)A 2005

131 (1) F(No.2)A 2005 is amended as follows.

(2) In section 7 (charge to income tax on lump sum), in subsection (3), omit ", ordinarily resident".

(3) In section 18 (section 17(3): specific powers), in subsection (1)...

CTA 2009

132 CTA 2009 is amended as follows.

133 (1) In section 900 (which relates to roll-over relief for disposals of pre-FA 2002 assets), in subsection (2), omit "or ordinarily UK resident".

(2) The amendment made by this paragraph applies in relation to gains accruing or treated as accruing on or after 6 April 2013.

134 (1) In section 936 (meaning of "UK estate" and "foreign estate"), in subsection (3), omit "or not ordinarily UK resident".

(2) The amendment made by this paragraph applies if the tax year in question begins on or after 6 April 2013.

135 (1) In section 947 (aggregate income of the estate), in subsection (2)(b)(i), omit "who was ordinarily UK resident".

(2) The amendment made by this paragraph applies if the tax year in question begins on or after 6 April 2013.

136 (1) In section 1009 (conditions relating to employee's income tax position), in subsection (5)(a), omit "and ordinarily UK resident".

(2) The amendment made by this paragraph applies in relation to shares acquired on or after 6 April 2013.

137 (1) In section 1017 (condition relating to employee's income tax position), in subsection (4)(a), omit "and ordinarily UK resident".

(2) The amendment made by this paragraph applies in relation to options obtained on or after 6 April 2013.

138 (1) In section 1025 (additional relief available if shares acquired are restricted shares), in subsection (5)(a), omit "and ordinarily UK resident".

(2) The amendment made by this paragraph applies in relation to restricted shares acquired on or after 6 April 2013.

139 (1) In section 1032 (meaning of "chargeable event"), in subsection (5)(a), omit "and ordinarily UK resident".

(2) The amendment made by this paragraph applies in relation to convertible shares acquired on or after 6 April 2013.

CTA 2010

140 (1) Section 1034 of CTA 2010 (purchase by unquoted trading company of own shares: requirements as to residence) is amended as follows.

(2) In subsections (1) and (2), omit "and ordinarily resident".

(3) In subsection (3), omit "and ordinary residence" in both places.

(4) Omit subsection (4).

(5) The amendments made by this paragraph do not apply in relation to a purchase by an unquoted trading company of its own shares if the purchase takes place before 6 April 2013.

TIOPA 2010

141 In section 363A of TIOPA 2010 (residence of offshore funds which are undertakings for collective investment in transferable securities), in subsection (3), for "neither resident nor ordinarily resident" substitute "not resident".

Constitutional Reform and Governance Act 2010

142 (1) In section 41 of the Constitutional Reform and Governance Act 2010 (tax status of MPs and members of the House of Lords), in subsection (2), omit ", ordinarily resident".

(2) The amendment made by this paragraph has effect for the purposes of a member's liability to income tax or capital gains tax for the tax year 2013-14 or any subsequent tax year.

7 Summary of impacts

Statutory residence test

7.1 The consultation document contained an initial assessment of impacts from introducing a statutory definition of tax residence. This annex provides an updated assessment.

Policy objective

7.2 Tax residence has a significant bearing on an individual's UK tax liability, especially where they have non-UK income or capital gains. There is currently no full statutory definition of tax residence and the rules are complicated and unclear. As a result, it can be difficult for individuals to know whether they are resident in the UK or not. Placing tax residence on a statutory footing will provide certainty for the taxpayer.

Policy change

7.3 The current rules will be replaced by a simple statutory test that combines the amount of time a person spends in the UK with the level of their other connections to the UK. It is not intended that this will change the residence status of the vast majority of taxpayers.

Other options considered

7.4 The Government has considered other ways of designing the test, such as basing it purely on day counting, but considers that the framework proposed in this consultation is the best way of designing a test that is clear and also reflects the level of connection an individual has with the UK.

Figure 7.A: Impacts of introducing a Statutory Residence Test

Exchequer impact	This measure is expected to have a negligible Exchequer impact. The final impact on the Exchequer will be confirmed at Budget 2013.
Economic impact	Providing clarity on tax residence status is likely to create more favourable conditions for inward investment and could lead to wider economic benefits. These are very difficult to quantify but there is not expected to be a significant increase in investment due to this policy alone. But, in the medium term, this would be expected to have a favourable economic impact.
Impact on individuals and households	The statutory test will provide certainty for the taxpayer and reduce the administrative complexity of navigating the current rules. The test is intended to produce the same residence outcome as under the current rules for the vast majority of individuals. There will be a small number of individuals whose residence status will change as a result of this test but it is not possible to calculate precisely how many will be affected. Anyone who becomes resident as a result of this test will potentially be faced with additional burdens in completing an SA tax return, disclosing worldwide income or claiming double taxation relief. Anyone who becomes non-resident as a result of this test will benefit from a corresponding reduction in burdens.

Equalities impacts	The introduction of a statutory definition of residence will provide certainty for any individual who needs to consider their residence status for tax purposes. It is not intended to change the residence status outcome in the vast majority of cases and therefore is not expected to have a particular impact – either positive or negative – on any equality group.
Impact on business including civil society organisations	There will be no significant increase in administrative burdens or compliance costs for businesses or civil society organisations. Providing certainty on the residence status of individuals is expected to ease administration for companies which employ expatriate workers.
Operational impact	There will be an initial resource cost for HMRC to develop the test and to provide guidance to those who use it. In the longer term there is likely to be a reduction in operational costs for HMRC by making the rules easier to police and simplifying compliance activity. It would also reduce instances of litigation and associated legal costs.
Other impacts	No other impacts have been identified.

Abolition of ordinary residence

7.5 This chapter provides an initial assessment of the impact of abolishing ordinary residence for tax purposes.

Policy objective

7.6 The Government aims to simplify the rules for determining tax liability and to remove the uncertainty and complexity of the existing rules on ordinary residence.

Policy change

7.7 Ordinary residence will be abolished for tax purposes but Overseas Workday Relief, which currently provides an easement for some expatriate employees and is linked to the concept of ordinary residence, will be retained and put on a statutory footing.

Other options considered

7.8 The Government considered retaining the concept of ordinary residence and placing it on a statutory footing. However, it concluded that there was a stronger case for abolishing ordinary residence due to the significant simplification it will bring.

Figure 7.B: Impacts of abolishing ordinary residence

Exchequer impact	The Government estimates that the Exchequer impact will be negligible.
Economic impact	Not expected to have a direct economic impact.
Impact on individuals and households	Abolishing ordinary residence would be a significant simplification to the current rules and would lessen the administrative burden for individuals. 2008-09 data shows that around 300 individuals claimed the remittance basis on the grounds of not ordinarily resident: they would all be losers if ordinary residence is abolished. Transitional rules will minimise any impact on individuals who currently benefit from being not ordinarily resident
Equalities impacts	These reforms are not expected to have any impact on individuals with protected characteristics.
Impact on business including civil society organisations	There will be no significant increase in administrative burdens or compliance costs for business or civil society organisations. Retaining Overseas Workday Relief will ensure that employers can continue to benefit from a significant administrative easement for

	short-term secondees. Restricting the relief to non-domiciles may create a disincentive for some employers to deploy domiciles to the UK, but very few domiciles currently use the relief so any impact is expected to be minimal.
Operational impact	There may be an initial cost for HMRC in providing guidance to individuals and employers. In the longer term, costs are likely to decrease slightly because of simplification of the rules. Instances of litigation and associated legal costs are also expected to reduce.
Other impacts	No other impacts have been identified.

8 The consultation process

8.1 This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1: Setting out objectives and identifying options.

Stage 2: Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3: Drafting legislation to effect the proposed change.

Stage 4: Implementing and monitoring the change.

Stage 5: Reviewing and evaluating the change.

8.2 This consultation is taking place during Stage 3 of the process. The purpose of the consultation is to seek views on the detailed policy and draft legislation for a statutory residence test and reforms to ordinary residence, building on the commitment originally announced in Budget 2011.

How to respond

8.3 The Government welcomes comments and responses to this consultation. The key consultation questions are summarised in Chapter 5. All e-mail correspondence should be sent to offshorepersonal.taxteam@hmrc.gsi.gov.uk by close of business on 13 September 2012.

8.4 This consultation document is available on the HM Treasury website at www.hm-treasury.gov.uk/consult_statutory_residence_test.htm. Where possible, all correspondence should be sent electronically. Alternatively, mail correspondence can also be sent to the following address:

Statutory residence test consultation
Room G65

Personal Tax International

Specialist Personal Tax
HM Revenue and Customs
100 Parliament Street
London SW1A 2BQ

8.5 When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality disclosure

8.6 Information provided in response to this consultation document, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

8.7 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential.

8.8 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury or HM Revenue and Customs (HMRC). HM Treasury and HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The Consultation Code of Practice

8.9 This consultation is being conducted in accordance with the Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A.

A The code of practice on consultation

A.1 This consultation is being conducted in accordance with the Code of Practice on Consultation that sets the following criteria:

- Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

A.2 If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Amy Burgess

Consultation Coordinator, Better Regulation and Policy Team
H M Revenue & Customs
Room 1/73, 100 Parliament Street
London, SWA 2BQ

E-mail hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

B List of respondents

Association of Chartered Certified Accountants
Africa Inland Mission
Allen & Overy LLP
Atlas Chambers
Association of Tax Technicians
BAE Systems plc
Baker Tilly
Baptist Missionary Society
Barclays
BDO LLP
Berkeley Law Ltd
Berwin Leighton Paisner LLP
Bircham Dyson Bell LLP
Blackstone Franks LLP
Blick Rothenberg
Boodle Hatfield
British American Business
British Bankers' Association
British Universities Finance Directors Group
BSkyB Group plc
Buzzacott LLP
Caldwell & Braham
Caterpillar European Tax Services
Charles Russell LLP
Chartered Institute of Taxation
City of London Law Society
Confederation of British Industry
Council of British Chambers of Commerce in Europe
Creaseys LLP
Cyprus International Financial Services Association
Deloitte LLP
DLA Piper UK LLP
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Fladgate LLP
Forces Pension Society (Cyprus)
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FT Consulting and Accounting Services
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Grant Thornton LLP
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Institute of Chartered Accountants of Scotland
Intertrust Reads Private Clients Ltd
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Law Society of Scotland
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Low Income Tax Reform Group (of CIOT)
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Salans LLP
Shell International Limited
Society of Trust and Estate Practitioners
Speechly Bircham LLP
Stonehage Law Ltd
TaxAid
Templar Group
Thomas Eggar LLP
TUC

There were 39 responses from individuals

HM Treasury contacts

This document can be found in full on our website: http://www.hm-treasury.gov.uk

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