

NOTICES OF AMENDMENTS

given on

Thursday 13 June 2013

For other Amendment(s) see the following page(s):
Finance Bill Committee 128-135

PUBLIC BILL COMMITTEE

FINANCE BILL

(Except Clauses 1, 3, 16, 183, 184 and 200 to 212; Schedules 3 and 41; any new Clauses, and any new Schedules, first appearing on the Order Paper not later than Tuesday 16 April 2013 and relating to tax measures concerning housing; and any new Clauses, and any new Schedules, relating to value added tax or the bank levy or air passenger duty or the subject matter of Clauses 1 and 16 and Schedule 3 or the subject matter of Clause 3 or the subject matter of Clauses 203 to 212 and Schedule 41)

Mr David Gauke

125

Schedule 43, page 497, line 40, leave out ‘in’ and insert ‘which falls in both that period and’.

Mr David Gauke

126

Schedule 43, page 498, line 38, at end insert ‘, and

- (e) if P had a home overseas during all or part of year X, P did not spend a sufficient amount of time there in year X.
- (2) In relation to a home of P’s overseas, P “spent a sufficient amount of time” there in year X if—
 - (a) there were at least 30 days in year X when P was present there on that day for at least some of the time (no matter how short a time), or
 - (b) P was present there for at least some of the time (no matter how short a time) on each day of year X up to and including the day on which P died.
- (3) In sub-paragraph (2)—
 - (a) the reference to 30 days is to 30 days in aggregate, whether the days were consecutive or intermittent, and
 - (b) the reference to P being present at the home is to P being present there at a time when it was a home of P’s.
- (4) If P had more than one home overseas—
 - (a) each of those homes must be looked at separately to see if the requirement of sub-paragraph (1)(e) is met, and

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- (b) that requirement is then met so long as it is met in relation to each of them.’.
- Mr David Gauke 127
 Schedule 43, page 508, line 18, after ‘even’ insert ‘if P’.
- Mr David Gauke 128
 Schedule 43, page 514, line 38, after ‘taxpayer’ insert ‘—
 (a) ’.
- Mr David Gauke 129
 Schedule 43, page 514, line 40, at end insert ‘, but
 (b) was resident in the UK for one or more of the 4 tax years immediately preceding that year.’.
- Mr David Gauke 130
 Schedule 43, page 517, line 12, after ‘in the’ insert ‘part of the’.
- Mr David Gauke 131
 Schedule 43, page 517, line 37, leave out from ‘is’ to end of line 40 and insert ‘the part of that year defined below—
 (a) for the Case in question, or
 (b) if the taxpayer’s circumstances fall within more than one Case, for the Case which has priority (see paragraphs 53A and 53B).’.
- Mr David Gauke 132
 Schedule 43, page 518, line 22, at end insert—
- ‘Priority between Cases 1 to 3*
- 53A(1) This paragraph applies to determine which Case has priority where the taxpayer’s circumstances for the relevant year fall within two or all of the following—
 Case 1 (starting full-time work overseas);
 Case 2 (the partner of someone starting full-time work overseas);
 Case 3 (ceasing to have a home in the UK).
 (2) Case 1 has priority over Case 2 and Case 3.
 (3) Case 2 has priority over Case 3.
- Priority between Cases 4 to 8*
- 53B(1) This paragraph applies to determine which Case has priority where the taxpayer’s circumstances for the relevant year fall within two or more of the following—
 Case 4 (starting to have a home in the UK only);
 Case 5 (starting full-time work in the UK);

Finance Bill, *continued*

Case 6 (ceasing full-time work overseas);

Case 7 (the partner of someone ceasing full-time work overseas);

Case 8 (starting to have a home in the UK).

- (2) In this paragraph “the split year date” in relation to a Case means the final day of the part of the relevant year defined in paragraph 53(5) to (9) for that Case.
- (3) If Case 6 applies—
- (a) if Case 5 also applies and the split year date in relation to Case 5 is earlier than the split year date in relation to Case 6, Case 5 has priority;
- (b) otherwise, Case 6 has priority.
- (4) If Case 7 (but not Case 6) applies—
- (a) if Case 5 also applies and the split year date in relation to Case 5 is earlier than the split year date in relation to Case 7, Case 5 has priority;
- (b) otherwise, Case 7 has priority.
- (5) If two or all of Cases 4, 5 and 8 apply (but neither Case 6 nor Case 7), the Case which has priority is the one with the earliest split year date.
- (6) But if, in a case to which sub-paragraph (5) applies, two or all of the Cases which apply share the same split year date and that date is the only, or earlier, split year date of the Cases which apply, the Cases with that split year date are to be treated as having priority.’.

Mr David Gauke

133

Schedule 43, page 558, line 14, leave out ‘or 2015-16’ and insert ‘2015-16, 2016-17 or 2017-18’.

Mr David Gauke

134

Schedule 43, page 558, line 40, at end insert ‘, and

- (c) paragraph 49 of this Schedule has effect in relation to that year as if in sub-paragraph (2) for the words from “because” to the end there were substituted “in circumstances where the taxpayer was working overseas full-time for the whole of that year.”’.

Mr David Gauke

135

Schedule 43, page 559, line 17, at end insert—

- ‘ (1) Sub-paragraph (2) applies in determining whether the test in paragraph 50(3) is met where the relevant year is the tax year 2013-14.
- (2) The circumstances of a partner of the taxpayer are to be treated as falling within Case 6 for the previous tax year if the partner was eligible for split year treatment in relation to that tax year under the relevant ESC on the grounds that he or she returned to the United Kingdom after a period working overseas full-time.
- (3) Where the circumstances of a partner are treated as falling within Case 6 under sub-paragraph (2), the reference in paragraph 50(7)(b) to the UK part of the relevant year as defined for Case 6 is a reference to the part corresponding, so far as possible, in accordance with the terms of the relevant ESC, to the UK part of that year.
- (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 partner’s case.’.

EXPLANATORY NOTE

CLAUSE 215: SCHEDULE 43: STATUTORY RESIDENCE TEST

AMENDMENTS 125 TO 135

SUMMARY

1. Schedule 43 sets out a new statutory residence test for individuals. The amendments make changes to the test itself and related provisions.

DETAILS OF THE AMENDMENTS

Amendment 125

2. Under paragraph 9 of the Schedule an individual is UK resident if they work ‘full-time’ in the UK over a 365-day period partly falling within the year under consideration.
3. As drafted, paragraph 9(1)(e) requires the individual, P, to work for more than 3 hours in the UK on at least one day in the year under consideration (year X). There is no link to the 365-day period (partly falling in year X) over which P must be working ‘full-time’ in the UK. The amendment ensures that at least one day of more than 3 hours’ work must fall within both year X and the 365-day period. Without it, the test could be satisfied if the 365-day period ended in, for example, May (with no days of working more than 3 hours in the UK in that tax year), but there was a solitary 7 hour UK workday in the following March.

Amendment 126

4. Under paragraph 10 of the Schedule an individual is UK resident if they die in the year under consideration while having a UK home having been UK resident for the three previous tax years. This ensures that an individual who may have been UK resident all their life remains resident in the year of death even though they may have spent no or few days in the UK (eg because of a Spring holiday abroad) provided that they have a home in the UK. But the test is not intended to catch, for example, someone who is living back in their overseas home following a secondment to the UK and happens to retain a UK home. Provided the new ‘spending sufficient time’ requirement is met in respect of an overseas home, the amendment ensures that such an individual does not automatically become UK resident by virtue of their death.
5. The amendment inserts a new sub-paragraph (e) (into what will be sub-paragraph (1)) and new sub-paragraphs (2), (3) and (4) into paragraph 10.
6. New sub-paragraph (e) adds an additional requirement that must be met before an individual P becomes resident under the paragraph 10 test. That requirement is that P

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did not spend a sufficient amount of time in P's overseas home in the year of death. So if P did spend a sufficient amount of time in an overseas home then P does not become resident under this test.

7. New sub-paragraphs (2) and (3) define what is meant by spending a sufficient amount of time. P must have been present in an overseas home for at least 30 days, or have been there on every day from the beginning of the tax year (to meet the case where P died within 30 days of the start of the year).
8. New sub-paragraph (4) says that if P has more than one overseas home then the new requirement is met so long as it is met for each overseas home. So P need only satisfy the sufficient amount of time condition in respect of one such home in order to avoid being UK resident under this test.

Amendment 127

9. This amendment corrects a minor error in the draft legislation. The words 'if P' in paragraph 34(4) of the Schedule were inadvertently omitted and are now inserted at the appropriate place.

Amendments 128 and 129

10. Under Part 3 of the Schedule, a year of residence may be split into an overseas part and a UK part for someone 'coming' to the UK provided that the conditions in at least one of five separate 'Cases' are met. Those Cases are numbered 4 to 8 (Cases 1 to 3 dealing with people 'leaving' the UK). Case 6, in paragraph 49, has been drafted too widely and the amendment restricts the scope of its application.
11. The amendments change paragraph 49(2) so that instead of one condition, there are two. The existing condition becomes sub-paragraph (a) (amendment 128) and the new condition is inserted as sub-paragraph (b) (amendment 129).
12. New sub-paragraph (b) provides that Case 6 only applies if the individual was resident in the UK for one or more of the five tax years immediately preceding the year being considered for split year treatment.

Amendment 130

13. This amendment corrects a minor error in the draft legislation. The words 'part of the' in paragraph 51(7) of the Schedule were inadvertently omitted and are now inserted at the appropriate place.

Amendments 131 and 132

14. Paragraph 53 of the Schedule contains a rule that rule minimises the overseas part of the year where the conditions of more than one split year Case are met. The amendments change that rule and set out two separate orders of priority, that in new paragraph 53A applying to Cases 1 to 3 and that in new paragraph 53B applying to Cases 4 to 8.

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15. Amendment 131 removes the existing priority rule from paragraph 53(1) and instead specifies that the priority rules are as set out in new paragraphs 53A and 53B. Amendment 132 inserts new paragraphs 53A and 53B into Schedule 43.
16. New paragraph 53A sets out the priority between Cases 1, 2 and 3 which deal with individuals who were UK resident in the previous year (i.e. are 'leaving' the UK).
17. New paragraph 53B sets out the priority between Cases 4, 5, 6, 7 and 8 which deal with individuals who were not resident in the UK in the previous year (i.e. are 'coming' to the UK).

Amendment 133

18. Under paragraph 152 of the Schedule, in determining residence for a year from 2013-14 to 2015-16, there are special rules which apply if it is necessary to know the individual's residence position for a tax year before 2013-14. The amendment applies the special rules for two more years to 2016-17 and 2017-18.

Amendment 134

19. Paragraph 152 of the Schedule contains special rules which apply where a provision looks back to a year which could be a year before the statutory residence test applied. The amendment inserts a new rule to cater for the earlier year referred to in paragraph 49(2) being the year 2012-13 for which the third automatic overseas test did not exist.
20. The amendment adds a new sub-paragraph (c) to paragraph 152(5) of Schedule 43. It provides that in applying paragraph 49(2) to 2012-13, instead of the reference to the third automatic overseas test being met, there is a reference to the taxpayer working overseas full-time for the whole of the year.

Amendment 135

21. The Schedule contains special rules which apply where a provision looks back at a year which could be a year before the statutory residence test applied. The amendment inserts a new paragraph to follow paragraph 153 to cater for the earlier year referred to in paragraph 50(3) being the year 2012-13 for which Case 6 split year treatment did not exist.
22. New sub-paragraph (1) provides that the year in question under paragraph 50(3) must be 2013-14.
23. New sub-paragraph (2) explains how the reference in paragraph 50(3) to Case 6 is to be applied where the partner's position for 2012-13 is being considered.
24. New sub-paragraph (3) explains how the reference in paragraph 50(7)(b) to the UK part of the relevant year is to be applied where the partner's position for 2012-13 is being considered. The year is split into a UK part and an overseas part following the treatment given under the relevant extra-statutory concession (ESC).

25. New sub-paragraph (4) explains what is meant by ‘the relevant ESC’. For income tax purposes it would have been ESC A11. For capital gains tax purposes it would have been ESC D2.

BACKGROUND NOTE

26. The amendments fall into four groups.
27. Amendments 125, 127 and 130 correct relatively minor errors.
28. Amendment 126 makes a significant relaxation to the fourth automatic UK test.
29. Amendments 128, 129, 131, 132 and 133 relate to the split year provisions under which a year of residence is split into a UK part and an overseas part. Case 6 provides split year treatment for someone who is ceasing full-time work abroad and taxed as if resident in the UK from the date that full-time work abroad ceases. This is appropriate for someone who has previously left the UK to work overseas, but is inappropriate for someone with no previous UK connections, who on that basis could have their tax year split from a date well before they came to the UK. The solution is to restrict the scope of Case 6 to those who were resident in the UK in at least one of the previous five years, leaving split years for the group without a previous UK connection to be determined under one of the other Cases 4, 5, 7 and 8. Extending the look-back period to five years means that applying Case 6 for years up to 2017-18 could involve looking back to a year before the introduction of the statutory residence test. Having restricted the scope of Case 6, it was appropriate to revise the priority rule which applies where the conditions for more than one split year Case are met. The result more accurately reflects the way that the former Extra-Statutory Concessions (which gave effect to the split year treatment legislated by Part 3 of the Schedule) were applied.
30. Amendments 134 and 135 correct an oversight. As drafted, the rules in paragraphs 49(2) and 50(3) cannot work properly where the year being considered is 2012-13. Since the third automatic overseas test referred to in paragraph 49(2) is intended to broadly replicate the position for those working full-time overseas that applied before 2013-14 and the split year provision in Case 6 is a direct replacement for the treatment given under an ESC on the return of the individual after a period of working full-time overseas that applied before 2013-14, the effect of the rules in paragraphs 49 and 50 is preserved.