
STATUTORY INSTRUMENTS

2013 No. 1810

INCOME TAX

The Temporary Non-Residence (Miscellaneous Amendments) Regulations 2013

<i>Made</i>	- - - -	<i>18th July 2013</i>
<i>Laid before the House of Commons</i>	- - - -	<i>22nd July 2013</i>
<i>Coming into force</i>	- -	<i>12th August 2013</i>

The Treasury, in exercise of the powers conferred by section 273ZA(1), (2) and (4) to (6) of the Finance Act 2004⁽¹⁾ and section 354(1), (5)(c) to (e), (6) and (7) of the Taxation (International and Other Provisions) Act 2010⁽²⁾ makes the following Regulations:

Citation, commencement and effect

1. These Regulations may be cited as the Temporary Non-Residence (Miscellaneous Amendments) Regulations 2013 and come into force on 12th August 2013.

2. The amendments made—

- (a) by regulation 3 have effect in relation to a scheme chargeable payment treated as made in the tax year 2013-14 and any subsequent tax year, and
- (b) by regulation 4 have effect for the purposes of income tax for the tax year 2013-14 and any subsequent tax year.

Amendments to the Pensions Schemes (Taxable Property Provisions) Regulations 2006

3.—(1) The Pensions Schemes (Taxable Property Provisions) Regulations 2006⁽³⁾ are amended as follows.

(2) In regulation 10 (scheme chargeable payment on income and gains from non-UK taxable property)—

- (a) in paragraph (3) for ‘subject to paragraphs (4) to (6)’, substitute ‘subject to paragraphs (4) and (5)’,
- (b) for paragraph (5) substitute—

(1) 2004 c. 12. Section 273ZA was inserted by paragraphs 2 and 10 of Schedule 21 to the Finance Act 2006 (c. 25).
(2) 2010 c. 8.
(3) S.I. 2006/1958; amended by S.I. 2013/605.

“(5) Where a member is temporarily non-resident at a time when a scheme chargeable payment would, but for this regulation, be treated as made by virtue of section 185F(4), that member shall be liable to the property enjoyment scheme sanction charge so far as relating to that scheme chargeable payment, as if that scheme chargeable payment were treated as made in the period of return.”,

(c) omit paragraph (6),

(d) in paragraph (7) for “renewed residence period” substitute “period of return”, and

(e) after paragraph (7) insert—

“(8) In this regulation—

(a) “period of return” has the meaning given in paragraph 115 of Schedule 45 to the Finance Act 2013(5) (statutory residence test: anti-avoidance),

(b) “temporarily non-resident” has the meaning given in paragraph 110 of that Schedule.”.

Amendments to the Offshore Funds (Tax) Regulations 2009

4.—(1) The Offshore Funds (Tax) Regulations 2009(6) are amended as follows.

(2) For regulation 23 (application of section 10A of TCGA 1992) substitute—

“Temporary non-residents

23.—(1) This regulation applies where an individual (“the taxpayer”) is temporarily non-resident.

(2) The taxpayer is chargeable to income tax as if offshore income gains within paragraph (3) were offshore income gains arising to the taxpayer in the period of return.

(3) The offshore income gains within this paragraph are those that—

(a) arise to the taxpayer in the temporary period of non-residence, and

(b) would be treated under section 13 of TCGA 1992(7) (attribution of gains to members of non-resident companies) as it applies to offshore income gains by virtue of regulation 24 as having arisen to the taxpayer in that period if the residence assumption were made.

(4) The residence assumption is—

(a) that the taxpayer had been resident in the United Kingdom for the tax year in which the offshore income gain arose to the company, or

(b) if that tax year was a split year as respects the taxpayer, that offshore income gain had arisen to the company in the UK part of it.

(5) But a gain is not within paragraph (3) if, ignoring this regulation, the taxpayer is chargeable to income tax in respect of it (and could not cease to be so chargeable by making a claim under section 6 of the Taxation (International and Other Provisions) Act 2010).

(4) Section 185F was inserted by paragraphs 2 and 6 of Schedule 21 to the Finance Act 2006.

(5) 2013 c. 29.

(6) S.I. 2009/3001, to which there are amendments not relevant to these Regulations.

(7) 1992 c. 12. Section 13 was amended by section 174 of, and Part 5 of Schedule 41 to, the Finance Act 1996 (c. 8), section 122(4) of the Finance Act 1998 (c. 36), section 80 of the Finance Act 2001 (c. 9), Part 3 of Schedule 40 to the Finance Act 2002 (c. 23), paragraphs 2(1) and (3) of Schedule 27 to the Finance Act 2003 (c. 14), paragraphs 38 and 39 of Schedule 35 to the Finance Act 2004 (c. 12), paragraphs 7 and 8 of Schedule 12 to the Finance Act 2006 (c. 25), paragraphs 1, 4, 23 and 28 of Schedule 2 and paragraph 103 of Schedule 7 to the Finance Act 2008 (c. 9), paragraph 178 of Schedule 1 to S.I. 2009/56, paragraph 225 and 227 of Schedule 1 to the Corporation Tax Act 2010 (c. 4), section 35(1) and (2) of the Finance Act 2012 (c. 14), and paragraph 96 of Schedule 45 to the Finance Act 2013.

(6) Paragraph (2) is subject to regulation 23A.

(7) If section 809B, 809D or 809E of ITA 2007⁽⁸⁾ (remittance basis) applies to the taxpayer for the year of return, any offshore income gains to which regulation 19(2) applies falling within paragraph (3) of this regulation by virtue of sub-paragraph (a) of that paragraph 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.

(8) In this regulation—

- (a) “remitted to the United Kingdom” has the same meaning as in Chapter A1 of Part 14 of ITA 2007⁽⁹⁾,
- (b) “split year” has the meaning given in paragraph 43 of Schedule 45 to the Finance Act 2013,
- (c) “temporarily non-resident” has the meaning given in paragraph 110 of that Schedule,
- (d) “the UK part” of a split year has the meaning given in paragraph 56 of that Schedule.

(9) In this regulation and regulation 23A—

- (a) “period of return” has the meaning given in paragraph 115 of Schedule 45 to the Finance Act 2013,
- (b) “temporary period of non-residence” has the meaning given in paragraph 113 of that Schedule, and
- (c) “the year of return” has the meaning given in section 10A(11) of TCGA 1992⁽¹⁰⁾.

Regulation 23: supplementary

23A.—(1) Regulation 23(2) does not apply to an offshore income gain 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) TCGA 1992⁽¹¹⁾ is treated as having been a disposal on which neither a gain nor a loss accrued, and
- (c) the asset is not an interest created by or arising under a settlement.

(2) Nothing in any double taxation relief arrangements is to be read as preventing the taxpayer from being chargeable to income tax in respect of any offshore income gains treated under regulation 23 as accruing to the taxpayer in the period of return (or as preventing a charge to that tax from arising as a result).

(3) Nothing in any enactment imposing any limit on the time within which an assessment to income 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.

(4) In this regulation—

⁽⁸⁾ Income Tax Act 2007 (c. 3). Sections 809B, 809D and 809E were inserted by paragraph 1 of Schedule 7 to the Finance Act 2008. Sections 809D and E were amended by paragraphs 3 and 4 of Schedule 27 to the Finance Act 2009 (c. 27).

⁽⁹⁾ Chapter A1 was inserted by paragraph 1 of Schedule 7 to the Finance Act 2008.

⁽¹⁰⁾ Section 10A was inserted by section 127(1) of the Finance Act 1998. It was substituted by paragraph 119 of Schedule 45 to the Finance Act 2013.

⁽¹¹⁾ Section 58 was amended by regulation 107 of S.I. 2005/3229. Section 73 was amended by paragraph 6 of Schedule 39 and Part 8 of Schedule 41 to the Finance Act 1996, paragraphs 7, and 42 of Schedule 12 and paragraphs 29 and 31 of Schedule 20 to the Finance Act 2006, and paragraphs 57 and 61 of Schedule 2 to the Finance Act 2008.

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- (a) “relevant disposal” has the meaning given in section 10AA(2) of TCGA 1992⁽¹²⁾, and
- (b) “the year of departure” has the meaning given in paragraph 114 of Schedule 45 to the Finance Act 2013.”.

18th July 2013

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Two of the Lords Commissioners of Her
Majesty’s Treasury

⁽¹²⁾ Section 10AA was inserted by paragraph 119 of Schedule 45 to the Finance Act 2013.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Pensions Schemes (Taxable Property Provisions) Regulations 2006 (S.I. 2006/1958) ('the Pensions Schemes Regulations') and the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) ('the Offshore Funds Regulations').

Section 218 of, and Schedule 45 to, the Finance Act 2013 (c. 29) introduce the new Statutory Residence Test ('the SRT'). Part 4 of that Schedule introduces a new test for temporary non-residence and amends tax legislation as necessary to give effect to that new test. Broadly speaking the test provides that where an individual has a period of temporary non-residence (as defined) certain events, for example the disposal of a chargeable gain, will be treated as taking place in the year the individual returns to the UK and will thus be taxable in the UK. These rules are modelled on existing temporary non-residence provisions. These Regulations make similar provision in the Pensions Schemes and Offshore Funds Regulations.

Regulation 3 amends the Pensions Schemes Regulations to bring its temporary non-residence rules in line with those in the SRT. The amendments made by this regulation have effect for the purposes of a scheme chargeable payment treated as made in the tax year 201314 and any subsequent tax year. Section 273ZA(6)(b) of the Finance Act 2004 (c. 12) provides for these regulations to have effect in relation to times before they are made.

Regulation 4 substitutes a new regulation 23 of the Offshore Funds Regulations and inserts new regulation 23A. The amendments are similar to those made to section 10A and new section 10AA of the Taxation of Capital Gains Act 1992 (c. 12), in relation to capital gains tax, by the SRT. The amendments made by this regulation have effect for the purposes of a person's liability to income tax for the tax year 201314 and any subsequent tax year. Section 354(6) of the Taxation (International and Other Provisions) Act 2010 (c. 8) provides for these regulations to have effect in relation to the tax year current on the day on which the regulations were made.

A Tax Information and Impact Note covering this instrument was published on 11 December 2012 alongside the Finance Bill 2013 and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.