

FINANCE ACT 2013

EXPLANATORY NOTES

INTRODUCTION

Section 219, Schedule 46: Ordinary Residence

Details of the Schedule

Part 2

Income tax: arising basis of taxation

ICTA 1988

29. Paragraph 28 removes references to ‘ordinarily resident’ from section 614 of ICTA.

ITEPA 2003

30. Paragraph 30 amends a reference in section 56(5)(a) of ITEPA to being ordinarily resident outside the UK to a reference to being within section 26A and removes a similar reference from section 56(5)(b).
31. Paragraph 31 amends a reference in section 61G(5)(a) of ITEPA to being ordinarily resident outside the UK to a reference to being within section 26A and removes a similar reference from section 61G(5)(b).
32. Paragraph 32 amends section 328(5) of ITEPA as a consequence of changes made to section 378 of ITEPA (see commentary in paragraph 37 below).
33. Paragraph 33 removes a reference to ordinarily resident from section 341(3) of ITEPA.
34. Paragraph 34 removes a reference to ordinarily resident from section 342(6) of ITEPA.
35. Paragraph 35 removes a reference to ordinarily resident from section 370(6) of ITEPA.
36. Paragraph 36 removes a reference to ordinarily resident from section 376(1)(b) of ITEPA.
37. Paragraph 37 amends section 378 of ITEPA which, in conjunction with the other provisions in Chapter 6, provides an exemption for certain earnings of seafarers who are ordinarily resident in the UK or resident in an EEA State provided that various conditions are met. The exemption will now apply on the basis of residence in the UK or in an EEA State which allows the structure of section 378 to be simplified. As part of the simplification of section 378, the provision in subsection (5)(b) which means that remittance basis claimants are not entitled to seafarers’ earnings deduction, is omitted.
38. Paragraph 38 inserts two new subsections (2A) and (3ZA) into section 413 of ITEPA. The old rules setting out what constitutes ‘foreign service’ are retained for service prior to 6 April 2013.
39. New subsection (2A) provides that for 2013-14 onwards service will only count as ‘foreign service’ where the earnings are not ‘relevant earnings’ and to the extent that the

duties are performed outside the UK. The provision whereby service for which earnings are subject to the deduction from seafarer's earnings under Chapter 6 of Part 5 of ITEPA also counts as 'foreign service' is retained.

40. New subsection (3ZA) defines 'relevant earnings' for the purposes of new subsection (2A). With the abolition of ordinary residence, relevant earnings are defined for 2013-14 onwards in terms of earnings within section 15 of ITEPA directly or which would fall under that section even if a remittance basis claim under section 809B of ITA were made. The savings provisions in paragraph 73 apply for the purposes of sections 413 and 414 of ITEPA. For 2013-14 onwards an anomaly in the old rules is corrected whereby for an individual who was resident but not ordinarily resident, all service, including UK duties, could count as 'foreign service'. For 2013-14 onwards, service under a contract providing for both UK and overseas duties which could be subject to overseas workday relief under section 26 of ITEPA will be apportioned.
41. Paragraph 39 substitutes section 681A(4) of ITEPA which concerns the conditions for exemption from tax in respect of certain foreign state benefits paid to consular officers and employees. The reference to the individual being not ordinarily resident prior to taking up duty in the UK is replaced by a reference to being not UK resident for the two preceding tax years.
42. Paragraph 40 omits paragraph 8(2)(b) of Schedule 2 to ITEPA. In order for a share incentive plan to be an approved plan it must be open to all individuals who are both resident and ordinarily resident (as well as the individuals meeting other conditions). The amendment removes the ordinary residence condition in respect of plans approved on or after the day this Act was passed.
43. Paragraph 41 omits paragraph 6(2)(ca) of Schedule 3 to ITEPA. In order for a SAYE option scheme to be approved it must be open to all individuals who are ordinarily resident (as well as the individuals meeting other conditions). The amendment removes the ordinary residence condition in respect of option schemes approved on or after the day this Act was passed.
44. Paragraph 42 removes a reference to ordinarily resident from paragraph 27(3)(b) of Schedule 5 to ITEPA.

ITTOIA 2005

45. Paragraph 44 amends section 154A(1) of ITTOIA so that the exemption for profits on War Loan securities operates on the basis of the holder being non-resident rather than being not ordinarily resident. This does not affect the way in which the exemption applies to existing holders of War Loan securities (see the commentary in paragraphs 99 and 100 below).
46. Paragraph 45 amends section 459(2) of ITTOIA so that it refers to an individual who is resident rather than ordinarily resident in the UK. This reflects changes made to the basis on which the provisions of Chapter 2 of Part 13 of ITA (transfer of assets abroad) operate.
47. Paragraph 46 substitutes section 468(2) of ITTOIA so that the reference to an individual who is ordinarily resident is changed to one who is UK resident, reflecting changes to the transfer of assets abroad regime. The amendment also corrects an error – the words 'of ICTA' should have been repealed by ITA 2007.
48. Paragraph 47 amends section 569(2) of ITTOIA so that it refers to an individual who is resident rather than ordinarily resident in the UK. This reflects changes to the transfer of assets abroad regime.
49. Paragraph 48 removes a reference to ordinarily resident from section 636(2)(b) of ITTOIA in respect of income arising from 6 April 2013.

*These notes refer to the Finance Act 2013 (c.29)
which received Royal Assent on 17 July 2013*

- 50. Paragraph 49 removes a reference to ordinarily resident from section 648(1)(b) of ITTOIA.
- 51. Paragraph 50 removes a reference to ordinarily resident from section 651(3) of ITTOIA.
- 52. Paragraph 51 removes a reference to ordinarily resident from section 664(2)(b)(i) of ITTOIA.
- 53. Paragraph 52 amends section 715 of ITTOIA to reflect the fact that the exemption condition attaching to FOTRA securities (as set out in section 713(2)(a) of ITTOIA) will change to the holder being non-resident rather than being not ordinarily resident for securities issued on or after 6 April 2013. Where the security was acquired by the trust before 6 April 2013 the existing references to the ordinary residence status of the beneficiaries remain in force.
- 54. Paragraph 53 substitutes section 771(4) of ITTOIA which concerns the conditions for exemption from tax in respect of relevant foreign income of consular officers and employees. The reference to the individual being not ordinarily resident prior to taking up duty in the UK is replaced by a reference to being not UK resident for the two preceding tax years.

ITA 2007

- 55. Paragraph 55 removes a reference to ordinarily residence from section 465(4) of ITA.
- 56. Paragraph 56 substitutes section 475(1) of ITA to remove reference to the ordinary residence status of the body of trustees. There are corresponding changes to section 475(2) and (3). Section 475 is further amended by Part 3 of the statutory residence test.
- 57. Paragraph 57 removes references to the ordinary residence status of a settlor from section 476(2)(b) and (3)(b) of ITA. In the case of a settlement arising on the settlor's death the change only applies to deaths on or after 6 April 2013. In the case of other settlements the change only applies where the settlement is made on or after 6 April 2013.
- 58. Paragraph 58 removes a reference to ordinarily resident from section 643(1) of ITA.
- 59. Paragraph 59 removes a reference to ordinarily resident from section 718(2)(b) of ITA.
- 60. Paragraph 60 removes the word 'ordinarily' from section 720(1) of ITA. This is the first of a number of amendments to the transfer of assets abroad provisions in Chapter 2 of Part 13 of ITA which ensure that the provisions will apply in future where the individual subject to the charge is resident rather than ordinarily resident.
- 61. The savings provisions in paragraph 73 apply for the purposes of the transfer of assets abroad provisions in Chapter 2 of Part 13 of ITA.
- 62. Paragraph 61 amends section 721 of ITA to reflect the fact that the provision applies to a UK resident individual.
- 63. Paragraph 62 amends section 727 of ITA to reflect the fact that the provision applies to a UK resident individual.
- 64. Paragraph 63 amends section 728 of ITA to reflect the fact that the provision applies to a UK resident individual.
- 65. Paragraph 64 amends section 732 of ITA to reflect the fact that the provision applies to a UK resident individual.
- 66. Paragraph 65 removes a reference to ordinarily resident from section 749(2) of ITA. The change only applies to a transfer or associated operation made on or after 6 April 2013.

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- 67. Paragraph 66 removes a reference to ordinarily resident from section 812(1)(a) of ITA.
- 68. Paragraph 67 removes a reference to ordinarily resident from section 834(3) of ITA which determines the residence status of an individual's personal representatives. The change only applies where the deceased dies on or after 6 April 2013.
- 69. Paragraph 68 amends section 858 of ITA so that a declaration made by an individual to enable a deposit taker or building society to pay interest without deduction of tax is that the person entitled to the interest is not resident rather than not ordinarily resident. Similarly, the undertaking given to notify becoming ordinarily resident will be an undertaking to notify becoming UK resident. This is the first in a number of similar provisions and they all come into force on 6 April 2014 instead of the general commencement date for this Schedule of 6 April 2013.
- 70. Paragraphs 68 to 71 do not affect declarations and undertakings given before 6 April 2014 which will continue to operate on the basis of declaring and notify changes to ordinary residence status.
- 71. Paragraph 69 makes corresponding amendments to section 859 of ITA in respect of a declaration and undertaking given in respect of members of a Scottish partnership.
- 72. Paragraph 70 makes corresponding amendments to section 860 of ITA in respect of a declaration made by a personal representative of an individual who was not ordinary resident immediately before death.
- 73. Paragraph 71 makes corresponding amendments to section 861 of ITA in respect of a declaration and undertaking given by the trustees of a settlement in respect of the beneficiaries of the settlement.
- 74. Paragraph 72 provides that the amendments made by Part 2 have effect for 2013-14 onwards unless otherwise stated.
- 75. Paragraph 73 provides transitional provisions for sections 413 and 414 of ITEPA (foreign service termination payments) and Chapter 2 of Part 13 of ITA (transfer of assets abroad). They apply where an individual is not ordinarily resident at the end of the tax year 2012-13 and that year is the first, second or third year of residence. It reflects the fact that an individual, unless having established an intention to settle in the UK would have been regarded as not ordinarily resident for a maximum of 3 years (typically straddling four tax years). So the provisions specified will continue to apply on the basis of current law for 2013 - 14 (where that is the fourth year of residence), for 2013-14 and 2014-15 (where they are the third and fourth years of residence) or for 2013-14, 2014-15 and 2015-16 (where they are the second, third and fourth years of residence), provided in the case of termination payments that the employment in question began before 6 April 2013.