

# **Statutory residence test**

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## **Who is likely to be affected?**

The statutory residence test will determine if an individual is resident in the UK or not for tax purposes. However, the vast majority of individuals will be unaffected by the introduction of the test.

## **General description of the measure**

This measure will introduce a statutory residence test which will provide greater clarity and certainty to individuals when determining their residence status for tax purposes in the UK. The current rules for determining tax residence depend to a large extent on cases decided by the courts. Many of these cases were decided some time ago and do not reflect modern work or travel patterns.

## **Policy objective**

The measure will introduce a statutory residence test that is transparent, objective and simple to use.

## **Background to the measure**

The Government announced at Budget 2011 that it would introduce a statutory residence test. A consultation on the statutory residence test during summer 2011 raised a number of detailed issues requiring careful consideration to ensure the legislation achieves its objectives.

In December 2011, the Government announced that it would defer the introduction of the test until April 2013 to give time for further consideration. In June 2012, the Government published draft legislation and a summary of responses document opening up a further consultation which closed in September 2012.

## **Detailed Proposal**

### **Operative Date**

The measure will have effect on and after 6 April 2013.

### **Current law**

The current rules for determining tax residence depend to a large extent on cases decided by the courts and can be found in HM Revenue & Customs (HMRC) guidance. There are many different factors which will determine whether an individual is resident in the UK under current rules. If an individual is in the UK for 183 days or more in a tax year, they are resident in the UK. However, an individual can also be resident in the UK if they are here for fewer than 183 days depending on the purpose and pattern of their presence and their connections to the UK.

### **Proposed revisions**

The statutory residence test will replicate as far as possible the residency outcomes delivered by the current rules. The test will also take into consideration the days spent in the UK and connections to the UK and will be structured into three parts.

Firstly, the automatic overseas test will determine if an individual is automatically non-resident.

Secondly, the automatic UK test will determine if an individual is automatically resident.

Thirdly, the sufficient ties test will determine the residency position if an individual meets neither the automatic overseas nor the automatic UK test. The sufficient ties test determines residency based on a combination of the amount of time spent in the UK with the number of ties a person has.

### Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	-	negligible	negligible	negligible	negligible	negligible
This measure is expected to have a negligible impact on the Exchequer. Any impact will be set out at Budget 2013.						
<b>Economic impact</b>	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.					
<b>Impact on individuals and households</b>	<p>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.</p> <p>Anyone who becomes resident as a result of this test will potentially be faced with additional burdens in completing a Self Assessment 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.</p>					
<b>Equalities impacts</b>	The introduction of a statutory residence test is not intended to change the residence status outcome in the vast majority of cases and it is not expected to have a particular impact, either positive or negative, on any equality group.					
<b>Impact on business including civil society organisations</b>	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.					
<b>Operational impact (£m) (HMRC or other)</b>	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.					
<b>Other impacts</b>	<p><u>Small firms impact test:</u> there will be a negligible impact on businesses, some of which will be small firms.</p> <p>Other impacts have been considered and none have been identified.</p>					

**Monitoring and evaluation**

This measure will be kept under review through communication with affected taxpayer groups.

**Further advice**

If you have any questions about these changes, please contact the offshore personal tax team (email: [offshorepersonal.taxteam@hmrc.gsi.gov.uk](mailto:offshorepersonal.taxteam@hmrc.gsi.gov.uk)).

## 1 Statutory residence test

- (1) 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.
- (2) The Treasury may by order make any incidental, supplemental, consequential, transitional or saving provision in consequence of Schedule 1.
- (3) An order under subsection (2) may –
  - (a) make different provision for different purposes, and
  - (b) make provision amending, repealing or revoking any provision made by or under an Act (whenever passed or made).
- (4) An order under subsection (2) is to be made by statutory instrument.
- (5) A statutory instrument containing an order under subsection (2) is subject to annulment in pursuance of a resolution of the House of Commons.

## 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 that 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 (or falling to be recognised and acknowledged in law by virtue of) 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 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.

*The automatic UK tests*

6 There are 4 automatic UK tests.

7 The first automatic UK test is that P spends at least 183 days in the UK in year X.

8 (1) The second automatic UK test is that –

- (a) P has a home in the UK for more than 90 days,
- (b) P is present at that home (while it is a home of P's) on at least 30 separate days in year X (for no matter how short a time on each day),
- (c) while P has that home, there is at least one period of 91 consecutive days throughout which condition A or condition B (or a combination of those conditions) is met, and
- (d) at least one day of at least one of those 91-day periods falls within year X.

(2) Condition A is that P has no home overseas.

(3) Condition B is that –

- (a) P has one or more homes overseas, but
- (b) each of those homes is a home at which P is present on fewer than 30 separate days in year X (for no matter how short a time on each day).

(4) A reference in this paragraph to 30 separate days is to 30 separate days in aggregate, whether the days are consecutive or intermittent.

(5) Sub-paragraph (1)(c) is satisfied so long as there is a period of 91 days throughout which condition A or condition B (or a combination of those conditions) is met, even if the period throughout which one (or a combination) of those conditions is met is in fact longer than that.

(6) If P has more than one home in the UK –

- (a) each of those homes must be looked at separately to see if the second automatic UK test is met, and
- (b) the second automatic UK test is then met so long as it is met in relation to at least one of those homes.

9 (1) The third automatic UK test is that –

- (a) P works full-time in the UK for a period of 365 days,
- (b) during that period, there are no significant breaks from UK 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.

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- (2) There is a “significant break from UK work” if at least 31 days go by and not one of those days is –
- (a) a day on which P does more than 3 hours’ work in the UK, or
  - (b) a day on which P would have done more than 3 hours’ work in the UK but for being on annual leave, sick leave or parenting leave.
- (3) Sub-paragraph (1)(a) is satisfied so long as there is a period of 365 days for which P works full-time in the UK, even if P in fact works full-time there for longer than that.
- (4) This paragraph does not apply to P if P is an international transportation worker at any time in year X.
- 10 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, either –
    - (i) P’s home was in the UK, or
    - (ii) P had more than one home and at least one of them was in the UK.

#### *The automatic overseas tests*

- 11 There are 4 automatic overseas tests.
- 12 The first automatic overseas test is that –
- (a) P was resident in the UK for one or more of the 3 tax years preceding year X,
  - (b) the number of days in year X that P spends in the UK is less than 16, and
  - (c) P does not die in year X.
- 13 The second automatic overseas test 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.
- 14 (1) The third automatic overseas test is that –
- (a) P works full-time overseas for year X,
  - (b) during year X, there are no significant breaks from overseas work,
  - (c) the number of days in year X on which P does more than 3 hours’ work in the UK is less than 31, and
  - (d) the number of days in year X falling within sub-paragraph (2) is less than 91.
- (2) A day falls within this sub-paragraph if –
- (a) it is a day spent by P in the UK, but
  - (b) it is not a day that is treated under paragraph 22(4) as a day spent by P in the UK.

- (3) There is a “significant break from overseas work” if at least 31 days go by and not one of those days is –
- (a) a day on which P does more than 3 hours’ work overseas, or
  - (b) a day on which P would have done more than 3 hours’ work overseas but for being on annual leave, sick leave or parenting leave.
- (4) This paragraph does not apply to P if P is an international transportation worker at any time in year X.
- 15 (1) The fourth automatic overseas test is that –
- (a) P dies in year X,
  - (b) P was resident in the UK for neither of the 2 tax years preceding year X or, alternatively, P’s case falls within sub-paragraph (2), and
  - (c) the number of days that P spends in the UK in year X is less than 46.
- (2) P’s case falls within this sub-paragraph if –
- (a) P was not resident in the UK for the tax year preceding year X, and
  - (b) the tax year before that was a split year as respects P because the circumstances of the case fell within Case 1, Case 2 or Case 3 (cases involving departure from the UK).

*The sufficient ties test*

- 16 (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 17 and 18 show how many ties are sufficient in each case.

*Sufficient UK ties*

- 17 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 –

<i>Days spent by P in the UK in year X</i>	<i>Number of ties that are sufficient</i>
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

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

- 18 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 –

<i>Days spent by P in the UK in year X</i>	<i>Number of ties that are sufficient</i>
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

- 19 (1) If P dies in year X, paragraph 17 has effect as if the words “More than 15 but” were omitted from the first column of the Table.
- (2) In addition to that modification, if the death occurs before 1 March in year X, paragraphs 17 and 18 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 –
- if the first figure after the decimal point is 5 or more, round the appropriate number up to the nearest whole number,
  - otherwise, round it down to the nearest whole number.

## PART 2

### KEY CONCEPTS

#### *Introduction*

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

*Days spent*

- 21 (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) For a tax year –
- (a) the maximum number of days to which sub-paragraph (2) may apply in reliance on sub-paragraph (4) is limited to 60, and
  - (b) accordingly, once the number of days within sub-paragraph (4) reaches 60 (counting forward from the start of the tax year), any subsequent days within that sub-paragraph, whether involving the same or different exceptional circumstances, will count as days spent by P in the UK.
- 22 (1) If P is not present in the UK at the end of a day, that day does not count as a day spent by P in the UK.
- (2) This is subject to the deeming rule.
- (3) The deeming rule applies if –
- (a) P has at least 3 UK ties for a tax year,
  - (b) the number of days in that tax year when P is present in the UK at some point in the day but not at the end of the day (“qualifying days”) is more than 30, and
  - (c) P was resident in the UK for at least one of the 3 tax years preceding that tax year.
- (4) The deeming rule is that, once the number of qualifying days in the tax year reaches 30 (counting forward from the start of the tax year), each subsequent qualifying day in the tax year is to be treated as a day spent by P in the UK.
- (5) The deeming rule does not apply for the purposes of sub-paragraph (3)(a) (so, in deciding for those purposes whether P has a 90-day tie, qualifying days in excess of 30 are not to be treated as days spent by P in the UK).

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*Days spent “in” a period*

- 23 Any reference to a number of days spent in the UK “in” a given period is a reference to the total number of days spent there (in aggregate) in that period, whether continuously or intermittently.

*Home*

- 24 (1) A person’s home could be a building or part of a building or, for example, a vehicle, vessel or structure of any kind.
- (2) Whether, for a given building, vehicle, vessel, structure or the like, there is a sufficient degree of permanence or stability about P’s arrangements there for the place to count as P’s home (or one of P’s homes) will depend on all the circumstances of the case.
- (3) But somewhere that P uses periodically as nothing more than a holiday home or temporary retreat (or something similar) does not count as a home of P’s.
- (4) A place may count as a home of P’s whether or not P holds any estate or interest in it (and references to “having” a home are to be read accordingly).
- (5) Somewhere 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 (for example, if P is in the process of selling it or has let or sub-let it, having set up home elsewhere).

*Work*

- 25 (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.
- (4) Time spent travelling counts as time spent working—
- (a) if 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) to the extent that P does something else during the journey that would itself count as work in accordance with this paragraph.
- (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.
- (6) Sub-paragraphs (4) and (5) have effect without prejudice to the generality of sub-paragraphs (2) and (3).
- (7) Assume for the purposes of sub-paragraphs (2) to (5) that P is someone who is chargeable to income tax under ITEPA 2003 or ITTOIA 2005.
- (8) 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*

- 26 (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 to or from the UK by air or sea or via a tunnel under the sea is assumed to be done overseas even during the part of the journey in or over the UK.
- (3) For these purposes, travelling to or from the UK is taken to –
  - (a) begin when P boards the aircraft, ship or train that is bound for a destination in the UK or (as the case may be) overseas, and
  - (b) end when P disembarks from that aircraft, ship or train.
- (4) This paragraph is subject to express provisions in this Schedule about the location of work done by international transportation workers.

#### *Full-time work*

- 27 (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 or parenting 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 or parenting 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 –

- (a) P changes employment during the period,
  - (b) there is a gap between the two employments, and
  - (c) P does not work at all at any time between the two employments,
- the number of days in the gap may be deducted from the length of the period in determining whether the test in sub-paragraph (1) is met, subject to a maximum deduction of 15 days.

#### *International transportation workers*

- 28 (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) 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) –
- (a) it is sufficient that substantially all of the duties or activities consist of duties or activities of that kind (even if, for example, the person occasionally performs duties or provides services on board a vehicle, aircraft or ship as it makes domestic journeys), and
  - (b) duties or activities of a purely incidental nature are to be ignored.

#### *UK ties*

- 29 (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 types of tie 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 types of tie counts as a UK tie –
- (a) a family tie,
  - (b) an accommodation tie,
  - (c) a work tie, and
  - (d) a 90-day tie.
- (4) In order to have the requisite number of UK ties for year X, each tie of P’s must be of a different type.

*Family tie*

- 30 (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 and the other person are husband and wife or civil partners and, in either case, are not separated,
  - (b) P and the other person are living together as husband and wife or, if they are of the same sex, as if they were civil partners, or
  - (c) the other person is a child of P's and is 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.
- 31 (1) This paragraph applies in deciding for the purposes (only) of paragraph 30(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.

- (6) For the purposes of this paragraph, half-term breaks and other breaks when teaching is not provided during a term are considered to form part of “term-time”.

#### *Accommodation tie*

- 32 (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’s home or at least one of P’s homes (if P has more than one) is in the UK, or
  - (b) P has a holiday home or 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 even has no legal right to occupy it.
- (5) If the accommodation is the home of a close relative of P’s, 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*

- 33 (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 day on which P completes an international journey (as such a worker) in the UK that began overseas.

- (4) The assumptions in sub-paragraph (3)(a) and (b) apply regardless of how late in the day the journey begins or, as the case may be, ends (even if it begins or ends just before midnight).
- (5) For the purposes of sub-paragraph (3)(a), it does not matter whether P completes the journey on that same day.
- (6) A day that falls within both paragraph (a) and paragraph (b) of sub-paragraph (3) is to be treated as if it fell only within paragraph (a).
- (7) In the case of an international journey to or from the UK that is undertaken in stages –
  - (a) the day on which P “starts” or, as the case may be, “completes” the journey is the day on which P starts or, as the case may be, completes the stage of the journey that involves crossing the UK border, and
  - (b) accordingly, any day on which the stage of the journey undertaken by P is a stage solely within the UK is to be counted separately (if it lasts for more than 3 hours) as a day on which P does more than 3 hours’ work in the UK.

#### *90-day tie*

- 34 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 separately.

#### *Country tie*

- 35 (1) P has a country tie for year X if the country in which P meets the midnight test for the greatest number of days in year X is the UK.
- (2) If –
- (a) P meets the midnight test for the same number of days in year X in two or more countries, and
  - (b) that number is the greatest number of days for which P meets the midnight test in any country in year X,
- P has a country tie for year X if one of those countries is the UK.
- (3) P meets the “midnight test” in a country for a day if P is present in that country at the end of that day.

### PART 3

#### SPLIT YEAR TREATMENT

#### *Introduction*

- 36 This Part of this Schedule –
- (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.

- 37 (1) The effect of a tax year being a split year is to relax the effect of paragraph 2(3) (which treats individuals who are UK resident “for” a tax year as being UK resident at all times in that year).
- (2) When and how the effect of paragraph 2(3) is relaxed is defined in the special charging rules introduced by the amendments made by this Part.
- (3) Subject to those special charging rules (and any other special charging rules for split years that may be introduced in the future), nothing in this Part alters an individual’s residence status for a tax year or affects his or her liability to tax.
- 38 This Part –
- (a) does not apply in determining the residence status of personal representatives, and
- (b) applies to only a limited extent in determining the residence status of the trustees of a settlement (see section 475 of ITA 2007 and section 69 of TCGA 1992, as amended by this Part).
- 39 The existence of special charging rules for cases involving split years is not intended to affect any question as to whether an individual would fall to be regarded under double taxation arrangements as a resident of the UK.

#### *Definition of a “split year”*

- 40 (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, Case 4 or Case 5.
- (2) The 5 Cases are described in paragraphs 41 to 45.
- (3) In those paragraphs, the individual is referred to as “the taxpayer” and the tax year as “the relevant year”.
- (4) In applying Part 2 of this Schedule to those paragraphs, for “P” read “the taxpayer”.

#### *Case 1: starting full-time work overseas*

- 41 (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 falling within sub-paragraph (6) 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 14).
- (6) A day falls within this sub-paragraph if –
  - (a) it is a day spent by the taxpayer in the UK, but
  - (b) it is not a day that is treated under paragraph 22(4) as a day spent by the taxpayer in the UK.
- (7) The permitted limit is –
  - (a) for sub-paragraph (4)(a), the number found by reducing 30 by the appropriate number, and
  - (b) for sub-paragraph (4)(b), the number found by reducing 90 by the appropriate number.
- (8) The appropriate number is the result of –

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

where –

“A” is –

- (a) 30, 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*

- 42 (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 41(4)(b).
- (9) “Partner” means –
  - (a) a husband or wife or civil partner,

- (b) if the taxpayer and another person are living together as husband and wife, that other person, or
- (c) if the taxpayer and another person of the same sex are living together as if they were civil partners, that other person.

*Case 3: leaving the UK to live abroad*

- 43 (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 had one or more homes 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 of the case 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) At the end of the period of 6 months beginning with the day mentioned in sub-paragraph (3)(a), the taxpayer has a sufficient link with a country overseas.
- (8) The taxpayer has a “sufficient link” with a country overseas if and only if—
- (a) the taxpayer is considered for tax purposes to be a resident of that country in accordance with its domestic laws, or
  - (b) the taxpayer has been present in that country (in person) at the end of each day of the 6-month period mentioned in sub-paragraph (7), or
  - (c) the taxpayer’s only home is in that country or, if the taxpayer has more than one home, they are all in that country.

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

- 44 (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 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 the earliest of those days 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 paragraphs 8 and 9).
- (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 16 to 19 (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 part of the relevant year mentioned in sub-paragraph (4), and
  - (b) each number of days mentioned in the first column of the Table in paragraphs 17 and 18 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).

*Case 5: starting to have a home in the UK*

- 45 (1) The circumstances of a case fall within Case 5 if they are as described in sub-paragraphs (2) to (6).
- (2) The taxpayer was not resident in the UK for the previous tax year.
- (3) At the start of the relevant year, the taxpayer had no home in the UK but –
  - (a) there comes a day when, for the first time in that year, the taxpayer does have a home in the UK, and
  - (b) from then on, the taxpayer continues to have a home in the UK for the rest of that year and for the whole of the next tax year.
- (4) For the part of the relevant year before the day mentioned in sub-paragraph (3)(a), the taxpayer does not have sufficient UK ties.
- (5) The circumstances of the case do not fall within Case 4 for the relevant year.
- (6) The taxpayer is resident in the UK for the next tax year and that tax year is not a split year as respects the taxpayer.
- (7) Paragraphs 16 to 19 (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 part of the relevant year mentioned in sub-paragraph (4), and
  - (b) each number of days mentioned in the first column of the Table in paragraphs 17 and 18 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 mentioned in sub-paragraph (3)(a).

*General rules for construing Cases 1 to 5*

- 46 (1) This paragraph applies for the purposes of paragraphs 41 to 45.
- (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) 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*

- 47 (1) “The overseas part” of a split year is the part of that year –
- (a) in Case 1, beginning with the day mentioned in paragraph 41(3),
  - (b) in Case 2, beginning with the deemed departure day as defined in paragraph 42(7),
  - (c) in Case 3, beginning with the day mentioned in paragraph 43(3)(a),
  - (d) in Case 4, before the day (or earliest day) mentioned in paragraph 44(4), and
  - (e) in Case 5, before the day mentioned in paragraph 45(3)(a).
- (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*

- 48 ITEPA 2003 is amended as follows.
- 49 (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.”
- 50 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).”
- 51 (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 the full amount of the overseas earnings for that year as is attributable to the UK part of the 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 or step 2 in subsection (3) is to be done on a just and reasonable basis.”
- 52 (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.”
- 53 (1) Section 26 (foreign earnings for year when remittance basis applies and employee meets section 26A requirement) 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).”
- 54 (1) Section 329 (deduction from earnings not to exceed earnings) is amended as follows.
- (2) After subsection (1) insert –
- “(1A) If the earnings from which a deduction allowed under this Part is deductible include earnings that 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 part of the earnings that is not “excluded” bears to the total earnings.”
- (3) In subsection (2), after “those earnings” insert “(or, in a case within subsection (1A), the part of those earnings that is not “excluded”).
- (4) In subsection (3), after “the earnings” insert “(or, in a case within subsection (1A), the part of the earnings that is not “excluded”).
- 55 (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, 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) After subsection (2) insert –
  - “(2A) But Chapters 3A to 3D do apply in relation to employment-related securities in relation to which they are disapplied by subsection (2) if –
    - (a) the acquisition takes place in the overseas part of a tax year that is a split year as respects the employee,
    - (b) the tax year is a split year because the circumstances of the case fall within Case 1, Case 2 or Case 3 as described in Part 3 of Schedule 1 to FA 2013 (split year treatment: cases involving departure from the United Kingdom), and
    - (c) had it not been a split year –
      - (i) the earnings from the employment at the time of the acquisition (or some of them) would have been general earnings to which section 15, 22 or 26 applied, or
      - (ii) if there had been any earnings from the employment at that time, they (or some of them) would have been general earnings to which any of those sections applied.”

56 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.”

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

(2) For subsections (3) to (5) substitute –

“(3) Subsection (4) applies if the value of the relevant step, or a part of it, is “for” –

- (a) a tax year for which A is non-UK resident, or
- (b) a tax year that is a split year as respects A.

(4) The value, or the part of it, is to be reduced –

- (a) in a case within subsection (3)(a), by so much of the value, or the part of it, as is not in respect of UK duties, and
- (b) in a case within subsection (3)(b), by so much of the value, or the part of it, as is both –
  - (i) attributable to the overseas part of the tax year, and
  - (ii) not in respect of UK duties.

(5) The extent to which –

- (a) the value, or the part of it, is not in respect of UK duties, or
  - (b) so much of the value, or the part of it, as is attributable to the overseas part of the tax year is not in respect of UK duties,
- is to be determined on a just and reasonable basis.”

(3) After subsection (5) insert –

“(5A) Any attribution required for the purposes of subsection (4)(b)(i) is to be done on a just and reasonable basis.

(5B) “UK duties” means duties performed in the United Kingdom.”

58 In section 554Z6 (overlap with certain earnings), in subsection (1)(a), after “UK resident” insert “(and, in the case of a tax year that is a split year as respects A, are not “excluded” by virtue of section 15(1A)(a) and (b)(i))”.

59 In section 554Z9 (remittance basis: A is ordinarily UK resident), in subsection (5) –

- (a) in paragraph (b), after “that income” insert “(or of so much of it as is attributable to the UK part of the relevant tax year, if it was a split year as respects A)”, and
- (b) in paragraph (c), after “tax year” insert “(or the UK part of it)”.

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

- (2) In subsection (1), for paragraph (a) substitute –
- “(a) the value of the relevant step, or a part of it, is “for” a tax year (“the relevant tax year”) as determined under section 554Z4.”.
- (3) For subsection (2) substitute –
- “(2) The overseas portion of (as the case may be) –
- (a) A’s employment income by virtue of section 554Z2(1), or
- (b) the relevant part of A’s employment income by virtue of that section,
- is “taxable specific income” in a tax year so far as the overseas portion is remitted to the United Kingdom in that year.”
- (4) After that subsection insert –
- “(2A) “The overseas portion” of A’s employment income by virtue of section 554Z2(1), or of the relevant part of that income, is so much of that income, or of the relevant part of it, as is not in respect of UK duties.
- (2B) “UK duties” means duties performed in the United Kingdom.”
- (5) In subsection (3), for “this purpose” substitute “the purposes of this section”.
- (6) For subsection (4) substitute –
- “(4) The extent to which –
- (a) the employment income, or the relevant part of it, is not in respect of UK duties, or
- (b) so much of the employment income, or of the relevant part of it, as is attributable to the UK part of the relevant tax year is not in respect of UK duties,
- is to be determined on a just and reasonable basis.”

*Special charging rules for pension income*

- 61 (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*

- 62 ITTOIA 2005 is amended as follows.
- 63 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.”
- 64 (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,”.
- 65 In section 243 (post-cessation receipts: extent of charge to tax), after subsection (5) insert—
- “(6) 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.”
- 66 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.”
- 67 (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).”
- 68 (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*

69 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 –

- (a) 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, and
- (b) the portion of the profits arising in the overseas part of the tax year is, accordingly, not chargeable to tax under this Chapter.

(4) In determining how much of the profits arise in the UK part of the tax year –

- (a) determine first how much of the non-CAA profits arise in the UK part by apportioning the non-CAA profits between the UK part and the overseas part on a just and reasonable basis, and
- (b) then adjust the portion of the non-CAA profits arising in the UK part by deducting any CAA allowances for the year and adding any CAA charges for the year.

(5) In subsection (4) –

“CAA allowances” means allowances treated under section 250 or 250A of CAA 2001 (capital allowances for overseas property businesses) as an expense of the business;

“CAA charges” means charges treated under either of those sections as a receipt of the business;

“non-CAA profits” means profits before account is taken of any CAA allowances or CAA charges.”

*Special charging rules for savings and investment income*

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

71 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.”

- 72 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).”
- 73 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,”.
- 74 (1) Section 528 (reduction in amount charged under Chapter 9 of Part 4: non-UK resident policy holders) is amended as follows.
- (2) The amendments made by sub-paragraphs (3) to (5) apply to section 528 as substituted by paragraph 3 of Schedule [ ] to this Act, and have effect in relation to policies and contracts in relation to which that section as so substituted has effect.
- (3) In subsection (1)(b), for the words from “on which” to the end substitute “that are foreign days”.
- (4) After subsection (1) insert –
- “(1A) “Foreign days” are –
- (a) days falling within any tax year for which the individual is not UK resident, and
- (b) days falling within the overseas part of any tax year that is a split year as respects the individual.”
- (5) In subsection (3), in the definition of “A”, for “days falling within subsection (1)(b)” substitute “foreign days”.
- (6) The amendments made by sub-paragraphs (7) to (9) apply to section 528 as in force immediately before the substitution mentioned in sub-paragraph (2) so far as that section as so in force continues to have effect after the substitution.
- (7) 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 foreign days.”
- (8) After that subsection insert –
- “(1A) “Foreign days” are –
- (a) days on which the policy holder is not UK resident, and
- (b) days falling within the overseas part of any tax year that is a split year as respects the policy holder (if the policy holder is an individual).”
- (9) In subsection (3), in the definition of “A”, for the words from “on which” to the end substitute “in the policy period that are foreign days, and”.
- 75 (1) Section 528A (reduction in amount charged on basis of non-UK residence of deceased person), as inserted by paragraph 3 of Schedule [ ] to this Act, is amended as follows.

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- (2) In subsection (1)(b), for the words from “on which” to the end substitute “that were foreign days”.
- (3) In subsection (2) –
- (a) in paragraph (b), for the words from “on which” to the end substitute “that were foreign days, and”, and
  - (b) for paragraph (c), substitute –
    - “(c) the deceased died –
      - (i) in a tax year for which the deceased was UK resident but not one that was a split year as respects the deceased, or
      - (ii) in the UK part of a tax year that was a split year as respects the deceased.”
- (4) After that subsection insert –
- “(2A) “Foreign days” are –
- (a) days falling within any tax year for which the deceased was not UK resident, and
  - (b) days falling within the overseas part of any tax year that was a split year as respects the deceased.”
- (5) In subsection (4), in the definition of “A”, for the words from “are days falling” to the end substitute “were foreign days, and”.
- 76 (1) Section 536 (top slicing relieved liability: one chargeable event) is amended as follows.
- (2) The amendment made by sub-paragraph (3) applies to section 536 as amended by paragraph 5 of Schedule [ ] to this Act, and has effect in accordance with paragraph 7 of that Schedule.
- (3) For subsection (7) substitute –
- “(7) If in the case of the individual the gain is reduced under section 528 –
- (a) divide the number of foreign days in the material interest period (as defined in that section) by 365,
  - (b) if the result is not a whole number, round it down to the nearest whole number, and
  - (c) reduce N, for steps 1 and 3 in subsection (1), by the number found by applying paragraphs (a) and (b).”
- (4) The amendment made by sub-paragraph (5) applies to section 536 as in force immediately before it is amended by paragraph 5 of Schedule [ ] to this Act, so far as that section as so in force continues to have effect after it is so amended.
- (5) For subsection (7) substitute –
- “(7) If the gain is from such a policy –
- (a) divide the number of foreign days in the policy period (as defined in section 528) by 365,
  - (b) if the result is not a whole number, round it down to the nearest whole number, and
  - (c) reduce N, for steps 1 and 3 in subsection (1), by the number found by applying paragraphs (a) and (b).”

*Special charging rules for miscellaneous income*

- 77 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*

- 78 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.”
- 79 (1) Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad) is amended as follows in consequence of the amendment made by the preceding paragraph.
- (2) In section 726 (non-UK domiciled individuals to whom remittance basis applies), after subsection (4) insert –
- “(5) In the application of section 832 of ITTOIA 2005 to the foreign deemed income, subsection (2) of that section has effect with the omission of paragraph (b).”
- (3) In section 730 (non-UK domiciled individuals to whom remittance basis applies), after subsection (4) insert –
- “(5) In the application of section 832 of ITTOIA 2005 to the foreign deemed income, subsection (2) of that section has effect with the omission of paragraph (b).”
- (4) In section 735 (non-UK domiciled individuals to whom remittance basis applies), as substituted by Part 4 of Schedule [ ] to this Act, after subsection (5) insert –
- “(6) In the application of section 832 of ITTOIA 2005 to the foreign deemed income, subsection (2) of that section has effect with the omission of paragraph (b).”

*Special charging rules for capital gains*

- 80 TCGA 1992 is amended as follows.
- 81 (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 [ ] 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)”.
- 82 (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)”.
- 83 (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”.
- 84 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.”
- 85 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.”
- 86 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”.

- 87 (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 definition of “relevant allowable losses”, after “tax year” insert “or a part of the tax year”.
- 88 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”.
- 89 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.”
- 90 (1) Paragraph 9 of Schedule 4C (transfers of value: attribution of gains to beneficiaries) is amended as follows.
- (2) In sub-paragraph (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) 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.”

#### *Trustees of a settlement*

- 91 In section 69 of TCGA 1992 (trustees of settlements), after subsection (2D) insert –
- “(2DA) A trustee who is resident in the United Kingdom for a tax year is to be treated for the purposes of subsections (2A) and (2B) as if he or she were not resident in the United Kingdom for that year if –
- (a) the trustee is an individual,

- (b) the individual becomes or ceases to be a trustee of the settlement during the tax year,
  - (c) that year is a split year as respects the individual, and
  - (d) in that year, the only period when the individual is a trustee of the settlement falls wholly within the overseas part of the year.
- (2DB) Subsection (2DA) is subject to subsection (2D) and, accordingly, an individual who is treated under subsection (2DA) as not resident is, in spite of that, to be regarded as resident whenever the individual acts as mentioned in subsection (2D).”
- 92 In section 475 of ITA 2007 (residence of trustees), after subsection (6) insert –
- “(7) Subsection (8) applies if –
    - (a) an individual becomes or ceases to be a trustee of the settlement during a tax year,
    - (b) that year is a split year as respects the individual, and
    - (c) the only period in that year when the individual is a trustee of the settlement falls wholly within the overseas part of the year.
  - (8) The individual is to be treated for the purposes of subsections (4) and (5) as if he or she had been non-UK resident for the year (and hence for the period in that year when he or she was a trustee of the settlement).
  - (9) But subsection (8) is subject to subsection (6) and, accordingly, an individual who is treated under subsection (8) as having been non-UK resident is, in spite of that, to be treated as UK resident whenever the individual acts as mentioned in subsection (6).”

*Definitions in enactments relating to income tax and CGT*

- 93 (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).”
- 94 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”.        |
| 95 | 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”,<br>and |
|    | “the UK part   | section 989 of ITA 2007”.        |
| 96 | 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);”.  |                                  |
| 97 | 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*

- 98 This Part of this Schedule –
- (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 rules for temporary non-residents, and
  - (d) inserts some more special rules for temporary non-residents in certain cases.

*Meaning of temporarily non-resident*

- 99 (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 5 years or less.
- (2) Terms used in sub-paragraph (1) are defined below.

*Residence periods*

- 100 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*

- 101 (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*

- 102 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*

- 103 “The year of departure” is the tax year consisting of or including period A.

*Period of return*

- 104 “The period of return” is the first residence period after period A for which the individual has sole UK residence.

*Consequential amendments: income tax*

- 105 In ITEPA 2003, for section 576A substitute –

**“576A 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 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)).”

106 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 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;  
 “flexible drawdown arrangement” means an arrangement to  
 which section 165(3A) or 167(2A) of FA 2004 applies.”

107 In ITTOIA 2005, for section 832A substitute –

**“832A Section 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.”

*Consequential amendments: capital gains tax*

108 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 within this subsection are –
  - (a) chargeable gains and losses that accrued to the taxpayer in the temporary period of non-residence,
  - (b) chargeable gains that would be treated under section 13 as having accrued to the taxpayer in that period if the residence assumption were made,

- (c) losses that would be allowable in the taxpayer’s case under section 13(8) in that period if that assumption were made, and
  - (d) chargeable gains that would be treated under section 86 as having accrued to the taxpayer in a tax year falling wholly in that period if the taxpayer had been resident in the United Kingdom for that year.
- (4) The residence assumption is –
  - (a) that the taxpayer had been resident in the United Kingdom for the tax year in which the gain or loss accrued to the company, or
  - (b) if that tax year was a split year as respects the taxpayer, that the gain or loss had accrued to the company in the UK part of it.
- (5) But –
  - (a) a gain is not within subsection (3) if, ignoring this section, the taxpayer is chargeable to capital gains tax in respect of it (and could not cease to be so chargeable by making a claim under section 6 of TIOPA 2010), and
  - (b) a loss is not within subsection (3) if the test in paragraph (a) would be met if it were a gain.
- (6) Subsection (2) is subject to sections 10AA and 86A.
- (7) The reference in subsection (3)(c) to losses that would be 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 if the residence assumption were made, and
  - “sum B” is the amount of the gains that would have accrued to the taxpayer by virtue of that section in that tax year if that assumption were made.
- (8) 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) by virtue of paragraph (a) of that subsection 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.
- (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) 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 under section 10A as accruing to the taxpayer in the period of return (or as preventing a charge to that tax from arising as a result).
- (5) 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 (as defined in section 10A).”

109 For section 86A of TCGA 1992 substitute –

#### **“86A Attribution of gains to settlor in section 10A cases**

- (1) Subsection (3) applies if –
  - (a) chargeable gains of an amount equal to the amount referred to in section 86(1)(e) for a tax year (“year A”) are treated under section 10A as accruing to a settlor under section 86 in the period of return,

- (b) there are amounts on which beneficiaries of the settlement are charged to tax under section 87 or 89(2) for one or more tax years, each of which is earlier than the year of return, and
  - (c) those amounts are in respect of matched capital payments received by the beneficiaries.
- (2) A “matched” capital payment is a capital payment, all or part of which is matched under section 87A with the section 2(2) amount for year A.
- (3) The amount of the chargeable gains mentioned in subsection (1)(a) for year A that are treated under section 10A as accruing to the settlor under section 86 in the period of return is to be reduced by the appropriate amount.
- (4) The appropriate amount is –
  - (a) the sum of the amounts mentioned in subsection (1)(c) to the extent that the matched capital payments are matched under section 87A with the section 2(2) amount for year A, or
  - (b) if the property comprised in the settlement has at any time included property not originating from the settlor, so much (if any) of that sum as, on a just and reasonable apportionment, is properly referable to the settlor.
- (5) If a reduction falls to be made under subsection (3) for the year of return, the deduction to be made in accordance with section 87(4)(b) for the settlement for that year must not be made until –
  - (a) all the reductions to be made under subsection (3) for that year for each settlor have been made, and
  - (b) those reductions are to be made starting with the year immediately preceding the year of return and working backwards.
- (6) Subsection (7) applies if, with respect to year A, an amount remains to be treated under section 10A as accruing to any of the settlors in the period of return after having made the reductions under subsection (3) with respect to year A.
- (7) The aggregate of the amounts remaining to be so treated (for all of the settlors) is to be applied in reducing so much of the section 2(2) amount for year A as has not already been matched with a capital payment under section 87A for any year prior to the year of return (but not so as to reduce the section 2(2) amount below zero).
- (8) In this section –
  - (a) “the settlement” means the settlement in relation to which the settlor mentioned in subsection (1)(a) is a settlor,
  - (b) a reference to “the settlors” or “each settlor” is to the settlors or each settlor in relation to the settlement,
  - (c) “period of return” and “year of return” have the same meanings as in section 10A, and
  - (d) paragraph 8 of Schedule 5 applies in construing the reference to property originating from the settlor.”

- 110 In section 96 (payment by and to companies), in subsection (9A), for the words from “which in his case” to the end substitute “for which he or she was not so resident if—
- (a) section 10A applies to him or her, and
  - (b) the year falls within the temporary period of non-residence.”.
- 111 (1) Section 279B (deferred unascertainable consideration: supplementary provisions) is amended as follows.
- (2) In subsection (7), for “year of return” substitute “period of return”.
  - (3) In subsection (8)(a) and (b), for “year” substitute “period”.
- 112 (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 sub-paragraph (1) of paragraph 12—
    - (a) for paragraph (a) substitute—
      - “(a) by virtue of section 10A, an amount of chargeable gains within section 86(1)(e) that accrued in a tax year (“year A”) to the trustees of a settlement would be treated as accruing to a person (“the settlor”) in the period of return, and”, and
    - (b) in paragraph (b), for “the intervening year” substitute “year A”.
  - (4) In sub-paragraph (2) of paragraph 12, for “year of return” substitute “period of return”.
  - (5) In paragraph 12A(1)—
    - (a) for “year of return” substitute “period of return”, and
    - (b) for “an intervening year” substitute “the temporary period of non-residence”.

*New special rule: lump sum payments under pension schemes etc*

- 113 ITEPA 2003 is amended as follows.
- 114 In Chapter 2 of Part 6 (employer-financed retirement benefits), after section 394 insert—

**“394A Temporary 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.”
- 115 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.”

116 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.”

117 In that Chapter, in section 554Z12 (relevant step taken after A’s death etc), after subsection (8) insert –

- “(9) Section 554Z4A and section 554Z11A apply for the purposes of subsection (4) as for the purposes of section 554Z2 and section 554Z9(2) or 554Z10(2) respectively (reading references in sections 554Z4A and 554Z11A to “A” as references to “the relevant person”).
- (10) But those sections do not apply for the purposes of subsection (4) if the relevant person’s temporary period of non-residence began before A died.”

118 In Chapter 3 of Part 9 (United Kingdom pensions: general rules), after section 572 insert –

**“572A Temporary 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.”
- 119 (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).”

*New special rule: distributions to participators in close companies etc*

- 120 Part 4 of ITTOIA 2005 (savings and investment income) is amended as follows.
- 121 In Chapter 4 (dividends from non-UK resident companies), after section 408 insert –

*“Anti-avoidance*

#### **408A Temporary non-residents**

- (1) This section applies if an individual is temporarily non-resident.
- (2) Dividends within subsection (3) are to be treated for the purposes of this Chapter as if they were received by the individual, or as if the individual became entitled to them, in the period of return.
- (3) A dividend is within this subsection if –
  - (a) the individual receives or becomes entitled to it in the temporary period of non-residence,
  - (b) it is a dividend of a company that would be a close company if the company were UK resident,

- (c) the individual receives or becomes entitled to it by virtue of being at a relevant time –
    - (i) a material participator in the company, or
    - (ii) an associate of a material participator in the company, and
  - (d) ignoring this section, the individual –
    - (i) is not liable for tax under this Chapter in respect of the dividend, but
    - (ii) would have been so liable if the individual had received the dividend, or become entitled to it, in the period of return.
- (4) For the purposes of subsection (3) –
  - (a) “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454),
  - (b) a “material participator” is a participator who has a material interest in the company, as defined in section 457 of that Act,
  - (c) a “relevant time” is any time in the UK part of the year of departure or in one or more of the 3 tax years preceding that year, and
  - (d) paragraph (d)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.
- (5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the year of return, any dividend 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 dividend within subsection (3) to the extent that it is paid in respect of post-departure trade profits.
- (7) “Post-departure trade profits” are –
  - (a) trade profits of the company arising in an accounting period that begins after the start of the temporary period of non-residence, and
  - (b) so much of any trade profits of the company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.
- (8) The extent to which a dividend is paid in respect of post-departure trade profits is to be determined on a just and reasonable basis.
- (9) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax by virtue of this section (or as preventing a charge to income tax from arising as a result).
- (10) If section 406 or 407 applies, references in this section to a dividend being received by the individual are to a cash dividend being paid over to the individual or (as the case may be) a dividend being treated as paid to the individual.

- (11) 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”, “the year of departure” and “the period of return” mean.
- (12) In this section –
- “double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;
  - “remitted to the United Kingdom” has the meaning given in Chapter A1 of Part 14 of ITA 2007;
  - “year of return” means the tax year consisting of or including the period of return.”
- 122 In Chapter 6 (release of loan to participator in close company), after section 420 insert –

**“420A Temporary non-residents**

- (1) This section applies if an individual is temporarily non-resident.
- (2) Debts within subsection (3) are to be treated for the purposes of this Chapter as if they had been released or written off in the period of return.
- (3) A debt is within this subsection if –
  - (a) it is the debt, or a part of the debt, in respect of a loan or advance made by a company to the individual,
  - (b) it is released or written off in the temporary period of non-residence, and
  - (c) ignoring this section, the individual –
    - (i) is not liable for tax under this Chapter in respect of the release or write-off, but
    - (ii) would have been so liable, had the release or write-off taken place in the period of return.
- (4) For the purposes of subsection (3) –
  - (a) “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454), and
  - (b) paragraph (c)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), 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 by virtue of this section (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 having effect under section 2(1) of TIOPA 2010.”

123 In Chapter 8 of Part 5 of that Act (income not otherwise charged), after section 689 insert –

**“689A Temporary non-residents**

- (1) This section applies if an individual is temporarily non-resident.
- (2) Distributions within subsection (3) are to be treated for the purposes of this Chapter as if they had been received by the individual, or as if the individual had become entitled to them, in the period of return.
- (3) A distribution is within this subsection if –
- (a) the individual receives or becomes entitled to it in the temporary period of non-residence,
  - (b) it is a distribution of a company that is a close company or that would be a close company if the company were UK resident,
  - (c) the individual receives or becomes entitled to the distribution by virtue of being at a relevant time –
    - (i) a material participator in the company, or
    - (ii) an associate of a material participator in the company, and
  - (d) ignoring this section, the individual –
    - (i) is not liable for tax under this Chapter in respect of the distribution, but
    - (ii) would have been so liable if the individual had received the distribution, or become entitled to it, in the period of return.
- (4) For the purposes of subsection (3) –
- (a) “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454),
  - (b) a “material participator” is a participator who has a material interest in the company, as defined in section 457 of that Act,
  - (c) a “relevant time” is any time in the UK part of the year of departure or in one or more of the 3 tax years preceding that year, and
  - (d) paragraph (d)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.
- (5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the year of return, any distribution within subsection (3) that is relevant foreign income and is 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) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax by virtue of this section (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”, “the year of departure” 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;
  - “remitted to the United Kingdom” has the meaning given in Chapter A1 of Part 14 of ITA 2007;
  - “year of return” means the tax year consisting of or including the period of return.”

124 In Chapter 1 of Part 14 of ITA 2007 (limits on liability to income tax of non-UK residents), after section 812 insert –

**“812A Temporary non-residents**

- (1) This section applies if –
  - (a) an individual is temporarily non-resident,
  - (b) the individual’s liability to income tax for a tax year is limited under section 811,
  - (c) that tax year (“the non-resident year”) falls within the temporary period of non-residence, and
  - (d) the individual’s income for that tax year includes relevant investment income.
- (2) The total income (see Step 1 of the calculation in section 23) on which the individual is charged to income tax for the year of return is to be increased by an amount equal to the amount of that relevant investment income.
- (3) But the notional UK tax on that relevant investment income is to be allowed as a credit against the individual’s liability to income tax for the year of return under Step 6 of the calculation in section 23.
- (4) Income is “relevant investment income” if –
  - (a) it is chargeable under Chapter 3 or 5 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies and stock dividends from UK resident companies),
  - (b) the distributing company is a close company, and
  - (c) the income arises or is treated as arising to the individual because the individual was at a relevant time –
    - (i) a material participator in that company, or
    - (ii) an associate of a material participator in the company.
- (5) But income within subsection (4) in the form of a cash or stock dividend is not “relevant investment income” to the extent that the dividend is paid, or the share capital is issued, in respect of post-departure trade profits.
- (6) “Post-departure trade profits” are –

- (a) trade profits of the distributing company arising in an accounting period that begins after the start of the temporary period of non-residence, and
  - (b) so much of any trade profits of the distributing company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.
- (7) The “notional UK tax” on relevant investment income is –
- (a) the total of any sums in respect of that income that were included within amount A in determining the limit under section 811, less
  - (b) any credit for foreign tax paid in respect of that income that was allowed under Chapter 2 of Part 2 of TIOPA 2010 against the individual’s liability to income tax for the non-resident year.
- (8) The following matters are to be determined on a just and reasonable basis –
- (a) the extent to which a dividend is paid, or share capital is issued, in respect of post-departure trade profits, and
  - (b) the extent to which a sum included within amount A is a sum in respect of relevant investment income.
- (9) Nothing in any double taxation arrangements is to be read as preventing the individual from being chargeable to income tax by virtue of this section (or as preventing a charge to that tax from arising as a result).
- (10) 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”, “the year of departure” and “the period of return” mean.
- (11) In this section –
- “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454);
  - “the distributing company” means the UK resident company mentioned in section 383(1) or, as the case may be, 410(1) of ITTOIA 2005;
  - “material participator” means a participator who has a material interest in the company, as defined in section 457 of CTA 2010;
  - “relevant time” means any time in the UK part of the year of departure or in one or more of the 3 tax years preceding that year;
  - “year of return” means the tax year consisting of or including the period of return.”

*New special rule: chargeable event gains*

125 Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc) is amended as follows.

126 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 in respect of an insurance made, or from 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 in respect of the gain,
  - (e) no-one is liable by virtue of section 468 for either the year of return or an earlier tax year as a result of the gain, and
  - (f) the individual would have been liable under section 465 in respect of the gain, 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) If the individual is liable by virtue of subsection (2) in respect of a gain –
  - (a) the amount of the gain in respect of which he or she is liable is the amount on which tax would have been charged under this Chapter applying the assumptions in subsection (4), but
  - (b) in determining that amount, section 528 must be applied ignoring those assumptions.
- (6) That amount is treated as income of the individual for the year of return.
- (7) If the gain arises from a policy or contract treated under section 473A as a single policy or contract, the date, for the purposes of subsection (3)(b), on which the insurance or contract is made is the date on which the first insurance is made in respect of which the connected policies were issued or, as the case may be, the date on which the first of the connected contracts is made.
- (8) 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,
  - (c) the chargeable event giving rise to the gain is one that is treated as occurring under section 509(1) as a result of the application of section 498(1)(a),

- (d) section 498(1)(a) applies other than by virtue of section 500, and
  - (e) 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.
- (9) 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).
- (10) 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.
- (11) 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.”
- 127 In section 468 (non-UK resident trustees and foreign institutions), after subsection (6) insert –
- “(7) This section does not apply if someone is liable under section 465B in respect of the gain.”
- 128 In section 514 (chargeable events where transaction-related calculations show gains), after subsection (4) insert –
- “(4A) Subsection (3)(b) includes a case where a person would be liable to tax on the gain under section 465B for the tax year in which the transaction occurs (because the transaction occurs in the year of return, as defined in that section).”
- 129 In section 541 (calculation of deficiencies), in subsection (4)(b), after “that section” insert “or formed part of the total income of that individual by virtue of section 465B for the tax year mentioned in section 539(1)”.
- 130 In section 552 of ICTA (information: duties of insurers), in subsection (13), for “section 541A” substitute “section 465B or 541A”.

## PART 5

### MISCELLANEOUS

#### *Interpretation*

- 131 In this Schedule –
- “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” means an enactment whenever passed (including this Act) and 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;

“parenting leave” means maternity leave, paternity leave, adoption leave or parental leave (whether statutory or otherwise);

“ship” includes any kind of vessel (including a hovercraft);

“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.

132 In relation to an individual who carries on a trade –

- (a) a reference in this Schedule to annual leave or parenting leave is to reasonable amounts of time off from work for the same purposes as the purposes for which annual leave or parenting leave is taken, and
- (b) what are “reasonable amounts” is to be assessed having regard to the annual leave or parenting leave to which an employee might reasonably expect to be entitled if doing similar work.

133 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 zero.

#### *Consequential amendments*

134 (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 1 to the Finance Act 2013;”, and
- (b) in the Table in subsection (8), omit the entry for the expressions “resident” and “ordinarily resident”.
- 135 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”.
- 136 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”.
- 137 (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 3 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).
- 138 (1) ITA 2007 is amended as follows.
- (2) Omit sections 829 to 832.

- (3) In section 810 (limits on liability to income tax of non-UK residents: overview of Chapter), after subsection (3) insert –
- “(4) In relation to an individual –
- (a) a reference in this Chapter to a non-UK resident’s liability to income tax is a reference to the liability of someone who is non-UK resident for the tax year for which the liability arises, and
  - (b) accordingly, enactments under which income arising to a UK resident in the overseas part of a split year is treated as arising to a non-UK resident are of no relevance to this Chapter.”

#### *Commencement*

- 139 (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 (as defined in that Part) is the tax year 2013-14 or a subsequent tax year.

#### *Transitional and saving provision*

- 140 (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 under this Schedule 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 under this Schedule 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.
- (5) Unless an election is made under sub-paragraph (3) as respects the tax year, paragraph 10(b) has effect in relation to a pre-commencement tax year as if the words “by virtue of the automatic residence test” were omitted.
- 141 (1) This paragraph applies if –
- (a) year X or, for Part 3 of this Schedule, the tax year for which an individual’s liability to tax is being calculated is the tax year 2013-14 or a subsequent tax year, and

- (b) it is necessary to determine under a provision of this Schedule, or a provision inserted by Part 3 of this Schedule, whether a tax year before the tax year 2013-14 (a “pre-commencement tax year”) was a split year as respects the individual.
  - (2) The provision is to have effect as if –
    - (a) the reference to a split year were to a tax year to which the relevant ESC applied, and
    - (b) any reference to the UK part or the overseas part of such a year were to the part corresponding as far as possible, in accordance with the terms of the relevant ESC, to the UK part or the overseas part of a split year.
  - (3) Where the provision also refers to cases involving departure from the UK, the reference is to be read and given effect so far as possible in accordance with the terms of the relevant ESC.
  - (4) “The relevant ESC” means whichever of the extra-statutory concessions to which effect is given by Part 3 of this Schedule is relevant in the individual’s case.
- 142 (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 Part 4 of this Schedule) 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 for the purposes of those provisions 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).
- 143 Section 13 of FA 2012 (Champions League final 2013) is to be read and given effect, on and after the day on which this Act is passed, as if section 1 and this Schedule had not been enacted.

**EXPLANATORY NOTE**

**STATUTORY RESIDENCE TEST**

**SUMMARY**

1. This Schedule introduces rules which determine an individual's residence for tax purposes. The rules are referred to collectively as the statutory residence test. The Schedule determines an individual's tax residence status by applying three sets of tests in order of priority: four automatic overseas tests; four automatic UK tests; and the sufficient ties test. An individual who is resident under the test will be resident for a full tax year. The Schedule provides cases in which the rule that a resident individual is taxed on the basis of residence for the whole year is relaxed in certain circumstances; in those circumstances the year is known as a "split year". The Schedule also provides that certain income and gains that arise during a period of temporary non-residence shall be charged to UK tax when the individual resumes UK residence.

**DETAILS OF THE CLAUSE**

2. This clause introduces the Schedule which contains the statutory residence test and makes related provision. The clause also contains a power allowing the Treasury to make any incidental, supplemental, consequential, transitional or saving provision in consequence of the Schedule. Any such Order is subject to the negative resolution procedure and must be laid before the House of Commons only.

**DETAILS OF THE SCHEDULE**

**PART 1**

**The Rules**

*Introduction*

3. Paragraph 1 defines the purpose of this Part of the Schedule.

4. Sub-paragraph (3) of paragraph 1 states that the rules do not provide a residence test for parts of the UK but for the UK as a whole.
5. Sub-paragraph (4) of paragraph 1 specifies the different taxes covered by the statutory residence test:
  - income tax;
  - capital gains tax; and
  - inheritance tax and corporation tax (to the extent that the residence status of individuals is relevant to them).

*Interpretation of enactments*

6. Paragraph 2 specifies how the statutory residence test applies to the interpretation of other enactments.
7. Sub-paragraph (3) of paragraph 2 provides that the tax residence status determined by the statutory residence test applies for a full tax year, so that an individual is resident for every day in a tax year or not at all in that year. Sub-paragraph (4) of paragraph 2 explains that there are rules in Part 3 of the Schedule which relax the effect of that rule (without changing residence status) in certain circumstances.
8. Sub-paragraph (5) of paragraph 2 provides that the effect of this Schedule may be overridden by any express provision to the contrary in, or falling to be recognised and acknowledged by law by virtue of, any other legislation.
9. Examples of such provision include section 41 of the Constitutional Reform and Governance Act 2010 (which treats members of the House of Commons and House of Lords as resident in the UK for tax purposes) and Articles 12 and 13 of the Protocol on the Privileges and Immunities of the European Communities (which provides rules on the tax status of individuals who work for the European Union).

*The basic rule*

10. Paragraphs 3 and 4 provide that an individual (P) is UK resident if either the automatic residence test (see paragraph 5) or the sufficient ties test (see paragraph 16) is met for a tax year. If neither test is met for a tax year P is non-resident in that year.

*The automatic residence test*

11. Paragraph 5 sets out the automatic residence test. The automatic residence test is met if P meets at least one of the automatic UK tests (see paragraphs 6 to 10) and none of the automatic overseas tests (see paragraphs 11 to 15).

*The automatic UK tests*

12. Paragraph 7 specifies the first automatic UK test, which is met for a tax year if P spends 183 days or more in the UK in that year.
13. Paragraph 8 specifies the second automatic UK test.
14. Sub-paragraph (1) of paragraph 8 applies if P has a home in the UK for more than 90 days and is present at that home on at least 30 separate days in the tax year. P will be UK resident for the tax year if, while P has that home, there is at least one period of 91 consecutive days (at least one of which falls within the tax year) throughout which condition A or condition B (or a combination of those conditions) is met.
15. Sub-paragraph (2) of paragraph 8 sets out condition A, which is that P has no home overseas.
16. Sub-paragraph (3) of paragraph 8 sets out condition B, which is that P has one or more homes overseas but each of those homes is a home at which P is present on fewer than 30 separate days in the tax year.
17. Sub-paragraph (4) of paragraph 8 provides that this reference to 30 days is to 30 separate days, whether consecutive or intermittent.
18. Sub-paragraph (5) of paragraph 8 states that the test will be met so long as there is at least one period of 91 days where the conditions are satisfied, even if the period is in fact longer than 91 days.
19. Sub-paragraph (6) of paragraph 8 states that, if P has more than one home in the UK, the test must be applied to each of those homes individually.
20. Paragraph 9 specifies the third automatic UK test, which is that P will be UK resident for a tax year if P works full-time in the UK for a period of at least 365 days without a significant break from work of 31 days or more, and all or part of the 365 day period falls within the tax year. More than 75 per cent of P's working days in that tax year must be UK work days. A UK work day is a day in which the individual does more than 3 hours work in the UK. Days on which P does 3 hours work or less in the UK count towards a significant break from work but days do not count as part of a significant break from work if P is on annual leave, sick leave or parenting leave (as defined in paragraph 131) on that day. Paragraph 9 does not apply if P is an international transportation worker (as defined in paragraph 28).
21. Paragraph 10 specifies the fourth automatic UK test, which is that P is treated as UK resident for a tax year if P dies during the year, P had a home in the UK when P died, for the three preceding years P had met

one of the automatic UK tests set out in paragraphs 5 to 9, and, even assuming P was not resident in the year of death, the preceding year would not be a split year as defined in Part 3 of this Schedule. The broad effect of this provision is that where P has been resident under the automatic tests in each of the previous three tax years and still has a home in the UK, P stays resident in the year of death unless P went abroad in the previous year in circumstances such that split year treatment applied (provided none of the automatic overseas tests is met).

*The automatic overseas tests*

22. Paragraphs 11 to 15 set out four automatic overseas tests. If P meets the conditions for any one of these, P will be non-UK resident for the tax year for which the test is applied.
23. Paragraph 12 specifies the first automatic overseas test, which is that P will be non-UK resident for a tax year if P spends fewer than 16 days in the UK in that year, does not die during the year, and was resident for one or more of the three years immediately preceding that year. The exclusion for cases of death ensures that P does not automatically become non-resident if P dies early in the tax year.
24. Paragraph 13 specifies the second automatic overseas test, which is that P will be non-UK resident for a tax year if P spends fewer than 46 days in the UK in that year and was resident for none of the three years immediately preceding that year.
25. Paragraph 14 specifies the third automatic overseas test, which is that P will be non-UK resident for a tax year if P works full-time overseas for that year without a significant break from work of 31 days or more, has fewer than 31 work days in the UK in that year, and spends fewer than 91 days in the UK in that year. A UK work day is a day in which P does more than 3 hours work in the UK. Days on which P does 3 hours overseas work or less count towards a significant break from work but days do not count as part of a significant break from work if P is on annual leave, sick leave or parenting leave. Sub-paragraph (2) of paragraph 14 ensures that the special rule in paragraph 22(4) under which certain days of presence (without being in the UK at midnight) count as days spent in the UK does not apply for this test. Sub-paragraph (4) of paragraph 14 provides that this test does not apply if P is an international transportation worker (as defined in paragraph 28).
26. Paragraph 15 specifies the fourth automatic overseas test, which is that P is non-UK resident for a tax year if P dies during the year and spends fewer than 46 days in the UK in that year, and either P was non-UK resident for the two tax years immediately preceding the tax year in which P dies or was non-resident for the tax year immediately preceding that tax year and the tax year before that was a split year by

virtue of Case 1, 2 or 3 of Part 3 of this Schedule (see paragraphs 41 to 43). The effect of this provision is to ensure that an individual who dies without establishing three full years of non-residence may in certain circumstances benefit from a 46-day rule equivalent to that in paragraph 13.

*The sufficient ties test*

27. Paragraph 16 sets out the sufficient ties test. The sufficient ties test will apply if P meets none of the automatic UK tests and none of the automatic overseas tests and if P has sufficient ties, as defined in Part 2 of this Schedule, for that tax year.
28. Sub-paragraph (3) of paragraph 16 specifies that the number of UK ties sufficient to make P UK resident for a tax year depends on whether P was UK resident for any of the three tax years immediately preceding that year and the number of days P spends in the UK in the year. The number of ties required is set out in paragraphs 17 and 18.

*Sufficient UK ties*

29. Paragraph 17 sets out how the number of days P spends in the UK in a tax year determines the number of UK ties sufficient to make P resident for that year if P was UK resident in one or more of the three tax years immediately preceding the year.
30. Paragraph 18 sets out how the number of days P spends in the UK in a tax year determines the number of UK ties sufficient to make P resident for that year if P was UK resident in none of the three tax years immediately preceding the year.
31. Paragraph 19 sets out how paragraphs 17 and 18 are modified in order to apply the sufficient ties test to an individual who dies during the year.
32. Sub-paragraph (1) of paragraph 19 specifies that if an individual dies then the lower limit of 15 days spent in the UK is removed when applying paragraph 17.
33. Sub-paragraphs (2) to (4) of paragraph 19 set out how the day counts in paragraphs 17 and 18 are time-apportioned if the individual dies before 1 March in the tax year to which the test is applied.

**PART 2**

**Key concepts**

*Days spent*

34. Paragraph 21 specifies what counts as a day spent in the UK for the purposes of this Schedule.
35. Sub-paragraph (1) of paragraph 21 specifies that if an individual is in the UK at the end of a day, that day will count as a day spent in the UK, subject to the two exceptions set out in sub-paragraphs (3) to (6) of paragraph 21.
36. Sub-paragraph (3) of paragraph 21 specifies that where an individual is in transit through the UK, leaves the UK the day after arrival, and does not engage in any activities substantially unrelated to their transit, then the day of arrival will not count as a day spent in the UK.
37. Sub-paragraphs (4) and (6) of paragraph 21 specify that where P is only present in the UK at the end of a day because of exceptional circumstances beyond P's control that prevented P from leaving, and P intends to leave as soon as those circumstances permit, that day will not count as a day spent in the UK up to a maximum of 60 days in a tax year.
38. Sub-paragraph (5) of paragraph 21 gives examples of circumstances that may be exceptional. HMRC will publish guidance on this area.
39. Paragraph 22 provides that if P is not present in the UK at the end of a day that day does not count as a day spent in the UK, subject to the exception provided by the deeming rule in sub-paragraph (4).
40. Sub-paragraphs (2) to (4) of paragraph 22 provide that even if P is not present in the UK at the end of a day, that day will count as a day spent in the UK if P was UK resident in one or more of the 3 tax years immediately preceding the year in which the day falls, P has 3 or more UK ties for the tax year in which the day falls, and P is present in the UK at some point, but not at the end of the day, on more than 30 days in that year. Where this deeming rule applies, only the excess over 30 such days is added to the tally of days spent in the UK.
41. Sub-paragraph (5) of paragraph 22 provides that in establishing whether P has 3 UK ties for a tax year, the deeming rule in sub-paragraph (4) does not itself apply in calculating whether P has a 90-day tie.

*Days spent "in" a period*

42. Paragraph 23 specifies the way days spent in the UK are aggregated for any period specified in this Schedule.

*Home*

43. Paragraph 24 contains provisions to assist in interpreting the word "home". Sub-paragraph (1) of paragraph 24 provides that a person's

home could be a building or part of a building or, for example, a vehicle, vessel or structure of any kind. Sub-paragraph (2) of paragraph 24 states that whether there is a sufficient degree of permanence or stability about P's arrangements for a place to count as P's home will depend on all the circumstances of the case. Sub-paragraph (3) of paragraph 24 provides that somewhere that P uses periodically as nothing more than a holiday home or temporary retreat (or something similar) does not count as a home of P's. Sub-paragraph (4) of paragraph 24 provides that a place may count as a home whether or not P holds any estate or interest in it. This means, for example, that rented property or property which you live in but which is owned by someone else, such as your parents, may still count as a home in appropriate circumstances. Sub-paragraph (5) of paragraph 24 provides that somewhere 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. This would apply, for example, where P had rented out the property on arms' length commercial terms and was unable to live in the property.

#### *Work*

44. Paragraph 25 specifies when an individual is considered to be working for the purposes of this Schedule.
45. Sub-paragraphs (1) to (3) of paragraph 25 specify that P is considered to be working if P is doing something in the performance of duties of an employment held by P or in the course of a trade carried on by P. In deciding whether or not something is being done in the course of duties of an employment, regard must be had to whether, if value were to be received by P for doing that thing, it would be employment income as defined in section 7 of ITEPA. Similarly, in deciding whether or not something is being done in the course of a trade, regard must be had to whether, if expenses were incurred by P, they could be deducted in calculating the profits of the trade for income tax purposes.
46. Sub-paragraph (4) of paragraph 25 specifies that time spent travelling counts as time spent working if the cost of the journey, if met by P, could be deducted in calculating P's earnings from the associated employment or in calculating the profits from the associated trade. Time spent working while travelling also counts as work for the purposes of this Schedule.
47. Sub-paragraph (5) of paragraph 25 specifies that time spent training counts as time spent working if the training is provided or paid for by the employer to help the individual perform the employment, or the cost of the training could be deducted in calculating the profits of the trade for income tax purposes.

48. Sub-paragraph (8) of paragraph 25 provides that a voluntary post where the individual has no contract of service does not count as employment for the purposes of this Schedule.

*Location of work*

49. Paragraph 26 specifies that, for the purposes of this Schedule, work is considered as being done at the location where it is actually done rather than where an employment is held or a trade is carried on. Apart from the case of international transportation workers (as defined in paragraph 28, see also the special rules for such workers in paragraph 33), work done during travel to or from the UK after embarkation for overseas or before disembarkation from overseas is treated as being done overseas.

*Full-time work*

50. Paragraph 27 defines full-time work for a period for the purposes of this Schedule as when an individual works an average of at least 35 hours per week, excluding from the period for which the test is applied any reasonable amounts of annual leave (see also paragraph 132), sick leave, and parenting leave but including weekends and public holidays. The hours worked in two or more employments or trades within the period are aggregated in determining the number of hours worked. Gaps between employments where the individual does not work may be deducted from the length of the period when determining whether the individual is considered to work full-time, up to a maximum deduction of 15 days. The 35 hour average test applies only to hours worked in the place (being the UK or overseas) where the individual is working. For example, to meet the third automatic UK test the individual must work an average of 35 hours a week in the UK. Any hours worked overseas do not count.

*International transportation workers*

51. Paragraph 28 defines an international transportation worker for the purposes of this Schedule as an individual whose duties of employment, or trade, consists of duties to be performed, or services to be provided in person, on board a vehicle, aircraft or ship as it makes international journeys. An individual will be an international transportation worker if substantially all of the duties or activities are performed on board a vehicle, aircraft or ship as it makes international journeys, even if, for example, the individual occasionally performs duties on domestic journeys.

*UK ties*

52. Paragraph 29 lists what counts as a UK tie for the purposes of this Schedule, depending on whether the individual was UK resident for

one or more of the 3 tax years immediately preceding the tax year for which the test is applied. The UK ties are defined in paragraphs 30 to 35. Paragraph 29 specifies the requisite number of ties set out in paragraphs 17 and 18 must consist of different types of tie. So, for example, a family tie only counts once for a year regardless of the number of relatives that P has in the UK.

#### *Family tie*

53. Paragraph 30 specifies that P is considered to have a family tie for a tax year if P has a relevant relationship with another person in that tax year and that other person is someone who is resident in the UK in that tax year. P will have a relevant relationship with another person if that other person is P's husband or wife or civil partner (so long as they are not separated), or, someone P is living together with in that manner. P also has a family tie for a tax year if P has a child under age 18 who is UK resident in that tax year, unless P sees that child on no more than 60 days in that year, or the part of the tax year before the child reaches the age of 18.
54. Paragraph 31 sets out special rules for establishing whether, for the purposes of paragraph 30 only, a person with whom P has a relevant relationship is UK resident for a tax year. Sub-paragraph (2) of paragraph 31 provides that the fact that, in working out whether that other person is resident for the purposes of determining whether P has a family tie, their own family tie to P is disregarded. Sub-paragraphs (3) to (6) of paragraph 31 provide that a child of P's under the age of 18 who is UK resident is to be treated as non-UK resident if they are in full-time education in the UK and would not be UK resident if the time spent in full time education were to be disregarded. This test will only apply if the child spends fewer than 21 days in the tax year in the UK outside term-time. Half-term breaks and other breaks during a term are treated as term-time.

#### *Accommodation tie*

55. Paragraph 32 specifies that P is considered to have an accommodation tie for a tax year if P has a place to live in the UK and that place is available to P for a continuous period of 91 days or more during the tax year (ignoring gaps of fewer than 16 days when it is unavailable). P is considered to have a place to live in the UK if P has one or more homes in the UK, a holiday home, temporary retreat or something similar in the UK or if accommodation is otherwise available to P where P can live when P is in the UK. P does not need to own or have an interest in the accommodation, but must spend at least one night in it during the year or, if it is the home of a close relative as defined in sub-paragraph (6) of paragraph 32, P must spend at least 16 nights in it during the year.

*Work tie*

56. Paragraph 33 specifies that P has a work tie for a tax year if P does more than 3 hours work a day in the UK for at least 40 days in the year.
57. Sub-paragraphs (3) to (7) of paragraph 33 specify that if P is an international transportation worker, as defined in paragraph 28, any day P starts an international journey in the UK, as such a worker, is treated as one on which P did more than 3 hours work in the UK for that day. Any day P completes an international journey, as such a worker, in the UK that began overseas is treated as one on which P did less than 3 hours work in the UK for that day. Any day on which P both starts an international journey in the UK and completes an international journey in the UK is treated as one on which P did more than 3 hours work in the UK. If an international journey is undertaken in stages across a number of days, the international journey is considered to have started, or to be completed, on the day during which P crosses the UK border. Any day on which a stage of the journey takes place wholly within the UK will, so long as it takes more than 3 hours, be considered to be a UK work day.

*90-day tie*

58. Paragraph 34 specifies that P is considered to have a 90-day tie for a tax year if P spends more than 90 days in the UK in either or both of the two tax years immediately preceding that year.

*Country tie*

59. Paragraph 35 specifies that P is considered to have a country tie for a tax year if the country P is in at midnight for the greatest number of days in that year is the UK. P will also have a country tie for a tax year if P is in more than one country at midnight for the same number of days in that tax year if one of those countries is the UK and there is no country in which P has spent a greater number of days in that tax year.

**PART 3**

**Split year treatment**

*Introduction*

60. Paragraph 36 gives an overview of the content of this Part.
61. Paragraph 37 explains that the effect of a tax year being split into a UK part and an overseas part is as specified in the paragraphs in this Part amending the provisions concerned. But the individual's tax residence status for the whole year is not affected.

62. Paragraph 38 specifies that this Part does not apply when determining the residence status of personal representatives and applies only in a limited way in establishing the residence status of trustees of a settlement. For trustees see also the amendments to section 475 of ITA and section 69 of TCGA made by paragraphs 91 and 92 of this Schedule.
63. Paragraph 39 provides that split year treatment does not affect whether an individual would be regarded as UK resident for the purposes of double taxation arrangements.

*Definition of a “split year”*

64. Paragraph 40 specifies that a tax year is a split year in relation to an individual if the individual is UK resident for that year and their circumstances fall within Cases 1 to 5 (set out in paragraphs 41 to 45). Split year treatment does not apply if the individual is non-UK resident for the year.
65. Cases 1, 2 and 3 deal, broadly, with individuals going abroad and Cases 4 and 5 deal, broadly, with individuals coming to the UK.

*Case 1: starting full-time work overseas*

66. Paragraph 41 specifies that an individual (the taxpayer) will fall within Case 1 for a tax year if they were UK resident for the previous tax year, are non-resident for the following tax year because they meet the third automatic overseas test (see paragraph 14) and if at some point during the tax year they start to work full-time (see paragraph 27) overseas for a period that continues until at least the end of the tax year. From when the taxpayer starts full-time work overseas until the end of the year, the number of days in which they do more than 3 hours work in the UK and the number of days they spend in the UK must not exceed the permitted limit. In establishing the number of days the individual spends in the UK, days treated as spent in the UK by virtue of paragraph 22(4) are to be ignored. The permitted limit is found by carrying out the calculation in sub-paragraphs (7) and (8) of paragraph 41.

*Case 2: accompanying spouse etc*

67. Paragraph 42 specifies that an individual (the taxpayer) will fall within Case 2 for a tax year if they are UK resident for the previous tax year, are non-resident for the following tax year and have a partner who falls within Case 1 for the year. Partner means a husband, wife or civil partner or, if the taxpayer and another person are living together as man and wife, or as civil partners, that other person. The taxpayer must join the partner overseas so they can live together while the partner is working full-time overseas. After their deemed departure day, which is

the later of the date the taxpayer joins the partner and the date the partner starts to work full-time overseas, the taxpayer must either have no UK home or, if they have homes in both the UK and overseas, must spend the greater part of the time living in the overseas home. The number of days the taxpayer spends in the UK after the deemed departure day must not exceed the permitted limit (which has the same meaning as in sub-paragraph (4)(b) of paragraph 41).

*Case 3: leaving the UK to live abroad*

68. Paragraph 43 specifies that a taxpayer will fall within Case 3 for a tax year if they were UK resident for the previous tax year, are non-resident for the following tax year, and at the start of the tax year had at least one home in the UK but at some point in that year ceased to have any UK home and this continues until the end of that year. In addition, from the date of ceasing to have any UK home the taxpayer must not spend more than 15 days in the UK until the end of the tax year and must, within 6 months of ceasing to have any home in the UK, have a sufficient link with a country overseas (as defined in sub-paragraph (8) of paragraph 43). If the taxpayer also satisfies either Case 1 or Case 2 then those provisions apply instead.

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

69. Paragraph 44 specifies that a taxpayer will fall within Case 4 for a tax year if that person was non-resident for the previous tax year and either or both of the following descriptions apply. The first description is that, at the start of the tax year, the taxpayer did not meet the only home test but there comes a point in the year when that ceases to be the case and the taxpayer then continues to meet the only home test for the rest of the tax year. The taxpayer will satisfy the only home test if their only home, or all their homes if they have more than one, is in the UK.
70. The second description is that there is a day in the tax year on which the taxpayer commences full-time work in the UK for a period that continues until at least the end of the tax year.
71. In addition, for the part of the year before the point where the taxpayer meets the only home test or commences full time work in the UK, or the earliest of these points if there is more than one, the taxpayer must not have sufficient UK ties to make them UK resident for that part of the year considered in isolation. The UK ties are determined by applying paragraphs 16 to 19 (and Part 2 to the extent that it applies to these paragraphs) and reducing the numbers of days in the Tables in paragraphs 17 and 18 by the factor specified in sub-paragraph (8) of paragraph 44.

*Case 5: starting to have a home in the UK*

72. Paragraph 45 specifies that a taxpayer will fall within Case 5 for a tax year if they were non-resident for the previous tax year and are UK resident for the following tax year (and that year is not a split year) and if at a point during the year they have a home located in the UK for the first time in the year and this remains the case for the rest of the year and the whole of the next tax year. In addition, before that point in the year the taxpayer must not have sufficient UK ties to make them UK resident for that part of the year considered in isolation. The UK ties are determined by applying paragraphs 16 to 19, and Part 2 to the extent that it applies to these paragraphs and reducing the numbers of days in the Tables in paragraphs 17 and 18 by the factor specified in sub-paragraph (8) of paragraph 45. If the taxpayer also satisfies Case 4 then those provisions apply instead.

*General rules for construing Cases 1 to 5*

73. Paragraph 46 defines the meaning of terms used in paragraphs 41 to 45 and sets out how to calculate numbers of days in applying those paragraphs.

*The overseas part and the UK part*

74. Paragraph 47 defines “the overseas part” and “the UK part” of a split year.
75. Sub-paragraph (1) of paragraph 47 specifies the overseas part of a split year is the part of the year which:
- for Case 1, begins when the individual starts full-time work overseas;
  - for Case 2, begins on the later of the date the individual joins their partner overseas and the date their partner starts to work full-time overseas;
  - for Case 3, begins when the individual ceases to have any home in the UK;
  - for Case 4, falls before the earliest point when the location of the individual’s only home, or all their homes if they have more than one, changes to the UK or they commence full-time work in the UK;
  - for Case 5, falls before the point when the individual has for the first time in the year a home located in the UK.

*Special charging rules for employment income*

76. Paragraphs 48 to 60 amend certain provisions in ITEPA that charge various types of employment income to tax where the charge depends on the residence status of the taxpayer. The individual is charged for the overseas part of a year as if non-UK resident.
77. Paragraph 49 amends section 15 of ITEPA so that general earnings attributable to the overseas part of a split year are not charged to tax unless the earnings relate to duties performed in the UK or to overseas Crown employment that is subject to UK tax. Attribution of earnings between the two parts of the year is to be done on a just and reasonable basis.
78. Paragraph 50 amends section 22 of ITEPA to exclude general earnings taxable as chargeable overseas earnings on the remittance basis (as specified in section 23) from the charge to tax on general earnings set by the amended section 15 of ITEPA. The provisions of section 22 are further amended by the Schedule on ordinary residence.
79. Paragraph 51 amends the definition of chargeable overseas earnings in section 23 of ITEPA to take into account whether a year is a split year. Attribution of earnings between the two parts of the year is to be done on a just and reasonable basis.
80. Paragraph 52 amends section 24 of ITEPA to take into account whether a year is a split year. Attribution of earnings between the two parts of the year is to be done on a just and reasonable basis.
81. Paragraph 53 amends section 26 of ITEPA so that it only applies to foreign earnings taxable on the remittance basis that are attributable to the UK part of a split year. Attribution of earnings between the two parts of the year is to be done on a just and reasonable basis. The provisions of section 26 are further amended by the Schedule on ordinary residence.
82. Paragraph 54 amends section 329 of ITEPA so that the limit on deductions from earnings allowable for a split year takes into account that overseas earnings for the overseas part of the year may have been excluded from the charge to tax.
83. Paragraph 55 amends section 421E of ITEPA to set out the conditions attaching to the exclusions from charges under Chapters 2, 3 and 4 of Part 7 of ITEPA that apply to employment-related securities respectively acquired in a tax year of residence (new subsection (1)), in the UK part of a split year (new subsection (1A)) and in the overseas part of a split year (new subsection (1B)). It also amends section 421E so that the charges under Chapters 3A to 3D of Part 7 apply to employment-related securities if they were acquired in the overseas part of a year which is split under Case 1, 2 or 3 (as specified in paragraphs 41, 42 and 43) and, had it not been a split year, all or part

of earnings (or if there had been earnings, those earnings) at the time of acquisition would have been general earnings under sections 15, 22 or 26 of ITEPA.

84. Paragraph 56 amends section 474 of ITEPA so that Chapter 5 (apart from sections 473 and 483) of Part 7 does not apply in the circumstances specified to an employment-related securities option respectively acquired in a tax year of residence (new subsection (1)), in the UK part of a split year (new subsection (1A)) and in the overseas part of a split year (new subsection (1B)).
85. Paragraph 57 amends section 554Z4 of ITEPA so that, where a tax year is split, the value of a relevant step is reduced by the amount of the value that is attributable to the overseas part of the year and is not in respect of UK duties. Attribution of value between the two parts of the year is to be done on a just and reasonable basis.
86. Paragraph 58 amends section 554Z6 of ITEPA so that relevant earnings are excluded from the application of section 554Z6 if they are earnings attributable to the overseas part of a split year and are not earnings relating to duties performed in the UK or to overseas Crown employment that is subject to UK tax.
87. Paragraph 59 amends section 554Z9 of ITEPA so that employment income of the UK part of a split year is treated in the same way as employment income of a full year of residence for the purposes of that section. The provisions of section 554Z9 are further amended by the Schedule on ordinary residence.
88. Paragraph 60 makes changes to section 554Z10 of ITEPA that are consequential to the changes made to section 554Z4 and introduces a new term ‘the overseas portion’ to identify the employment income not attributable to UK duties. The provisions of section 554Z10 are further amended by the Schedule on ordinary residence.

*Special charging rules for pension income*

89. Paragraph 61 amends section 575 of ITEPA so that, in the case of a split year, the taxable foreign pension income for the year is that arising in the UK part of the year.

*Special rules for trading income*

90. Paragraph 63 amends section 6 of ITTOIA so that, in the case of a split year, for the overseas part of the year the section has effect as if the individual is non-UK resident.
91. Paragraph 64 amends section 17 of ITTOIA so that if an individual is carrying on a trade, profession or vocation wholly or partly outside the

UK other than in partnership, in the case of a split year the individual is treated as ceasing and immediately recommencing a new trade, profession or vocation at the beginning of whichever is the later of the UK part and the overseas part of the year.

92. Paragraph 65 amends section 243 of ITTOIA so that, in the case of a split year, for the overseas part of the year the section has effect as if the individual is non-UK resident.
93. Paragraph 66 amends section 849 of ITTOIA so that, in the case of a split year, for the overseas part of the year the section has effect as if the partner is non-UK resident.
94. Paragraph 67 amends section 852 of ITTOIA so that if a partner has a change of residence the partner is treated as ceasing one notional trade and immediately commencing another and, in the case of a split year, is treated as ceasing and immediately recommencing at the beginning of whichever is the later of the UK part and the overseas part of the year.
95. Paragraph 68 amends section 854 of ITTOIA so that if a partner has a change of residence the partner is treated as ceasing one notional business and immediately commencing another and, in the case of a split year, is treated as ceasing and immediately recommencing at the beginning of whichever is the later of the UK part and the overseas part of the year.

*Special charging rules for property income*

96. Paragraph 69 amends section 270 of ITTOIA so that where an individual is carrying on an overseas property business, in the case of a split year, tax is charged only on profits of the business that arise in the UK part of the year. Apportionment of profit between the two parts of the year is to be done on a just and reasonable basis.
97. New subsection (4)(b) of section 270 of ITTOIA introduces a rule to determine how capital allowances and balancing charges are taken into account in a split year.

*Special charging rules for savings and investment income*

98. Paragraph 71 amends section 368 of ITTOIA so that if income within Part 4 of ITTOIA arises to an individual in the overseas part of a split year it is treated as arising to a non-UK resident. Income arising to a non-resident is generally only chargeable if it is UK source income, but this is subject in particular to the rules for temporary non-residents (see Part 4 of this Schedule).

99. Paragraph 72 amends section 465 of ITTOIA so that, in the case of a split year, the individual is not liable to tax under Chapter 9 of Part 4 on gains arising in the overseas part of the year. But see Part 4 of this Schedule in relation to an individual who is temporarily non-resident.
100. Paragraph 73 amends section 467 of ITTOIA to include an additional absent settlor condition under subsection (4), which is that the gain arises in the overseas part of a split tax year applicable to the individual who created the trusts.
101. Paragraph 74 amends section 528 of ITTOIA to take into account days in the overseas part of a split year as well as days in a full year of non-residence in reducing the amount of the gain to be charged. This section is being substituted by the Schedule in this Bill dealing with chargeable event gains but continues in force for policies not covered by the new section. Accordingly, the amendments made by sub-paragraphs (3) to (5) of paragraph 74 apply to the existing section 528 and the amendments made by sub-paragraphs (6) to (9) of paragraph 74 apply to the new section 528. If the period being considered is before 6 April 2013 then the reference to a split year is applied as if it referred to the relevant Extra-Statutory Concession then in force (usually ESC A11) – see paragraph 141 of this Schedule.
102. Paragraph 75 amends section 528A of ITTOIA which is inserted by the Schedule in this Bill dealing with chargeable event gains. It provides relief in respect of a deceased person's policy corresponding to that for individuals in section 528 of ITTOIA. The amendments correspond to those made by paragraph 74.
103. Paragraph 76 amends section 536 of ITTOIA (as itself amended by the Schedule in this Bill dealing with chargeable event gains) to reflect the changes made to section 528 of ITTOIA.

*Special charging rules for miscellaneous income*

104. Paragraph 77 amends section 577 of ITTOIA so that if income falling under Part 5 arises to an individual in the overseas part of a split year it is treated under this section as arising to a non-UK resident.

*Special charging rules for relevant foreign income charged on remittance basis*

105. Paragraph 78 amends section 832 of ITTOIA to provide that an individual who is taxed on the remittance basis will be subject to UK tax on all relevant foreign income remitted in a tax year in which they are UK resident, or, if that year is a split year as respects the individual, on all relevant foreign income which they remit in the UK part of that year.

106. Paragraph 79 amends three provisions in Chapter 2 of Part 13 of ITA as a consequence of the amendments made to section 832 of ITTOIA.

*Special charging rules for capital gains*

107. Paragraph 81 amends section 2 of TCGA so that, in the case of a split year, an individual is not chargeable to capital gains tax on chargeable gains accruing to the individual in the overseas part of the year. This rule does not apply where gains are charged on a non-resident under section 10 of TCGA and is subject to the rules for temporary non-residents in section 10A of TCGA. The provisions of section 2 are further amended by the Schedule on ordinary residence.
108. Paragraph 82 amends section 3A of TCGA so that the period taken into consideration for the purpose of the amount of chargeable gains or chargeable disposals is, in the case of a split year applicable to the individual, the UK part of the year.
109. Paragraph 83 amends section 12 of TCGA so that, in the case of a split year when gains are remitted, they are treated as accruing to the individual in whichever part of the year (overseas part or UK part) in which the foreign gains are actually remitted to the UK. The provisions of section 12 are further amended by the Schedule on ordinary residence.
110. Paragraph 84 amends section 13 of TCGA so that, in the case of a split year for a participator in the company, the chargeable gain that accrues to the company in the overseas part of the year is not treated as accruing to the participator.
111. Paragraph 85 amends section 16 of TCGA so that, in the case of a split year for an individual, the loss accruing to the individual in the overseas part of the year is not an allowable loss under the Act.
112. Paragraph 86 amends section 16ZB of TCGA to reflect the fact that foreign chargeable gains remitted to the UK are treated under section 12 of TCGA as accruing to the individual in whichever part of the year (overseas part or UK part) the gains are remitted to the UK.
113. Paragraph 87 amends section 16ZC of TCGA so that the foreign chargeable gains in subsection (3)(a) and (b) respectively take into account that the relevant year may be a split year.
114. Paragraph 88 amends section 86 of TCGA so that, in the case of a split year for the settlor, the chargeable gains treated as accruing to the settlor are treated as accruing in the UK part of the year. The provisions of section 86 are further amended by the Schedule on ordinary residence.

115. Paragraph 89 amends section 87 of TCGA so that, if the year is a split year for the beneficiary, the amount on which the beneficiary is chargeable to capital gains tax under this section is the portion of the total that would have been chargeable for a full year of residence attributable on a time basis to the UK part of the year. The provisions of section 87 are further amended by the Schedule on ordinary residence.
116. Paragraph 90 amends paragraph 9 of Schedule 4C to TCGA so that, if the year is a split year in respect of the beneficiary receiving a capital payment that falls under this paragraph, the payment is disregarded if it is received by the beneficiary in the overseas part of the year. The provisions of Schedule 4C are further amended by the Schedule on ordinary residence.

*Trustees of a settlement*

117. Paragraph 91 amends section 69 of TCGA which contains the residence rules of a body of trustees for capital gains tax purposes. Under the statutory residence test, an individual trustee who is resident in the UK for a year is resident for every day in that year, including those days that fall within the overseas part of a split year for that individual. The amendment provides that if the individual is a trustee of a settlement only in the overseas part of a split year then he or she is treated as not resident for that year in applying the residence rules to that settlement. This exception is overridden if the trustee is acting as such in the course of a UK business.
118. Paragraph 92 amends section 475 of ITA which contains the residence rules of a body of trustees for income tax purposes. It makes equivalent changes to those made for capital gains tax by the previous paragraph.

*Definitions in enactments relating to income tax and CGT*

119. Paragraph 93 amends section 288 of TCGA to insert definitions of a “split year” and “the overseas part” and “the UK part” of a split year.
120. Paragraph 94 amends Part 2 of Schedule 1 to ITEPA to insert cross-references to the ITA definitions of a “split year” and “the overseas part” and “the UK part” of a split year.
121. Paragraph 95 amends Part 2 of Schedule 4 to ITTOIA to insert cross-references to the ITA definitions of a “split year” and “the overseas part” and “the UK part” of a split year.
122. Paragraph 96 amends section 989 of ITA to insert definitions of a “split year” and “the overseas part” and “the UK part” of a split year.

123. Paragraph 97 amends Schedule 4 to ITA to insert entries relating to “split year”, “the overseas part” and “the UK part” of a split year.

## PART 4

### Anti-avoidance

#### *Introduction*

124. Paragraph 98 gives an overview of the content of this Part. This Part amends existing rules which apply to income and gains arising during a period of temporary non-residence and introduces new charges for certain income and gains not presently covered by such rules. In addition to the provisions amended or introduced by this Part there are two similar charges in secondary legislation (SI 2006/1958 (pension schemes, taxable property) and SI 2009/3001 (offshore funds)). It is proposed that those provisions will be brought into line with the rules in this Part – a draft statutory instrument will be published in due course.

#### *Meaning of temporarily non-resident*

125. Paragraph 99 specifies that an individual is regarded as “temporarily non-resident” if he or she has sole UK residence for a residence period and, 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. “Sole UK residence” is defined in paragraph 101 and “residence period” is defined in paragraph 100. In addition, in 4 or more tax years out of the 7 tax years immediately preceding the year of departure (a term defined in paragraph 103), the individual must have had either sole UK residence or the year must have been a split year that included a period when the individual had sole UK residence. Finally, the temporary period of non-residence (see paragraph 102) must be 5 years or less.
126. The provisions in this Part apply if the period of temporary non-residence is 5 years or less. This is a change from the current temporary non-residence provisions which apply if there are no more than 5 tax years (‘intervening years’) between the year of departure and the year of return.

#### *Residence periods*

127. Paragraph 100 defines a “residence period” as a tax year that is not split, or the overseas part or the UK part of a split year.

#### *Sole UK residence*

128. Paragraph 101 defines “sole UK residence” for a residence period as the individual being UK resident for an entire tax year and not Treaty

non-resident, or the UK part of a split year and not Treaty non-resident in that part. “Treaty non-resident” is defined in sub-paragraph (3) of paragraph 101.

*Temporary period of non-residence*

129. Paragraph 102 defines “the temporary period of non-residence” as the period between the end of period A and the start of the next residence after period A for which the individual has sole UK residence.

*Year of departure*

130. Paragraph 103 defines “the year of departure” as the tax year consisting of or including period A.

*Period of return*

131. Paragraph 104 defines “the period of return” as the first residence period after period A for which the individual has sole UK residence.

*Consequential amendments: income tax*

132. Paragraph 105 substitutes a new section 576A of ITEPA. Both the existing and new sections 576A provide that a withdrawal from a flexible drawdown pension fund under a relevant non-UK scheme during a period of temporary non-residence (as defined in paragraph 102) is to be treated as pension income when the individual returns to the UK. The new section 576A ensures the existing provision is made consistent with the other provisions in Part 4 of this Schedule.
133. Subsection (1) of new section 576A provides that the section applies to persons who are “temporarily non-resident” (as defined in paragraph 99).
134. Subsection (2) of new section 576A provides that relevant withdrawals are to be treated as pension income arising in the period of return (as defined in paragraph 104) for the purposes of section 575 of ITEPA. Section 575 provides that the amount of pension arising when a pension is paid by or on behalf of a person outside the UK to a person who is resident in the UK is taxable pension income.
135. Subsections (3) and (4) of new section 576A define a “relevant withdrawal” for the purpose of subsection (2).
136. Subsection (3)(a) of new section 576A provides that a relevant withdrawal must be paid during a period of temporary non-residence.
137. Subsection (3)(b) of new section 576A provides that a relevant withdrawal is a withdrawal that is either not chargeable to tax under

Part 9 of ITEPA or, if it is so chargeable to tax, it would not be if the chargeable person made a claim under a double taxation agreement.

138. Subsection (4) of new section 576A provides that a relevant withdrawal is a withdrawal that is paid under a flexible drawdown arrangement relating to the person under a relevant non-UK scheme and would be an authorised pension or pension death benefit if the scheme paying it were a registered pension scheme. “Relevant non-UK scheme” is defined in paragraph 1 of Schedule 34 to FA 2004. The pension rules and the pension death benefit rules in relation to registered pension schemes are defined in sections 165 and 167 of FA 2004.
139. Subsection (5) of new section 576A provides that when an individual is chargeable to tax on the remittance basis for the year of return and both made a relevant withdrawal and remitted it to the UK during the period of temporary non-residence, the amount remitted is to be treated as having been remitted to the UK in the period of return.
140. Subsection (6) of new section 576A provides that the section does not apply unless the withdrawal from a flexible drawdown pension fund is referable to either the individual’s UK tax-relieved fund or their relevant transfer fund. A member’s UK tax-relieved fund is created by the accumulation of pension rights supported by UK tax relief. A member’s relevant transfer fund is created by the transfer to the relevant non-UK scheme from a registered pension scheme or from another relevant non-UK scheme.
141. Subsection (7) of new section 576A provides that no double taxation relief arrangement is to be read as preventing a charge to tax under section 575 of ITEPA from arising by virtue of section 576A.
142. Subsections (8) to (10) of new section 576A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.
143. Paragraph 106 substitutes a new section 579CA of ITEPA. Both the existing and the new sections 579CA provide that a withdrawal from a flexible drawdown pension fund under a registered pension scheme during a period of temporary non-residence is to be treated as pension income when the individual returns to the UK. The new section 579CA ensures the existing provision is made consistent with the other provisions in Part 4 of this Schedule.
144. Subsection (1) of new section 579CA provides that the section applies to persons who are “temporarily non-resident” (as defined in paragraph 99).

145. Subsection (2) of new section 579CA provides that relevant withdrawals are to be treated as pension income arising in the period of return (as defined in paragraph 104) for the purposes of section 579B of ITEPA. Section 579B provides that the amount of pension accruing when a pension is paid under a registered pension scheme is taxable pension income.
146. Subsection (3)(a) of new section 579CA provides that a withdrawal is not a relevant withdrawal unless it is paid during a period of temporary non-residence (as defined in paragraph 102).
147. Subsection (3)(b) of new section 579CA provides that a withdrawal is not a relevant withdrawal unless it is either not chargeable to tax under Part 9 of ITEPA or, if it is so chargeable to tax, it would not be if the chargeable person made a claim under a double taxation agreement.
148. Subsection (4) of new section 579CA provides that a withdrawal is not a relevant withdrawal unless it is paid under a flexible drawdown arrangement relating to the person under a registered pension scheme and is an authorised pension or pension death benefit. The pension rules and the pension death benefit rules in relation to registered pension schemes are defined in sections 165 and 167 of FA 2004.
149. Subsection (5) of new section 579CA provides that no double taxation relief arrangement is to be read as preventing a charge to tax under section 579B of ITEPA from arising by virtue of section 579CA.
150. Subsections (6) and (7) of new section 579CA provide statutory cross-references for terms used in the section but defined in legislation elsewhere.
151. Paragraph 107 substitutes a new section 832A of ITEPA which applies to individuals who are temporarily non-resident and taxed on the remittance basis. It provides that where such individuals remit relevant foreign income to the UK during the period of non-residence, they will be treated as having remitted that relevant foreign income to the UK in the period of return.
152. Subsection (4) of new section 832A provides that any apportionment which is required to determine the amount of relevant foreign income which relates to the UK part of a tax year must be done on a just and reasonable basis.
153. Subsection (5) of new section 832A provides that relevant foreign income which is treated by this section as remitted to the UK in the period of return will be chargeable to UK tax notwithstanding any double taxation arrangements.

154. Subsection (7) of new section 832A provides that the term “double taxation arrangements” means arrangements which have effect under section 2(1) of TIOPA.

*Consequential amendments: capital gains tax*

155. Paragraph 108 replaces existing section 10A of TCGA with new sections 10A and 10AA. The new section 10A replaces the concepts of intervening year, year of departure and year of return in the existing section with temporary period of non-residence (defined in paragraph 102), year of departure (defined in paragraph 103) and period of return (defined in paragraph 104).
156. The amendment to section 2 of TCGA in paragraph 81 means that gains arising in the overseas part of a split year will not be charged under that section but will instead be charged under new section 10A of TCGA if the individual meets the temporary non-resident conditions set out in this Part.
157. Subsection (1) of new section 10A restricts the scope of the section so that it only applies if an individual is temporarily non-resident (as defined in paragraph 99).
158. Subsection (2) of new section 10A provides that the individual’s gains or losses within subsection (3) are chargeable to capital gains tax as if they were chargeable gains or losses accruing to the individual in the period of return.
159. Subsections (3) to (5) of new section 10A replace the existing subsections (2), (5) and (9B) and take into account split years. The more general carve-out in subsection (3) enables the structure of the legislation to be simplified and also corrects a defect in the current legislation which prevents a charge in certain cases of treaty non-residence.
160. Subsection (6) of new section 10A provides that subsection (2) is subject to sections 10AA and 86A of TCGA.
161. Subsection (7) of new section 10A replicates the effect of the existing rules in subsection (6) that limit the losses available in accordance with section 13 of TCGA.
162. Subsection (8) of new section 10A replicates the effect of the existing subsection (9ZA).
163. Subsection (9) of new section 10A provides that the terms temporarily non-resident, temporary period of non-residence and the period of return are as defined in Part 4 of this Schedule.

164. Subsection (10) of new section 10A provides the meanings of foreign chargeable gains, remitted and year of return.
165. New section 10AA of TCGA contains provisions supplementary to new section 10A of TCGA.
166. Subsection (1) of new section 10AA replicates the effect of the existing section 10A paragraphs (3)(a), (b), (c) and (d).
167. Subsection (2) of new section 10AA defines the term “relevant disposal” for the purposes of section 10AA.
168. Subsection (3) of new section 10AA replicates the effect of subsection (4) of the existing section 10A.
169. Subsection (4) of new section 10AA replicates the effect of subsection (9C) of the existing section 10A.
170. Subsection (5) of new section 10AA replicates the effect of subsection (7) of the existing section 10A.
171. Paragraph 109 substitutes a new section 86A of TCGA to make it compatible with new section 10A of TCGA and to correct for consequential amendments that were missed in FA 2008. New section 86A ensures that gains that are taxed under section 86 of TCGA in a period of return because section 10A applies do not include gains that have already been charged to tax under section 87 of TCGA. This may happen if non-UK resident trustees make capital payments to beneficiaries that section 87A of TCGA matches to trustees’ gains that accrued in a period of temporary non-residence for the settlor.
172. Subsection (1) of new section 86A gives the conditions for the section to apply.
173. Subsection (2) of new section 86A gives the definition of “matched capital payment”.
174. Subsection (3) of new section 86A provides for the amount charged on the returning settlor under section 86 of TGA to be reduced if new section 86A applies.
175. Subsection (4) of new section 86A sets out the amount of the reduction.
176. Subsection (5) of new section 86A sets out the amount by which the trustees’ gains available to be matched under section 87 of TCGA are reduced if those gains have been taxed under section 86 of TCGA as modified by new section 86A.

177. Subsections (6) and (7) of new section 86A also deal with the reduction of the trustees' gains. The rules ensure that the reduction cannot take the gains below zero. It will apply if capital payments have been made to which the reduction in new section 86A does not apply because they are not charged to tax.
178. Subsection (8) of new section 86A provides various definitions.
179. Paragraph 110 amends section 96 of TCGA. The changes are consequential to the changes made to section 10A TCGA.
180. Paragraph 111 amends section 279B of TCGA. The changes are consequential to the changes made to section 10A TCGA.
181. Paragraph 112 amends Schedule 4C to TCGA. The changes are consequential to the changes made to section 10A TCGA.
182. The remaining provisions in this Part insert new rules into ITEPA, ITTOIA and ITA concerning the taxation of certain income and gains arising in a temporary period of non-residence.

*New special rule: lump sum payments under pension schemes etc*

183. Paragraph 113 introduces paragraphs 114 to 119 which amend ITEPA in connection with lump sums paid under pension schemes that are not registered pension schemes.
184. Paragraph 114 amends ITEPA to insert a new section 394A. New section 394A applies to certain lump sums paid under employer-financed retirement benefit schemes ('EFRBS').
185. Subsection (1) of new section 394A provides that the section applies to individuals who are temporarily non-resident (as defined in paragraph 99).
186. Subsection (2) of new section 394A provides that the benefits described in subsection (3) are to be treated as if they were received in the period of return (as defined in paragraph 104).
187. Subsections (3)(a) to (c) of new section 394A provide that the section applies to relevant benefits provided in the form of a lump sum, when received by an individual during a temporary period of non-residence (as defined in paragraph 102).
188. Subsection (3)(d) of new section 394A provides that the section applies when the lump sum in question is not subject to tax under section 394 but would be subject to tax if the existence of double tax relief arrangements were disregarded.

189. Subsection (4) of new section 394A provides that there will be regarded as being no charge to tax for the purpose of section 394(3)(d)(i) where the person could make a claim to double taxation relief but has not yet done so.
190. Subsection (5) of new section 394A provides that subsection (2) does not affect the operation of section 394(1A).
191. Subsection (6) of new section 394A provides that no double taxation relief arrangement is to be read as preventing the value of the benefit from counting as employment income by virtue of section 394 as a result of section 394A applying.
192. Subsections (7) and (8) of new section 394A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.
193. Paragraph 115 amends ITEPA to insert a new section 554Z4A. New section 554Z4A applies to certain relevant steps taken by relevant third persons providing employment income.
194. Subsection (1) of new section 554Z4A provides that the section applies to individuals who are temporarily non-resident (as defined in paragraph 99).
195. Subsection (2) of new section 554Z4A provides that the relevant steps described in subsection (3) are to be treated as if they were taken in the period of return.
196. Subsection (3)(a) to (c) of new section 554Z4A provide that the section applies to relevant steps comprising payment of a lump sum relevant benefit by a relevant third person under a relevant arrangement, when the step is taken during a temporary period of non-residence (as defined in paragraph 102). The term “relevant benefit” is defined in section 393B of ITEPA. The terms “relevant arrangement” and “relevant third person” are defined in section 554A of ITEPA.
197. Subsection (3)(d) of new section 554Z4A provides that the section applies when the step does not give rise to a charge to tax by virtue of section 554Z2 of ITEPA but such a charge would arise if the existence of double tax relief arrangements were disregarded.
198. Subsection (4) of new section 554Z4A provides that there will be regarded as being no charge to tax for the purpose of section 554Z4A(3)(d)(i) where the person could make a claim to double taxation relief but has not yet done so.
199. Subsection (5) of new section 554Z4A provides that no double taxation relief arrangement is to be read as preventing the value of the relevant

- step from counting as employment income by virtue of section 554Z2 of ITEPA.
200. Subsections (6) and (7) of new section 554Z4A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.
  201. Paragraph 116 amends ITEPA to insert a new section 554Z11A. New section 554Z11A applies to certain amounts remitted to the UK.
  202. Subsection (1) of new section 554Z11A provides that the section applies to individuals who are temporarily non-resident (as defined in paragraph 99).
  203. Subsection (2) of new section 554Z11A provides that the amounts described in subsection (3) are to be treated as if they were remitted to the UK in the period of return
  204. Subsections (3)(a) to (c) of new section 554Z11A provide that the section applies if all or part of a lump sum relevant benefit provided to a relevant person by a relevant third person under a relevant arrangement is remitted to the UK during a temporary period of non-residence (as defined in paragraph 102). The term “relevant benefit” is defined in section 393B of ITEPA. The terms “relevant arrangement” and “relevant third person” are defined in section 554A of ITEPA. The definition of a “relevant person” is in section 554C of ITEPA.
  205. Subsection (3)(d) of new section 554Z11A provides that the section applies when the amount remitted does not give rise to a charge to tax by virtue of section 554Z9 or section 554Z10 of ITEPA but such a charge would arise if the existence of double tax relief arrangements were disregarded.
  206. Subsection (4) of new section 554Z11A provides that there will be regarded as being no charge to tax for the purpose of section 554Z11A(3)(d)(i) where the person could make a claim to double taxation relief but has not yet done so.
  207. Subsection (5) of new section 554Z11A provides that no double taxation relief arrangement is to be read as preventing the value of the relevant step from giving rise to tax by virtue of Chapter 2 of Part 7A of ITEPA.
  208. Subsections (6) and (7) of new section 554Z11A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.
  209. Paragraph 117 amends section 554Z12 of ITEPA in connection with relevant steps within new sections 554Z4A and 554Z11A when the

steps are taken after A has died during a period for which the relevant person was temporarily non-resident. The amendments provide that the relevant step in question is treated as taken in the relevant person's period of return unless the relevant person's temporary period of non-residence started before A died.

210. Paragraph 118 inserts a new section 572A into ITEPA. New section 572A applies to certain lump sums paid by UK pension schemes.
211. Subsection (1) of new section 572A provides that the section applies to individuals who are temporarily non-resident.
212. Subsection (2) of new section 572A provides that any pension within subsection (3) is to be treated as if it accrued in the period of return
213. Subsection (3) of new section 572A prescribes the conditions that need to be satisfied in order for the section to apply. The conditions are that
  - section 569 of ITEPA applies to the lump sum;
  - the pension is paid in the form of a lump sum;
  - the lump sum accrued during a period in which the individual was temporarily non-resident;
  - the lump sum is not chargeable to tax as a United Kingdom pension under Chapter 3 of Part 9 of ITEPA but it would be so chargeable if there were no double tax arrangements under which the individual could claim an exemption from UK tax in respect of the lump sum.
214. Subsection (4) of new section 572A provides that there will be regarded as being no charge to tax for the purpose of subsection (3)(d)(i) where the person could make a claim to double taxation relief but has not yet done so.
215. Subsection (5) of new section 572A provides that no double taxation relief arrangements are to be read as preventing the pension to which the section applies from giving rise to tax in the period of return.
216. Subsections (6) and (7) of new section 572A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.
217. Paragraph 119 amends section 683 of ITEPA (PAYE income) in connection with amounts that are treated as employment income or pension income for a period of return by virtue of new sections 394A, 554Z4A, 572A or 579CA of ITEPA. The amendments provide that

there is no requirement to operate PAYE in respect of any employment income or pension income which is chargeable to tax by virtue of one of those sections.

*New special rule: distributions to participators in close companies etc*

218. Paragraph 120 introduces paragraphs 121 to 123 which amend Parts 4 and 5 of ITTOIA. They provide new charges on foreign dividends and other distributions received (including loans being released) during a temporary period of non-residence.
219. Paragraph 121 inserts new section 408A in Chapter 4 of Part 4 of ITTOIA (which deals with foreign dividends).
220. Subsection (1) of new section 408A provides that this section applies to an individual who is temporarily non-resident.
221. Subsection (2) of new section 408A provides that dividends are to be treated for the purpose of Chapter 4 as if the individual received or became entitled to them in the period of return.
222. Subsection (3) of new section 408A sets out the conditions that must apply for a dividend to fall within subsection (2). These conditions are that:
  - the individual receives or becomes entitled to the dividend in the temporary period of non-residence by virtue of being either a material participator in the company or an associate of such a participator at a relevant time;
  - the dividend is from a company which would be a close company if it were UK resident; and,
  - in the absence of this section, the individual would not be liable for tax under Chapter 4 in respect of the dividend but would have been so liable if they had received or become entitled to it in the period of return.
223. Subsection (4) of new section 408A defines the terms ‘associate’, ‘participator’, ‘material participator’ and ‘relevant time’ for the purposes of subsection (3) and provides that the subsection also applies where double taxation relief is available for the tax liability in question, even if no claim for such relief is actually made.
224. Subsection (5) of new section 408A provides that, where an individual is taxed on the remittance basis for the year of return, any dividend within subsection (3) which is remitted to the UK in the temporary

period of non-residence will be treated as remitted to the UK in the period of return.

225. Subsection (6) of new section 408A provides that new section 408A does not apply to dividends within subsection (3) which are paid in respect of post-departure trade profits.
226. Subsection (7) of new section 408A defines the term ‘post-departure trade profits’ for the purposes of subsection (6) as those arising to the company in an accounting period which begins after the start of the temporary period of non-residence and, where such profits arise in an accounting period straddling the start of that temporary period, so much of those profits which can be attributed, on a just and reasonable basis, to the time after the start of that temporary period.
227. Subsection (8) of new section 408A provides that the extent to which a dividend is paid in respect of post-departure trade profits should be determined on a just and reasonable basis.
228. Subsection (9) of new section 408A provides that double taxation arrangements will not prevent the individual from being chargeable to income tax under this section.
229. Subsection (10) of new section 408A provides that, where section 406 or 407 of ITTOIA applies to the dividend, references in this section to a dividend being received by the individual are to a cash dividend being paid to the individual or to a dividend treated as paid to the individual.
230. Subsection (11) of new section 408A provides that the meaning of the terms ‘temporarily non-resident’, ‘the temporary period of non-residence’, ‘the year of departure’ and ‘the period of return’ is as defined in Part 4 of this Schedule.
231. Subsection (12) of new section 408A defines the terms ‘double taxation arrangements’, ‘remitted to the UK’ and ‘year of return’ for the purposes of this section.
232. Paragraph 122 inserts new section 420A in Chapter 6 of Part 4 of ITTOIA. This provision applies to loans released in a period of temporary non-residence.
233. Subsection (1) of new section 420A provides that this section applies where an individual is temporarily non-resident.
234. Subsection (2) of new section 420A provides that debts within subsection (3) are treated as if they had been released or written off in the period of return.

235. Subsection (3) of new section 420A provides that a debt is within this subsection if:
- the debt is all or part of a debt in respect of a loan or advance made by a company to the individual;
  - the debt is released or written off in the temporary period of non-residence; and,
  - in the absence of this section, the individual would not be liable for tax under Chapter 6 of Part 4 of ITTOIA in respect of the release or write-off of the debt, but would have been liable if the debt had been released or written off in the period of return.
236. Subsection (4) of new section 420A provides that, for the purposes of subsection (3), the terms ‘associate’ and ‘participator’ have the same meaning as in Part 10 of CTA 2010 and that subsection (3) also applies where double taxation relief is available for the tax liability in question, even if no claim for such relief is actually made.
237. Subsection (5) of new section 420A provides that double taxation arrangements will not prevent the individual from being chargeable to income tax under this section.
238. Subsection (6) of new section 420A provides that the meaning of the terms ‘temporarily non-resident’, ‘the temporary period of non-residence’, ‘the year of departure’ and ‘the period of return’ is as defined in Part 4 of this Schedule.
239. Subsection (7) of new section 420A defines the term ‘double taxation arrangements’ for the purposes of this section.
240. Paragraph 123 inserts new section 689A in Chapter 8 of Part 5 of ITTOIA 2005 dealing with distributions not charged by other provisions of ITTOIA.
241. Subsection (1) of new section 689A provides that new section 689A applies if an individual is temporarily non-resident.
242. Subsection (2) of new section 689A provides that distributions within subsection (3) are to be treated for the purpose of Chapter 8 of Part 5 of ITTOIA as if the individual received or became entitled to them in the period of return.
243. Subsection (3) of new section 689A defines the conditions in which distributions are to be treated under the rule provided by subsection (2). These conditions are that:

- the individual receives or becomes entitled to the distribution in the temporary period of non-residence by virtue of being either a material participator in the company or an associate of such a participator at a relevant time;
  - the distribution is from a close company or from a company which would be a close company if it were UK resident; and
  - in the absence of this section, the individual would not be liable for tax under Chapter 8 of Part 5 of ITTOIA in respect of the distribution but would have been so liable if they had received or become entitled to it in the period of return.
244. Subsection (4) of new section 689A defines the terms ‘associate’, ‘participator’, ‘material participator’ and ‘relevant time’ for the purposes of subsection (3) and provides that the subsection also applies where double taxation relief is available for the tax liability in question, even if no claim for such relief is actually made.
245. Subsection (5) of new section 689A provides that, where an individual is taxed on the remittance basis for the year of return, any distribution within subsection (3) which is relevant foreign income and is remitted to the UK in the temporary period of non-residence will be treated as remitted to the UK in the period of return.
246. Subsection (6) of new section 689A provides that double taxation arrangements will not prevent the individual from being chargeable to income tax under this section.
247. Subsection (7) of new section 689A provides that the meaning of the terms ‘temporarily non-resident’, ‘the temporary period of non-residence’, ‘the year of departure’ and ‘the period of return’ is as defined in Part 4 of this Schedule.
248. Subsection (8) of new section 689A defines the terms ‘double taxation relief arrangements’, ‘remitted to the UK’ and ‘years of return’ for the purposes of this section.
249. Paragraph 124 inserts new section 812A in Chapter 1 of Part 14 of ITA.
250. Subsection (1) of new section 812A provides that new section 812A applies where:
- an individual is temporarily non-resident;
  - the individual’s income tax liability is limited under section 811 of ITA;

- the non-resident year falls within the temporary period of non-residence; and
  - the individual's income for that tax year includes relevant investment income.
251. Subsection (2) of new section 812A provides that the total income, as defined by Step 1 in section 23 of ITA, on which the individual is taxed for the year of return, is to be increased by amount X which is equal to the amount of the relevant investment income.
252. Subsection (3) of new section 812A provides that a credit is to be allowed for the notional UK tax on relevant investment income against the individual's income tax liability for the year of return to the extent that the relevant investment income does not exceed amount X.
253. Subsection (4) of new section 812A provides that 'relevant investment income' is income where:
- the income is chargeable under either Chapter 3 or Chapter 5 of Part 4 of ITTOIA;
  - the distributing company is a close company;
  - the income either arises or is treated as arising to the individual because they were a material participator in the company or an associate of such a participator at a relevant time.
254. Subsection (5) of new section 812A provides that income within subsection (4) in the form of a cash or stock dividend is not relevant investment income to the extent that the dividend is paid, or the share capital is issued, in respect of post-departure trade profits.
255. Subsection (6) of new section 812A defines the terms 'post-departure trade profits' for the purposes of subsection (5) as those arising to the distributing company in an accounting period which begins after the start of the temporary period of non-residence and, where such profits arise in an accounting period straddling the start of that temporary period, so much of those profits which can be attributed, on a just and reasonable basis, to the time after the start of that temporary period.
256. Subsection (7) of new section 812A defines the term 'notional UK tax' on relevant investment income for the purpose of subsection (3) as the total income included within amount A in section 811 of ITA less any credit for foreign tax paid in respect of that income under Chapter 2 of Part 2 of TIOPA for the non-resident year.
257. Subsection (8) of new section 812A provides that the extent to which a dividend is paid, or share capital is issued, in respect of post-departure

trade profits, and the extent to which a sum included within amount A is a sum in respect of relevant investment income should both be determined on a just and reasonable basis.

- 258. Subsection (9) of new section 812A provides that double taxation arrangements will not prevent the individual from being chargeable to income tax under this section.
- 259. Subsection (10) of new section 812A provides that the meaning of the terms ‘temporarily non-resident’, ‘the temporary period of non-residence’, ‘the year of departure’ and ‘the period of return’ is as defined in Part 4 of this Schedule.
- 260. Subsection (11) of new section 812A defines the terms ‘associate’, ‘participator’, ‘material participator’, ‘relevant time’ and ‘year of return’ for the purposes of this section.

*New special rule: chargeable event gains*

- 261. Paragraph 125 provides for Chapter 9 of Part 4 of ITTOIA to be amended. This provides a new charge on chargeable event gains arising in a temporary period of non-residence and makes related amendments.
- 262. Paragraph 126 inserts new section 465B into ITTOIA.
- 263. Subsection (1) of new section 465B provides that the section applies if an individual is temporarily non-resident (as defined in paragraph 99).
- 264. Subsection (2) of new section 465B provides a charge for the year of return following a temporary period of non-residence if the conditions in subsection (3) are met.
- 265. Subsection (3) and (4) of new section 465B state the conditions to be met for a gain to be charged under this section. It is necessary that the gain would have been chargeable had the individual been resident in the year in which the gain arose, and assuming that year was not a split year for that individual.
- 266. Subsections (5) and (6) of new section 465B provide that the amount chargeable in the year of return is the amount that would have been chargeable applying the assumptions in subsection (4).
- 267. Subsection (7) of new section 465B contains a rule determining the date an insurance or contract is made for the purposes of subsection (3)(b).
- 268. Subsection (8) of new section 465B provides that in certain circumstances a gain is not chargeable under this section.

269. Subsection (9) of new section 465B provides that nothing in any double taxation arrangements prevents the charge under this section.
270. Subsections (10) and (11) of new section 465B provide statutory cross-references for terms used in the section but defined in legislation elsewhere.
271. Paragraph 127 inserts new subsection (7) into section 468 of ITTOIA ensuring no double charge arises under sections 465B and 468.
272. Paragraph 128 inserts new subsection (4A) into section 514 of ITTOIA and provides that the special rule in subsection (4) charging the gain for the tax year in which the insurance year ends takes precedence over the timing rule in section 465B.
273. Paragraph 129 makes a consequential amendment to section 541 of ITTOIA.
274. Paragraph 130 makes a consequential amendment to section 552 of ICTA.

## PART 5

### Miscellaneous

#### *Interpretation*

275. Paragraph 131 defines terms used in this Schedule.
276. Paragraph 132 specifies the interpretation of annual and parenting leave for an individual carrying on a trade, and what are “reasonable amounts”, in relation to the usage in this Schedule.
277. Paragraph 133 provides that a reference to less than a specified number of days includes nil days.

#### *Consequential amendments*

278. Paragraph 134 amends TCGA to delete section 9, which defines residence and related expressions for the purposes of that Act, and inserts into section 288 the definition of “resident” given by this Schedule.
279. Paragraph 135 makes a minor consequential amendment to section 27 of ITEPA.
280. Paragraph 136 makes a similar minor consequential amendment to section 465 of ITTOIA.

281. Paragraph 137 amends section 28 of FA 2005 to incorporate the concept of a split year as defined in Part 3 of this Schedule and amends section 41 of FA 2005 to insert the definitions of “non-UK resident” and “UK resident” in accordance with the meaning arising from this Schedule. Minor amendments are also made to sections 30, 31 and 32 of that Act.
282. Paragraph 138 amends ITA to delete sections 829 to 832, which contain provisions about the meaning of residence for income tax purposes. It also makes consequential amendments to section 810 of ITA.

*Commencement*

283. Paragraph 139 specifies when this Schedule shall have effect. Parts 1 and 2 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. Part 3 of the 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. Part 4 of the Schedule has effect if the year of departure (as defined in paragraph 103) is the tax year 2013-14 or a subsequent tax year.

*Transitional and saving provision*

284. Paragraph 140 provides that where for the purposes of this Schedule it is necessary to determine for the tax year 2013-14, 2014-15 or 2015-16 whether an individual was UK resident or non-UK resident for a tax year before 2013–14, this will be determined in accordance with the rules then in force unless the individual elects for the determination to be made in accordance with this Schedule. Such an election must be made by notice in writing to HMRC no later than the first anniversary of the tax year to which it applies.
285. Paragraph 141 provides that where for the purposes of this Schedule it is necessary to determine for the tax year 2013-14 or any subsequent year whether a tax year before 2013–14 was a split year with respect to the individual, this will be determined in accordance with the relevant Extra Statutory Concession in place for that pre-commencement year. Those concessions are ESC A11, ESC A78 and ESC D2.
286. Paragraph 142 provides that the temporary non-resident provisions listed in sub-paragraph (3) will continue to have effect where the year of departure (as defined in paragraph 103) is a tax year before 2013-14, and that an individual’s residence for the year 2013-14 and after will be determined in accordance with this Schedule with the effect of split-years being disregarded.

287. Paragraph 143 provides that section 13 of FA 2012, which is a tax exemption in relation to the May 2013 Champions League final at Wembley, is applied using the concept of residence without regard to this Schedule.

### BACKGROUND

288. At Budget 2011, the Government announced that it would introduce a statutory definition of tax residence for individuals. Following extensive consultation, rules have been formulated which are contained within Parts 1 and 2 of the Schedule. The test makes an individual resident or not resident in the UK for a whole tax year. It applies for 2013-14 and following years.
289. Under a number of extra-statutory concessions, an individual could be taxed as if resident and non-resident for parts of the same tax year provided certain conditions were met. Part 3 of the Schedule replaces those concessions by giving statutory effect to 'split year' treatment and the concessions will be withdrawn with effect from 6 April 2013.
290. There are already several provisions (including two in secondary legislation) which charge certain income and gains when an individual resumes UK residence after a temporary period of non-residence. Those rules in primary legislation are aligned and updated by Part 4 of the Schedule which also extends the scope of the temporary non-resident rules to certain other income and gains. It is proposed that the two provisions in secondary legislation will be brought into line through a Statutory Instrument made after Royal Assent but taking effect on 6 April 2013. A draft statutory instrument will be published in due course.
291. If you have any questions or comments on the legislation, please contact Paul Jefferies on 020 7147 2580 (email: [offshorepersonal.taxteam@hmrc.gsi.gov.uk](mailto:offshorepersonal.taxteam@hmrc.gsi.gov.uk)).