HM TREASURY

Statutory definition of tax residence and reform of ordinary residence:

summary of responses to the June 2012 consultation

December 2012

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Foreword

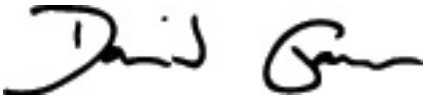
Since income tax was introduced in the 18th century, the definition of whether an individual is treated as resident for tax purposes has relied largely on a mix of practice, guidance and case law. A statutory residence test will provide much more clarity and certainty for everyone.

In June 2012, we published draft legislation and a summary of responses to the consultation on the statutory residence test and reform of Ordinary Residence. We opened up a further consultation which closed in September 2012 and I am delighted with the response that we received. We have refined the policy where we believe a strong case has been made and have also made amendments to the draft legislation to improve its clarity and provide further certainty about the way the new test will operate in practice. The details of the main changes are outlined in this document.

We have developed a statutory residence test which, whilst it will not change the residence position for the majority of individuals, will provide a greater degree of certainty and clarity to internationally mobile individuals and their employers. This is intended to increase the UK's reputation as a good place to invest in and do business, whilst continuing to ensure that those with close connections to the UK continue to pay their fair share of tax. Abolishing the concept of Ordinary Residence will also be a significant major simplification of the UK tax system.

I am also very pleased to announce a significant change in the rules for Overseas Workday Relief. The relief will now be available to all non-domiciled employees who arrive in the UK and have not been UK resident for the previous three tax years regardless of the length of time they intend to stay here. The relief will be available for the year the employee becomes UK resident, plus the two following tax years. We hope that this proposal will be widely welcomed by professional tax bodies and employers.

Taken together, these reforms represent a significant step forward in clarity, predictability and simplicity in this area of the personal tax code. I would like to invite all interested parties to work with the Government to ensure that the draft legislation meets its objectives before introduction in Finance Bill 2013.



David Gauke

Exchequer Secretary to the Treasury

December 2012

1 Introduction

1.1 The current rules that determine tax residence in the UK for individuals are complicated and unclear. At Budget 2011, the Government announced that it would introduce a statutory definition of tax residence. This will establish clear rules which would provide greater certainty and clarity for taxpayers.

1.2 In June 2011, the Government published *"Statutory definition of tax residence: a consultation"* which also included options for the reform of ordinary residence and overseas workday relief.

1.3 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. 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.

1.4 In June 2012, the Government published *"Statutory definition of tax residence and reform to ordinary residence: a summary of responses".* This included the Government response to the issues raised in consultation alongside draft legislation. It also opened up a further consultation in order to refine detail. This second consultation closed in September 2012.

1.5 This response document has been published to coincide with publication of the revised draft legislation. It sets out the Government's responses to the June 2012 consultation and provides an overview of changes made to the draft legislation.

Policy intention

1.6 The Government's policy objectives are to:

- introduce a statutory definition of tax residence 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 questions for consultation published in June 2012

1.7 Respondents were invited to give their responses to the questions outlined below:

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 three to five 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?

Overview of the Government's response

1.8 The Government is grateful to those who provided their views on the draft legislation and consultation questions published in June 2012. A total of 57 responses were received from a number of organisations and individuals. A list of respondents is included in Chapter 6.

1.9 A number of issues were raised during the consultation to which the Government has given careful consideration. These included concerns with definitions used for various terms in the legislation such as 'home'. The Government has reconsidered these definitions and has made changes to the draft legislation in response.

1.10 A number of changes have also been made to the qualifying conditions for full time work abroad (FTWA) and full time work in the UK (FTWUK). The Government has also proposed reforms to the provision of Overseas Workday Relief and will introduce an anti-avoidance rule to counter abuse of the day counting rules.

1.11 The main changes to the legislation that have been made since the June 2012 summary of responses are highlighted in this document. A number of other minor and drafting changes have also been made in response to the representations made during consultation.

2 Statutory residence test: structure

This chapter provides an overview of the statutory test set out in the draft legislation attached to this document.

Automatic overseas test

2.1 There are four automatic overseas tests and if an individual meets the conditions of any one of these tests they are automatically non-resident. The tests are:

- that they were resident in the UK for one or more of the three previous tax years and spend fewer than 16 days in the UK in the current tax year;
- that they were not resident in the UK for any of the previous three tax years and spend fewer than 46 days in the UK in the current tax year;
- that in the current tax year they leave the UK to carry out full-time work overseas; or
- that they die in the current year subject to conditions which include spending fewer than 46 days in the UK.

Automatic UK test

2.2 An individual who does not meet any of the automatic overseas tests will be automatically UK resident if they meet any of the four automatic UK tests. The tests are:

- they spend at least 183 days in the UK during the tax year;
- that there is a period of more than 90 days, part of which falls within the tax year, when they have a home in the UK, and no home overseas (disregarding any home at which they are present for fewer than 30 days in the tax year);
- that in the current tax year they work full-time in the UK; or
- that they die in the current year subject to conditions which include having been UK resident in the previous three tax years.

Sufficient ties test

2.3 An individual who meets none of the automatic overseas tests and none of the automatic UK tests will need to look at the sufficient ties test. This test compares the number of days spent in the UK against a small number of connection factors.

2.4 An individual who was not resident in any of the previous three tax years will need to determine whether they have any of the following ties:

- UK resident family;
- substantive UK employment (including self-employment);
- available accommodation in the UK; and

- more than 90 days spent in the UK in either or both of the previous two tax years.

2.5 The table below shows how many UK ties are sufficient to be considered UK resident if an individual was not resident in all of the previous three tax years:

Days spent in the UK during the tax year	Number of ties that are sufficient
More than 45 but not more than 90	All 4
More than 90 but not more than 120	At least 3
More than 120	At least 2

2.6 An individual who has been resident in the UK in one or more of the previous three tax years will need to determine whether they have any of the following ties:

- UK resident family;
- substantive UK employment (including self-employment);
- available accommodation in the UK;
- more than 90 days spent in the UK in either or both of the previous two tax years; and
- more time spent in the UK than in any other single country.

2.7 The table below shows how many UK ties are sufficient to be considered UK resident:

Days spent in the UK during the tax year	Number of ties that are sufficient
More than 15 but not more than 45	At least 4
More than 45 but not more than 90	At least 3
More than 90 but not more than 120	At least 2
More than 120	At least 1

3 Summary of responses: statutory residence test

Part A: Automatic overseas tests

Box 3.A: 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?

Third automatic overseas test – full time work abroad (FTWA)

3.1 Under the SRT, an individual who qualifies for the full time work abroad condition (FTWA) will be automatically non-resident. The proposed conditions were that an individual would qualify for FTWA provided they spend fewer than 91 days in the UK and fewer than 21 working days in the UK in the tax year. The individual would also have to be working abroad for at least a complete tax year and would have to work there 35 hours a week on average.

3.2 There has been universal support for the FTWA test for automatic non-residence amongst employers and businesses. However, concerns were raised during the consultation period about the maximum number of days an individual is allowed to spend working in the UK in a tax year.

3.3 Under current rules, an individual working abroad is allowed to spend an unlimited number of days in the UK carrying out "incidental duties" subject to an overall limit of 90 days of presence. However, the SRT has moved away from the concepts of "incidental" and "substantive" duties to an objective definition where a day of work is any day on which an individual carries out three or more hours of work. Some respondents argued that 20 work days is not sufficient for employees who have to return often to the UK for reporting and training duties which would be counted as work duties for the purposes of the test.

3.4 In the June 2012 summary of responses, the Government sought views on increasing either the number of working days allowed in the UK from 20 to 25 days, or the number of hours which constitute a day of work from three to five hours.

3.5 The Government suggested increasing the number of working days allowed in the UK to 25 days as this is closer to the typical working pattern for employees who work abroad for multinational organisations but are required to return to report back to UK headquarters. A large number of respondents to the recent consultation were in favour of this increase and preferred it to an increase in the number of hours which constitute a work day.

3.6 However, a number of respondents argued that this increase was insufficient and that many employees working abroad would not be able to benefit from the FTWA proposals. These concerns were exacerbated by the inclusion of employer-funded travel time in the definition of work. Many respondents argued that this would make it more likely that individuals would breach the three hour rule for a work day, hence using up more of the permitted UK work days under FTWA.

Government response

3.7 **The Government has considered the views put forward by respondents and believes there is a strong case to increase the number of work days allowed in the UK to 30 days.**

3.8 The Government accepts that the shift from an unlimited number of days in the UK carrying out incidental duties to 20 days of work of any kind may have produced a more stringent effect than the current rules. Though respondents welcomed the proposal to increase the limit to 25 days, there were many who felt that this should be increased further to take into account days spent in the UK carrying out training and reporting duties.

3.9 The Government also accepts that employer-funded time spent travelling in the UK will tip some individuals over the three hour threshold for a work day and that this should be taken into account when considering the number of days individuals should be allowed to spend working in the UK.

3.10 The Government is aware that increasing the number of work days allowed in the UK to 30 days goes some way beyond the increase that was originally suggested of 25 days. However, it believes that increasing to 30 days would not result in more individuals being able to access automatic non-residence status through the FTWA test than under the current rules.

Box 3.B: Question 2

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

Definition of work

3.11 For the purposes of the SRT, the distinction between incidental and substantive duties will be replaced by the simple three hour rule: a working day is any day in which three hours or more of work of any sort is carried out. This is not intended to represent a full working day but is meant to be indicative of a significant amount of work in a day.

3.12 Many respondents have raised concerns that this definition of work would lead to more days being treated as work days and could increase record-keeping requirements for individuals. In the June 2012 summary of responses, the Government sought views on increasing the hourly threshold from three to five hours.

3.13 A number of respondents were in favour of increasing the hourly threshold for a work day from three to five hours. They explained that this would be closer to a normal seven hour work day and would reduce record keeping requirements as fewer individuals would exceed the threshold of five hours.

Government response

3.14 **The Government has decided to retain the three hour threshold for a work day**. The majority of respondents preferred to increase the number of work days allowed in the UK, as opposed to increasing the number of hours for a UK work day.

3.15 The three hour threshold has always been intended to be a 'safe harbour'. For example, an individual in the UK at the weekend will not have to worry that a 10 minute work-related phone call on a Saturday will give them a UK work day. The three hour threshold is not intended to be an allowance to give individuals the opportunity to work substantial hours in the UK without losing FTWA.

3.16 A more straightforward way of counting days worked would be to count any day where any work at all is performed in the UK as a UK work day. However, this would be a much more stringent definition than proposed under the SRT and would need to be accompanied by a significant increase in the number of work days allowed in the UK. The Government does not believe this is a workable option. No other alternatives were suggested that appeared to the Government to be workable.

3.17 Using a specific number of hours as the definition of a working day is intended to provide a clear, objective standard. Most respondents were supportive of this definition. HMRC will continue to talk to affected employers and others about how the rule should operate in practice.

Box 3.C: Question 3

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

3.18 None of the respondents suggested alternative ways to amend the definition of FTWA, though several suggested that the definition of FTWA should be relaxed or based on criteria other than full time work. There were also comments about the record-keeping requirements that the FTWA test imposes on individuals being excessive.

Government response

3.19 The Government understands that employers and employees are likely to benefit from FTWA as it saves costs and helps the UK economy. This is why the FTWA test was replicated in the SRT. **However, apart from increasing the number of UK work days allowed, the Government does not intend to relax the criteria for qualifying for FTWA**.

3.20 However, the Government has made another change to the FTWA rules to clarify how they operate across a tax year. There must be no significant break (that is, no break of more than 30 days) in work during the period of full time working. This prevents individuals from doing no work at all for long stretches and then working very long hours for the rest of the tax year such that they still work on average at least 35 hours a week. It is right that individuals qualifying for FTWA should (broadly) work full time for the whole of the tax year in question. A day on which the individual would have done more than 3 hours' work overseas but for being on annual leave, sick leave or parenting leave will not be counted as a break from work.

Travel and work-related training

Travel

3.21 The Government proposed in the June 2012 summary of responses that any travel undertaken in the performance of the duties of employment (or in the course of a trade) would constitute work to the extent that the expenses of that travel would be an allowable deduction for tax purposes.

3.22 Many respondents have expressed concern that travel would constitute work in these circumstances. The foremost concern was that this would make it more likely that an individual returning to the UK would breach the three hour threshold for a UK work day. At the margins, this could tip an individual over the proposed 20 day threshold for the number of work days allowed in the UK under FTWA.

3.23 A number of respondents suggested that travel time should be disregarded completely except to the extent that the individual is actually working during the journey. Others suggested changing the policy to take into consideration delays at passport control and luggage collection.

Training

3.24 The Government proposed in the June 2012 summary of responses 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 deductable from taxable profits, would constitute work.

3.25 Many respondents were concerned that including work-related training in the definition of work would result in a larger number of individuals not being eligible for FTWA. This is because many employees posted abroad return to the UK for work-related training. Under the current rules, this might be treated as incidental duties in which case they would be allowed an unlimited number of days subject to an overall 90 day limit. Many have therefore suggested that training should be covered by an explicit carve out.

Government response

3.26 **The Government believes that work-related travel time should continue to be treated as work and does not intend to change the proposed rules.** Excluding time spent travelling from the definition of work would make it very easy for employees to travel into the UK specifically for a business meeting and leave again on the same day without being considered to have spent a day working in the UK.

3.27 The Government also believes it is important to move away from the current use of substantive and incidental duties and to have an objective definition of work. **It does not propose therefore to carve out work-related training.** This could lead to abuse as individuals may spend large amounts of time in the UK, to all intents and purposes carrying out their usual duties, while undertaking "on the job" training.

3.28 However, the Government recognises that the inclusion of travel and work-related training in the definition of work will have an impact on the number of UK work days an individual accumulates during the year, and that this could potentially lead to a larger number of individuals becoming UK resident. It believes that an increase of the number of work days allowed in the UK to 30 days under the FTWA condition would be simpler and more efficient than amending the definition of work itself which would lead to complexity in the legislation.

Part B: automatic residence tests

Second automatic residence test – home in the UK

3.29 There are four tests which make an individual automatically UK resident, and as the SRT has been developed it has always been intended that having an only home in the UK should be one of these tests. Whether an individual has a home in the UK is also a factor in determining whether split year treatment is available in certain cases. However, a large number of respondents to the recent consultation felt that the absence of a precise definition of home in the legislation would cause difficulties for individuals who, it was argued, would not be able to know their residence position with any degree of certainty.

3.30 In particular, many respondents asked for clarity about what constitutes a holiday or weekend home. For example, an individual may live in a UK property during the week but return to their family overseas during weekends. Though they spend the majority of their time in the UK property, they view their family home overseas as their principal home.

3.31 A number of respondents also commented that certain phrases in the legislation were not clearly defined such as 'moving out'. For example, taxpayers would not know whether they had to leave a property entirely empty or whether simply removing some personal effects would be sufficient to be regarded as having moved out of the property. It was also suggested that the legislation should clarify whether a property could be the home of an individual if it had been let commercially to tenants.

3.32 Respondents also suggested that an individual should not be treated as a UK resident for the whole of a tax year if they have an only home in the UK for just a few days because of a 91 day period which fell mainly in another tax year.

Government response

3.33 The Government has carefully considered whether it would be possible to define in legislation what constitutes a home more precisely. It has concluded that it would be very difficult to set out every single scenario in legislation. Nevertheless the Government continues to believe that there should be an automatic residence test based around having a UK home, and that the vast majority of taxpayers will know whether and where they have a home. This rule will ensure, for example, that people who move their home from an overseas country into the UK later in the tax year will know that they are resident in the UK (unless it happens to be the case that the automatic overseas test applies).

3.34 **However, recognising the uncertainty that people in more complicated situations could have, the Government has made some changes to the draft legislation and has introduced a minimum presence test.**

3.35 The draft legislation now makes it clear that a home will generally be a structure or a building as opposed to a place such as a town or a country. The legislation also indicates that a home will have a degree of stability or permanence for the individual, and that it will not necessarily continue to be a home just because an individual continues to hold an interest in it after moving out, for example having put it up for sale or having sub-let the property. Finally, the draft legislation makes it clear that somewhere the individual uses periodically as nothing more than a holiday home or temporary retreat will not count as a home, and the reference to a weekend home has been removed.

3.36 **The Government also proposes to introduce a minimum presence rule under which any home in which the taxpayer is present on fewer than 30 days during the tax year will be disregarded for the purposes of the second automatic residence test.** This will provide additional certainty to the second automatic UK residence test as an individual will know that they will not need to consider whether a place is a home unless they have spent more than the minimum period there. The Government has decided that 30 days is an appropriate period of time as it will rule out many holiday homes or temporary or occasional residences. This rule will apply to overseas homes as well as homes in the UK which will make it clear that a property overseas which is used only a few weeks a year can be disregarded for the purposes of this test.

3.37 Under the revised second automatic UK residence test, an individual will be UK resident if:

- they have a home in the UK for more than 90 days;
- they spend at least 30 (not necessarily consecutive) days in that home in the tax year; and
- while the individual has that home, there is at least one period of 91 consecutive days (falling at least partly within the tax year) throughout which either:
    - they have no home overseas; or

- they have one or more homes overseas, but each of those homes is a home in which they spend fewer than 30 (not necessarily consecutive) days in the tax year.

3.38 The Government proposes that an individual will have spent a day at the home if they are there at any point during the day.

3.39 HMRC will publish detailed guidance setting out how they will interpret the legislative provisions and provide examples of different scenarios to show when a particular property would constitute a home and when it would not.

3.40 Finally, the Government does not agree that an individual should not be treated as a UK resident for the whole of a tax year if they have an only home in the UK for just a few days because of a 91 day period which fell mainly in another tax year. The effects of this rule will be mitigated by either an automatic overseas test or in some cases through split year treatment.

Third automatic residence test – full time work in the UK (FTWUK)

Box 3.D: 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?

3.41 Under the SRT, an individual will be automatically UK resident if they work full time in the UK and do not meet any of the automatic overseas tests. The main purpose of this test is to provide certainty for employers when they bring their employees to the UK.

3.42 The Government originally proposed that an individual works full time in the UK if they are employed or self employed in the UK over a continuous period of nine months and if no more than 25 per cent of their duties are carried on outside the UK during the period.

3.43 However, in the June 2012 summary of responses, the Government asked respondents whether they would prefer the qualifying period to be increased from 9 months to 12 months. This would align more closely the qualifying period with the test for full time work overseas making it more straightforward and consistent. It would also help to reduce the administrative burdens for employers who need to track employees arriving from overseas locations.

3.44 Respondents have been largely in favour of increasing the qualifying period from 9 months to 12 months for these reasons.

Government response

3.45 For the reasons outlined above, the Government has decided to increase the qualifying period for an individual working in the UK to be treated as a UK resident to 12 months.

Fourth automatic residence test – death in year

3.46 The Government proposed that an individual who dies in a tax year would be treated as UK resident for tax purposes if they were UK resident in each of the previous three years due to meeting one of the automatic residence tests. In addition, for the test to apply, the individual would have their normal home in the UK when they die even if they were living temporarily overseas.

3.47 A number of respondents to the recent consultation argued that the definition of a "normal home" was inadequate and unclear.

Government response

3.48 In order to address the concerns raised about the definition of a "normal home", the Government has changed the legislation so that the test now looks at whether the individual has any home in the UK. Therefore, when the individual dies, the test is whether their home, if they have only one, is in the UK or, if they have multiple homes, at least one of their homes is in the UK.

Part C: sufficient ties

Accommodation tie

3.49 The accommodation tie generated a lot of comment from respondents throughout the consultation period. In June 2012, the Government proposed a simpler definition of the accommodation tie intended to capture a wide array of accommodation types with a single generic test. It also introduced day count thresholds to determine when accommodation becomes an accommodation tie for the purpose of this test.

3.50 The Government proposed that an individual would have an accommodation tie if they have a place to live in the UK, which is available to that individual during the year for a continuous period of at least 91 days, and the individual spends at least one night there in the year. But accommodation belonging to a close relative would be an accommodation tie only if the individual spends a total of at least 16 nights there in the tax year.

3.51 The Government also proposed that if there is a gap of fewer than 16 days between periods when a particular place is available to the individual, that place is treated as continuing to be available during the gap.

3.52 A number of respondents to the recent consultation have asked for the accommodation tie to be clarified further. In particular they queried why friends should be treated differently from close relatives and also why only some relatives fell within the definition of a close relative. Respondents were concerned that a casual offer of a place to stay by a friend could create "available accommodation" even if the offer was not one that either person would reasonably expect to be taken up for a three month period. Respondents also queried if staying frequently at the same hotel would create an accommodation tie.

3.53 A few respondents have also asked for the number of nights an individual is required to spend at the accommodation in the year to be increased.

Government response

3.54 **The Government does not propose to make any significant changes to the accommodation tie**. The definition has been drawn to capture any accommodation that is available to an individual for a significant period during the tax year, subject to the conditions outlined in the definition.

3.55 **However, the Government recognises that there are certain areas which require clarification**. HMRC guidance will be published to outline how HMRC will apply the accommodation tie and the circumstances in which an individual will and will not normally be considered to have an accommodation tie.

3.56 The Government does not believe that accommodation should be treated as being available accommodation for the purpose of this test unless the individual would really be able to stay there for at least a three month period. A casual offer by a friend indicating that somebody is welcome to stay with them at any time will not create an accommodation tie unless the offer would genuinely extend for a stay of at least three months.

3.57 The Government does not agree that the proposed thresholds for the number of nights an individual is allowed to spend at an accommodation, before it is treated as being available, are too low. Increasing the threshold of one night would risk the test looking like a test of presence which is not the objective of the accommodation tie. The Government has already increased the number of nights an individual is allowed to spend at the home of close relatives to at least 16 nights.

3.58 Furthermore the Government does not believe the accommodation tie should be changed to deal with stays at the same hotel. Such visits will be caught only if the same hotel is always used and there is no gap between visits of more than 16 days over a 91 day period. It is right that, in order to prevent manipulation, gaps of less than 16 days should be disregarded, and that very frequent and regular stays at the same hotel over a long period should be capable of being an accommodation tie.

3.59 The Government has however made some minor changes to clarify the operation of the accommodation tie. It has replaced the idea of accommodation "belonging" to a close relative with accommodation being "the home of" a close relative. And as with "home" the reference to a weekend home has been removed.

Family tie

3.60 The Government proposed that having a family in the UK such as a spouse, partner, or children should be a connection factor under the sufficient ties part of the SRT. It also proposed that children who are resident in the UK due to their attendance at an educational establishment should not be treated as a family connection if the child spends fewer than 60 days in the UK in a year where they are not present at the educational establishment and if the child's main home is not in the UK.

3.61 However, concerns were raised that only parents with children at a boarding school would benefit from this exclusion and that it should also take into account children at day schools. In the June 2012 summary of responses, the Government amended this exclusion so that a child would not be treated as a connection factor if they spend fewer than 21 days in the UK outside term time. It also removed the condition that a child's main home is not in the UK.

3.62 A number of respondents to the recent consultation have asked the Government to clarify what it means by term time. They have queried whether half term breaks are included within the definition and argued that the threshold of 21 days would be too low if term time breaks were not included. This is due to the fact that half term breaks at private schools are often a fortnight long and boarding students are likely to remain in the UK during this time. With three half terms a year, a student is likely to exceed the 21 day threshold.

Government response

3.63 **The Government has amended the draft legislation to make it clear that half term breaks are included within the definition of term time for the purposes of the test**. This means that time spent in the UK during half term breaks will not be taken into account when calculating whether a child has been in the UK for fewer than 21 days outside of term time.

Key concepts

Exceptional circumstances

3.64 Under the current rules, certain days that an individual spends in the UK because of exceptional circumstances may be disregarded for some of the day counting tests. This provision had initially not been replicated in the SRT. However, in the June 2012 summary of responses,

the Government agreed to include a similar exceptional circumstances test in response to very strong demand from respondents. This was widely welcomed by respondents.

3.65 There was a mixed response to the 60 day limit of the test; some thought that this was a reasonable amount of time and others suggested that it was too low. Respondents to the recent consultation have asked for clarity as to whether certain situations could count as exceptional circumstances, e.g. illness or injury of a spouse or close relative.

Government response

3.66 **The Government believes that 60 days is a reasonable limit of time to disregard and does not propose to increase this limit.** Guidance will be available to explain how HMRC will apply these provisions. The guidance will also cover some of the concerns that were raised in consultation.

Box 3.E: 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?

Midnight rule

3.67 Under the SRT, an individual will be treated as being in the UK on any day where they are in the UK at the end of the day (the midnight rule). The midnight rule has been adopted for simplicity and clarity. For example, individuals do not have to count the number of hours they are present in the UK, or count days of departure.

3.68 However, the Government is concerned that a small number of individuals would manipulate the midnight rule and qualify for non-resident status despite spending a lot of time in the UK in the year and having substantial UK ties. Without an anti-avoidance rule, individuals would be able to spend unlimited days in the UK, as long as they left before midnight, without being treated as having spent a day in the UK.

3.69 Under current rules, an individual needs to make a distinct break from the UK to become non-resident. However, under the SRT, there is no concept of a distinct break. This could make it easier for certain individuals to become non-resident despite not having made a distinct break.

3.70 In the June 2012 summary of responses, the Government sought views on including a targeted anti-avoidance rule to prevent abuse of the midnight rule.

3.71 Most respondents did not think it likely that many individuals would go to the lengths required to exploit the midnight rule to their advantage in order to be non-resident. However, they recognised that HMRC may be aware, from their experience of residence disputes under the current rules, of a small number of individuals who would do so and that a rule may be necessary if there is a significant amount of tax at stake and a cost to the exchequer. Respondents felt strongly that any such rule would need to be written so as to avoid complicating the legislation for the majority of people who should remain unaffected by this test.

Government response

3.72 **The Government believes that there would be a cost to the exchequer of not including a rule applying to those who are present in the UK on a large number of days without being in the UK at midnight on many of those days.**

3.73 The Government therefore proposes a rule targeted at this group of individuals. The rule will apply only to individuals who:

- have been resident in the UK for one or more of the three previous tax years;
- have at least three ties for the tax year; and
- on more than 30 days are present in the UK at some point, but not at midnight.

3.74 The effect of the test when it does apply is that all the days in excess of the 30 day threshold where an individual was present at some point in the day, are included for the purposes of establishing the number of days the individual has spent in the UK in the tax year. The new test will not apply for the purposes of applying the FTWA test. So, in determining whether an individual qualifies as not resident under the FTWA test, any days on which they were not present at midnight will continue not to be taken into account.

3.75 For example, an individual who was resident in the UK in the previous year, who has three ties to the UK and who spends 35 midnights in the UK will need to consider the number of additional days on which they were present in the UK at some point during the day but left before midnight. If in this example, the individual had spent some time in the UK on an additional 32 days then they would need to add 2 extra days when considering the number of days spent in the UK. So for the sufficient ties test they would have three ties and 37 days. In this particular example, the anti-avoidance rule would not make them resident under the sufficient ties test. However, if the individual spent some time in the UK on an additional 60 days they would need to take into account an additional 30 days. This would mean that they would be treated as having 3 ties and 65 days in the UK and so would be treated as resident under the sufficient ties test.

Full-time work

3.76 The SRT includes a requirement for an individual to work for 35 hours a week on average to qualify for FTWA and FTWUK. The draft legislation allows reasonable amounts of leave to be disregarded when calculating whether the test has been met, as well as periods where the individual is on sick leave. The limit was set taking into account the typical working week which excludes weekends, so no further reduction can be made for weekends. No adjustment is made for public holidays.

3.77 A number of respondents raised concerns about the treatment of various kinds of employment leave such as compassionate leave, maternity and paternity leave. Concerns were also raised about whether the test was appropriate for the self employed and entrepreneurs, as well as part-time and rotational workers.

3.78 If an individual moves from one job to another during the year, they will remain eligible for full-time work in the year provided the 35-hour average is met over the year. Where there is a gap between the two employments, a maximum of up to 15 days can be disregarded. Respondents thought that this 15 day limit was too short and should be replaced by a gap of 31 days instead.

3.79 A number of respondents also raised concerns that an individual returning to the UK to carry out work duties would have to compensate for this time and work more hours overseas in order to meet the 35-hour average test.

Government response

3.80 **The Government does not propose to fundamentally change the requirement for an individual to work for 35 hours a week on average to qualify for FTWA and FTWUK**. However,

the draft legislation has been amended so that in addition to annual and sick leave, a reasonable amount of parenting leave can also be disregarded when testing whether an individual has met the 35-hour average test.

3.81 The legislation as drafted should work for rotational and self employed workers. The 35-hour average test already accommodates flexible working as it is not necessary for an individual to work 35 hours in every week during the period, and weekends are not treated any differently from any other day.

3.82 The Government does not intend the FTWA condition to be available to part time workers. This would enable an individual to spend a significant amount of time in the UK, and have significant connections to the UK, but still claim automatic non-resident status on the basis of FTWA. This would constitute a significant relaxation of the existing rules and is not the policy intention of these reforms. However, this does not mean that a part-time worker cannot claim non-resident status. It simply means that they are not able to claim non-resident status on the basis of FTWA.

3.83 Extending the limit for the gap between employments from 15 days to 31 days would significantly relax the rules and allow individuals to spend a considerable amount of time doing no work at all and still qualify for FTWA. However, the Government has extended the "significant break" rule to FTWA as well as FTWUK. A "significant break" is not disregarded when applying the 35 hour test. The Government believes that it is only reasonable that somebody whose residence status is based on their employment in full time work should indeed be working regularly and consistently in full time employment.

3.84 Finally, the Government wishes to clarify that the hours that count towards the 35 hour test are only hours worked in the particular place where the test is operating. So for FTWUK, hours worked abroad do not count towards the 35 hour test, and for FTWA, hours worked in the UK do not count towards the 35 day test.

International transportation workers (ITWs)

3.85 In the June 2012 summary of responses, the Government proposed specific rules for ITWs such as pilots, cabin crew, truck drivers and mariners due to the nature of their work and working patterns. The concern was that these individuals could become non-resident comparatively easily under the FTWA condition even when they had substantial connections to the UK because a large part of their work consists of travelling overseas or between the UK and other countries.

3.86 The Government therefore proposed that an ITW should not be eligible for the FTWA or FTWUK conditions. It also proposed that, for the purposes of determining the location of work for the sufficient ties test, a UK workday should be any day in which a journey starts from the UK and that an overseas work day should be any day in which a journey starts in another country.

3.87 A number of respondents raised concerns that these proposals would mean that many ITWs would become UK resident, and that it would therefore not be fair to prevent them becoming non-resident on the grounds of FTWA.

3.88 Concerns were also raised that it would be difficult for individuals who work as ITWs for only part of the tax year to access split year treatment if they came to or left the UK to start a job in another profession.

Government response

3.89 The Government proposes retaining the rules for ITWs as outlined in the June 2012 summary of responses. It believes that special rules are needed for ITWs to exclude them from

FTWA to reflect their unique working patterns. This does not change existing practice for the vast majority, as most ITWs based in the UK would not qualify for FTWA under the current rules.

3.90 Although ITWs will not be able to become non-resident on the grounds of FTWA, it does not necessarily mean they will be UK resident. Instead, they will need to consult other parts of the test, including the number of days they work in the UK along with their other UK ties.

3.91 **In addition, the Government has amended the definition of an ITW to clarify that it includes individuals whose duties substantially consist of making international journeys but who also carry out a small number of domestic journeys in a tax year**. For these purposes, an individual will be treated as an ITW where international journeys make up at least 80 per cent of their total duties. HMRC will provide guidance on this matter.

3.92 However, the Government recognises that it would be unfair to prevent individuals who have been an ITW for part of the tax year from being eligible for split year treatment where they come to or leave the UK to work in another profession. Amendments to the rules for split year treatment will ensure that this will not occur.

Death in year

3.93 In the June 2012 summary of responses, the Government proposed changes to the way in which the SRT applies to individuals who die part way through the tax year. It was concerned that individuals who had been UK resident for all or most of their lives could be non-resident under the automatic non-residence test if they were to die abroad early in the tax year.

3.94 The Government proposed the following:

- the threshold of spending fewer than 16 days in the UK to be automatically non-resident, for individuals who have been resident in the UK in one or more of the previous three years in the UK, should not apply to those who die during the year;
- the day count thresholds in the sufficient ties test 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 automatic UK tests, they will remain UK resident for the year if their normal home was in the UK on the year of death.

3.95 A number of respondents were concerned that the proposals would create harsh results and that it would be easier for certain individuals to be UK resident. Specifically, an individual who leaves the UK to live abroad but dies while visiting the UK early in a subsequent tax year may become UK resident for tax purposes.

3.96 There were also concerns raised about the definition of a "normal home" in relation to the fourth automatic residence test (Paragraph 3.47). Respondents argued that it was vague and unclear.

Government response

3.97 The Government recognises these concerns and will introduce a new automatic overseas test for individuals who die during the tax year. Under this rule the deceased individual will be automatically non-resident if:

- they were non-resident for both immediately preceding tax years, or non-resident for the immediately preceding tax year and eligible for split year treatment by virtue of departure from the UK in the tax year before that; and

- they spend fewer than 46 days in the UK in the tax year.

3.98 The Government has also amended the fourth automatic residence test so that the test looks at whether the individual has a home in the UK (Paragraph 3.48).

Split year treatment

3.99 Under the current rules, concessionary treatment provides that the tax year is split into periods of residence and non-residence in certain circumstances when an individual comes to, or leaves, the UK part way through a tax year. The SRT will place this concessionary treatment on a statutory basis. The draft legislation aims to replicate the previous concessionary treatment but in an objective way.

3.100 A number of respondents suggested that the draft legislation was generally more restrictive and so fewer people would be able to claim split year treatment than under the current concessions.

3.101 In particular, concerns were raised about the requirement for an individual coming to the UK to have either an only home in the UK or full-time work here, in order to qualify for split year treatment. It was suggested that certain individuals would be in a worse position as compared with the current treatment. These individuals do not qualify for full time working in the UK as they either have a high number of overseas workdays or may not be working at all, and they do not meet the only home test, as they have maintained an overseas property available as a home.

3.102 Respondents suggested that it is unreasonable to put these individuals in a less favourable position than someone in a similar situation who has put a tenant in their overseas home or sold the property. Respondents also thought that the test made it more difficult for retirees to claim split year status.

3.103 It was also thought that the reference to an individual's "normal home" in the draft legislation would need defining and could lead to uncertainty.

3.104 Several respondents suggested that split year treatment is restrictive because an individual would not be able to claim split year treatment where they fail to fulfil the requirement under case 1 of working full time overseas for the whole of the following tax year (perhaps because they were made redundant, for example, although the individual remains overseas) but neither do they qualify for case 3 because they have retained a UK home.

Government response

3.105 In order to address the reasonable concerns that have been raised about the availability of split year treatment, the Government has added a fifth split year case to the draft legislation. The fifth case will ensure that an individual who does not have a home in the UK at the start of the tax year but who acquires a UK home during the tax year, and who also remains UK resident for the following tax year will be able to claim split year status.

3.106 Recognising the difficulty in this definition, the Government has also changed the draft legislation to remove the concept of "normal home". Under these changes an individual will qualify for case 3 split year treatment (leaving the UK to live abroad) if, subject to the other qualifying conditions, they have, in the six months following departure from the UK, become tax resident elsewhere, or have spent every midnight in an overseas country, or have established an only home or homes in an overseas country.

3.107 The concept of having a normal home has also been removed from the fourth automatic UK residence test and replaced with a requirement that the individual had a home in the UK at the time of death.

3.108 The Government does not intend to extend split year treatment to people who leave the UK to work but who do not qualify for case 1, and who retain a home in the UK and so fail to qualify for case 3 treatment. This is because split year treatment would not have been available under the current concessions.

Anti avoidance

3.109 In the June 2012 summary of responses, the Government outlined the further anti-avoidance rules it proposed to counteract the risk of individuals using short periods of non-residence to receive income or gains free of UK tax. These new rules would cover income from:

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

3.110 These would be designed to supplement the temporary non-residence rules which will apply to capital gains, pension scheme withdrawals, remittances of foreign income, offshore income gains and pension scheme property income.

3.111 All the temporary non-residence rules 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.

3.112 The main focus of the consultation responses was on how the new temporary non-residence rule for distributions from closely controlled companies would operate.

Government response

3.113 The Government remains committed to adding the new rules as proposed in the June 2012 summary of responses.

3.114 The revised draft legislation now contains rules which apply to income from closely controlled companies. This will operate where an individual has received a distribution or a dividend paid in respect of pre-departure profits from such a company whilst they are temporarily non-resident. Where this is the case, they will be chargeable to tax as if they had received those payments when they return to the UK. Similar rules will apply where such a company has made a loan to an individual which is written off during a period of non-residence. In such cases, the individual will be taxable as if the loan had been written off after the end of the period of temporary non-residence.

3.115 Further new rules apply where a chargeable event gain has arisen to an individual during a period of temporary non-residence and where an individual receives a lump sum from an employer-financed pension scheme during a period of temporary non-residence, both of which would have been liable to tax in the UK had the individual been resident at the time such benefits were received. Where this is the case, the individual will again be liable to tax as if those benefits had been received after the end of the period of temporary non-residence.

3.116 Relatively minor changes have also been made to some of the other temporary non-residence provisions.

Other issues

Short term business visitors

3.117 A number of respondents raised concerns that the SRT would be likely to make a greater number of short term visitors UK resident than was previously the case. The majority of these individuals will also remain resident in their home country for tax purposes and as such, most will be able to use the double tax treaty between the UK and their home country to exempt their earnings from UK income tax.

3.118 However, if they become resident for tax purposes, their employers will have to operate PAYE on their earnings and the individuals will need to file UK tax returns with treaty claims to reclaim the PAYE. This change is of most concern to employers who regularly bring large numbers of employees from the overseas business in to the UK for short term projects.

Government response

3.119 The Government accepts the evidence that a group of short term business visitors will become UK resident, due to the SRT, who are not resident under the current rules. However, the Government does not intend to adjust the day count thresholds which provide the right result for the vast majority of individuals.

3.120 These concerns can be addressed by changing an administrative easement which employers rely on to simplify reporting for their short term business visitors. Currently, the employee has to be non-resident for tax purposes in order to rely on this easement, which allows an employer not to have to operate PAYE if the employee's earnings are not taxable here under treaty provisions.

3.121 The Government is exploring whether these arrangements can be changed so that employees who are UK resident but whose earnings would be exempt from UK income tax under a double tax treaty, and whose earnings are not taxable in the UK under the double tax treaty, do not need to have PAYE operated on their earnings.

Trustees

3.122 Under the SRT an individual is resident for the whole of a tax year or not at all. It follows that provisions that look at residence status at a particular time may not work in the same way as previously. It is recognised that this may have an unintended impact on the position of a trust in the year in which an individual trustee comes to or leaves the UK and is resident for that year.

3.123 Accordingly the draft legislation contains a new rule that provides that an individual trustee is not regarded as resident for the purposes of determining the residence status of the trust if the only period in the year when the individual is a trustee falls within the overseas part of a split year for that individual.

Online tool

3.124 It was previously indicated that an online assessment tool will be available to assist people in determining whether or not they are resident. Respondents have welcomed such a tool, but have suggested that if the tool is not binding then it will be difficult for people to rely on the guidance that it provides. Several respondents suggested that there was a risk that the assessment tool would become difficult to use and heavily qualified because of the amount of information that would need to be considered. Respondents also suggested that a telephone helpline should also be available for those who don't want or are not able to use the internet.

Government response

3.125 HMRC is currently evaluating how the online assessment tool will operate in practice in combination with the guidance and other support HMRC will provide on the SRT. In some cases, an individual's residence will hinge on how they have applied the interpretation of a concept or term in the SRT to their circumstances. Where it is clear that they have correctly applied that term, and so input the correct data into the online tool, the tool can provide them with a definitive answer.

4 Summary of responses: reforms to ordinary residence

Ordinary residence

4.1 At Budget 2012, the Government announced that it would abolish the concept of ordinary residence and retain overseas workday relief (OWR) placing it on a statutory footing. This represents a major simplification to the UK tax system. This was the favoured option of the majority of respondents to the first consultation on the statutory residence test and reforms to ordinary residence in June 2011.

4.2 The decision to abolish ordinary residence will have an effect on the tax liability of a very small group of individuals who currently claim the remittance basis of taxation as a result of being not ordinarily resident. However, only around 300 individuals will be affected by this reform. The Government has also proposed changes to the provision of OWR. These changes will benefit a larger group of individuals than is the case under the current rules and will also be a major simplification for employers. These changes are outlined in the following section on OWR.

Box 4.F: 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?

Box 4.G: Question 6(b)

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

4.3 The consultation did not generate a significant amount of responses on whether or not the consequential changes will have a disproportionate impact, or if further transitional provisions would be required. However a number of respondents said, given there are grandfathering provisions, the consequential changes would have only a minimal impact on particular individuals. A number of respondents also confirmed there was no need for more comprehensive grandfathering provisions. Where respondents did identify individuals who would lose out as a result of the reforms to ordinary residence, the cases that were identified were individuals who arrived in the UK after April 2013 so the grandfathering provisions do not apply.

Overseas workday relief

4.4 In the June 2012 summary of responses, the Government outlined details of a legislative test to replicate the current rules on OWR under which it is available to employees who arrive in the UK intending to stay here for less than three years. The legislative test outlined a number of factors that would indicate that an individual was likely to be based in the UK beyond three years. The questions below were asked to test the effectiveness of this proxy test. The responses have led the Government to develop an alternative policy on OWR which has been set out in detail below.

Box 4.H:

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?

4.5 The Government decided to abolish ordinary residence, but to retain OWR and to place it on a statutory footing. The draft legislation that was published in June 2012 set out to replicate, in the form of a legislative test, the current policy under which OWR is available to employees who arrive in the UK intending to stay here for less than three years.

4.6 The draft legislation outlined a number of factors that would indicate that an individual was likely to be based in the UK beyond three years and hence ineligible for OWR. This was felt to replicate as closely as possible the current practice. OWR would be restricted to non-domiciles and would only be available to those individuals who have been non-resident in the UK for the previous three tax years.

4.7 These factors included purchasing a home, reaching an understanding that they were likely to be working here for more than three years, and entering into other commitments in the UK that indicate an intention to be based here for more than three years.

4.8 However, the majority of respondents to the consultation felt strongly that the test as drafted was still a subjective test of intention and was not a test based on objective external factors. Respondents claimed that this would mean continued uncertainly for the taxpayer.

4.9 Respondents suggested a variety of alternative tests ranging from suggesting that OWR should be available to any non-domiciled individual "not relocating permanently" or arriving for less than five years, and even suggested that the link with the remittance basis of taxation should be removed. Respondents also commented on the fact that the length of time that OWR would be available and in some cases, whether OWR was available at all, would vary depending on the point during the tax year that the individual arrived. This was seen as unfair and distortive.

Government response

4.10 The starting point for the SRT and the reforms to ordinary residence as a whole has been that the reforms are cost neutral. It would not be possible to simplify the test by removing the restrictions so that the relief was offered for three years to all "arrivers" as this would carry a cost to the exchequer. Neither would it be possible to remove the link with the remittance basis; it will remain the case that overseas earnings which are remitted to the UK will still be taxable here.

4.11 **However, the Government has listened to the suggestions made by respondents to the consultation and has decided to offer OWR to all non-domiciled individuals who arrive in the UK having been non-resident for the three previous tax years**. OWR will be available for the whole of the tax year that the individual becomes resident in the UK (or for the UK part of the year if that year is a split year) and for the two tax years following. This will simplify the test and provide certainty to the taxpayer and to their employer. For the majority of arrivers, OWR will be available for somewhere between two years and three years, depending on the point in the tax year they arrive.

4.12 This new relief will be available for anybody who arrives in the UK after 5 April 2013 and there will no longer be any need for an individual to demonstrate that they intend to leave the UK within three years. Furthermore, there will be no restrictions on the relief being available when somebody decides to buy a property in the UK or takes any other steps that would suggest a more permanent connection to the UK.

4.13 The Government believes that opening up this relief to any non-domiciled individual who arrives in the UK having been non-resident for three years will bring clarity and certainty to the tax system. This will help to make the UK a more appealing destination for foreign workers and will help to attract people to live and work in the UK.

4.14 For people who qualify for split year treatment, OWR will be available for the UK part of the split-year period and for the two complete tax years following. For people who become resident in the UK but do not qualify for split year treatment, OWR will be available for the whole of the tax year of arrival and for the two complete tax years following. In the event that an individual moves to the UK but does not become resident for tax purposes, OWR will not be available. However, if they become resident in the following tax year they will be able to claim OWR for that year and the two years following, as with any other new arriver.

Secondary legislation

4.15 FB13 removes most references to the concept of 'ordinary residence' from primary tax legislation. Secondary legislation will remove references to ordinary residence from six statutory instruments: the Income Tax (Entertainers and Sportsmen) Regulations 1987 (S.I 1987/530); the Individual Savings Account Regulations 1998 (S.I. 1988/1870); the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964); the Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009 (S.I. 2009/2034); the Pensions Schemes (Taxable Property Provisions) Regulations 2006 (S.I. 2006/1958); and the Offshore Funds (Tax) Regulations 2009 (2009/3001).

4.16 The last two instruments (relating to pension schemes and offshore funds) will be subject to further amendments, to reflect the new rules on split years in Part 3 of the SRT schedule, and on temporary non-residence in Part 4.

4.17 The amending instruments will be made in two tranches. The first, removing references to ordinary residence, will be made in early 2013. The second, relying on definitions in and amendments made by FB13, will be made after Royal Assent. Work is continuing to see whether any other secondary legislation should be similarly amended.

5 Summary of impacts

Statutory residence test

5.1 The table below provides an assessment of the impact of introducing a statutory definition of tax residence.

Exchequer Impact	This measure is expected to have a negligible impact on the Exchequer. The final impact on the Exchequer will be confirmed at Budget 2013.
Economic impact	Providing clarity on tax residency may increase the attractiveness of the UK as a place to invest, which may lead to a small increase in inward investment in the medium term.
Impact on individuals and households	The statutory test will provide greater certainty for the taxpayer and reduce the administrative complexity of navigating the current rules. 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	There is no impact on groups with protected characteristics. The introduction of a statutory residence test is not intended to change the residence status outcome in the vast majority of cases and there is not expected to have a particular impact – either positive or negative – on any equality group.
Impact on business including civil society organisations	This measure is expected to have a negligible impact on businesses and civil society organisations. Providing certainty on the residence status of individuals is expected to result in a negligible decrease in ongoing administrative burdens for companies which employ expatriate workers, since they will need to spend less time in ensuring the optimal tax status of these workers. There may be some negligible one-off costs in becoming familiar with the new provisions.
Operational impact (£m) (HMRC or other)	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 associate legal costs.
Other impacts	Other impacts have been considered and none have been identified.

Ordinary residence and overseas workday relief

5.2 The table below provides an assessment of the impact of abolishing Ordinary Residence for tax purposes and placing Overseas Workday Relief on a statutory footing.

Exchequer Impact	This measure is expected to have a negligible impact on the Exchequer. The final impact on the Exchequer will be confirmed at Budget 2013.
Economic impact	The measure is not expected to have any significant economic impacts.
Impact on individuals and households	Abolishing Ordinary Residence will be a major simplification to the current rules and will lessen the administrative burden for individuals. At present, it is possible to claim the remittance basis on the grounds of being not ordinarily resident. This will not be possible after the reforms are introduced. Data from the financial year 2008-09 shows that around 300 individuals claimed the remittance basis on the grounds of not being ordinarily resident. However, transitional rules will minimise any impact on individuals who currently benefit from being not ordinarily resident. The vast majority of individuals who currently benefit from OWR would not lose access under the new rules. These reforms will widen the availability of the relief to all arrivers regardless of the length of time they intend to stay in the UK. However, as OWR is currently available for three full tax years, there will be a number of individuals who will not benefit from OWR for as long as they would have done under current rules. There will also be transitional rules for anyone who is still in receipt of OWR when the rules come in force in April 2013.
Equalities impacts	There is no impact on groups with protected characteristics.
Impact on business including civil society organisations	This measure is expected to have a negligible impact on businesses because is it directed at individuals rather than organisations. A small number of employers may be actively engaged in ensuring optimal tax status for their employees, and in these cases there may be some one-off costs in terms of familiarisation with the new provisions and a negligible change in ongoing administrative costs. This measure is expected to have no impact on civil society organisations.
Operational impact (£m) (HMRC or other)	Simplification will result in some efficiencies for HMRC in undertaking and checking calculations, but these will not be significant.
Other impacts	Other impacts have been considered and none have been identified.

6 List of respondents

Association of Chartered Certified Accountants
Aviva plc
BAE Systems plc
Baker Tilly Tax and Accounting Limited
BDO LLP
Boodle Hatfield LLP
British Air Line Pilots' Association
British American Businesses
British Bankers' Association
Buzzacott LLP
Caldwell & Braham
Confederation of British Industry (CBI)
Deloitte LLP
Ernst & Young LLP
ExxonMobil
Frank Hirth plc
Grant Thornton UK LLP
KPMG LLP
Law Society of Chartered Accountants
Low Incomes Tax Reform Group
Maurice Turnor Gardner LLP
Mazars LLP
Moore Stephens LLP
Perkins Engines Company Limited
PKF (UK) LLP
PricewaterhouseCoopers LLP
Rawlinson & Hunter's
Rolls-Royce PLC
Saffery Champness
Society of Trusts and Estate Practitioners
Tax In Industry
The Chartered Institute of Taxation
The Cyprus International Financial Services Association (CIFSA)
The Fry Group
The Institute of Chartered Accountants in England and Wales
The Law Society
Total E&P UK Limited

There were 20 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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