

FINANCE ACT 2013

EXPLANATORY NOTES

INTRODUCTION

Section 219, Schedule 46: Ordinary Residence

Details of the Schedule

Part 1

Income tax and capital gains tax: remittance basis of taxation

Remittance basis restricted to non-doms

5. Paragraph 2 amends section 809A of ITA. The remittance basis of taxation in Chapter A1 of Part 14 of ITA will be available only to an individual who is not domiciled in the UK. An individual who is domiciled in the UK, but not ordinarily resident, will not be able to claim the remittance basis for 2013-14 onwards (subject to transitional provisions).
6. Paragraph 3 makes amendments to section 809B of ITA to restrict the remittance basis to non-domiciled individuals. Section 809B(2) is repealed because a claim to the remittance basis can be made only on the basis of being non-domiciled.
7. Paragraphs 4 and 5 make corresponding changes to sections 809D and 809E of ITA.

Treatment of relevant foreign earnings

8. Paragraph 7 amends section 22 of ITEPA. That section provides that where the remittance basis applies and the employee is ordinarily resident in the UK, 'chargeable overseas earnings' are taxed only to the extent to that they are remitted to the UK. With the abolition of ordinary residence, section 22 will apply where the employee does not meet the requirement of new section 26A of ITEPA (see commentary in paragraph 11 below).
9. Paragraph 8 amends section 23 of ITEPA which defines 'chargeable overseas earnings' for the purposes of section 22. The condition that an employee is ordinarily resident is replaced by a condition that the employee is outside new section 26A.
10. Paragraph 9 amends section 26 of ITEPA. That section provides that where the remittance basis applies and the employee is not ordinarily resident in the UK, earnings in respect of overseas duties (other than from Crown employments) are taxed only to the extent that they are remitted to the UK. With the abolition of ordinary residence, section 26 will apply where the employee meets the requirement of new section 26A. This provision is often known as overseas workday relief.
11. Paragraph 10 inserts new section 26A into ITEPA. A UK resident employee is within this section for a tax year X if he or she has been non-resident for three consecutive tax years and that year X is any of the three years immediately following that spell of non-residence.

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

12. Paragraph 11 replaces the references to being ordinarily resident in section 41C(4) of ITEPA and not ordinarily resident in section 41C(6) with requirements to be outside or within section 26A respectively.
13. Paragraph 12 replaces the references to being ordinarily resident in section 271(2)(a) of ITEPA and not ordinarily resident in section 271(2)(b) with requirements to be outside or within section 26A respectively.
14. Paragraph 13 replaces the reference to being ordinarily resident in section 554Z9(1)(c) of ITEPA with a reference to being outside section 26A.
15. Paragraph 14 replaces the reference to being not ordinarily resident in section 554Z10(1)(c) of ITEPA with a reference to being within section 26A.
16. Paragraph 15 replaces the references to being not ordinarily resident in section 690(1)(a) and (2A) of ITEPA with a reference to being within section 26A and being not domiciled in the UK respectively.

Consequential amendments

17. Paragraph 16 replaces the references to being ordinarily resident in section 266A(8)(a) of ICTA and not ordinarily resident in section 266A(8)(b) with requirements to be outside or within section 26A respectively.
18. Paragraph 17 substitutes section 12(1) of TCGA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.
19. Paragraph 18 amends section 87B of TCGA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.
20. Paragraph 19 substitutes section 726(1) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.
21. Paragraph 20 substitutes section 730(1) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.
22. Paragraph 21 amends section 735(1) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.
23. Paragraph 22 amends section 809F(4) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.
24. Paragraph 23 amends section 809YD(3) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.
25. Paragraph 24 amends section 809Z7(2)(d) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual and replaces the reference to being ordinarily resident in section 809Z7(3)(a) with a reference to being outside section 26A.

Commencement

26. Paragraph 25 provides that the amendments made by Part 1 of this Schedule apply to an individual's foreign income and gains for 2013-14 onwards.

Savings

27. Paragraph 26 contains transitional provisions which 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 three years (typically straddling four tax years). So provisions amended by this Part will continue to apply on the basis of current law for 2013-14 (where that

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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).

Interpretation

28. Paragraph 27 attracts the meaning of 'foreign income and gains' in section 809Z7 of ITA to provisions in this Part.