

**EXPLANATORY MEMORANDUM TO**  
**THE CAPITAL GAINS TAX (AMENDMENT) REGULATIONS 2013**

**2013 No. 557**

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 These Regulations provide for the amendment of regulation 15 of the Capital Gains Tax Regulations 1967.
  - 2.2 It amends the regulations in order to remove a reference to being 'ordinarily resident' in the United Kingdom.
  - 2.3 It also amends the regulations to remove the requirement that a person must be resident in the United Kingdom or carrying on a trade in the United Kingdom in order to be joined as a third party to an appeal or to apply to a Tribunal for a determination of the market value of an asset.
3. **Matters of special interest to the Select Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 Draft legislation has been published for Finance Bill 2013 which will remove the concept of 'ordinary residence' from primary legislation for tax purposes, although it continues to exist for some tax purposes, for example section 38 of ITA 2007 (blind person's allowance which refers to ordinary residence in Scotland or Northern Ireland).
  - 4.2 These Regulations are being made to remove the reference to 'ordinarily resident' from regulation 15 of the Capital Gains Tax Regulations 1967, which is not amended by the Finance Bill 2013.
  - 4.3 Legislation has also been published in the Finance Bill 2013 extending capital gains tax to non-natural persons which dispose of UK residential property with a value of over £2 million, irrespective of whether or not they are resident in the UK. These Regulations are being made in order to provide non-resident persons with the same rights to apply to be joined to certain appeals and to apply to a Tribunal for the determination of the market value of an asset as UK resident persons.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

As these Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 The concept of ‘ordinary residence’ for tax purposes has no statutory definition and this creates uncertainty. The abolition of the concept of ‘ordinary residence’ is part of the Government’s plan to simplify the UK tax system and is being addressed at the same time as the introduction of a statutory definition of tax residence. It is intended that the Finance Bill 2013 will remove most of the references to ‘ordinary residence’ from primary legislation. These Regulations remove the reference to ‘ordinarily resident’ in regulation 15 of the Capital Gains Tax Regulations 1967, which is not covered by the Finance Bill 2013.

7.2 These Regulations are also being made in order to remove the requirement in the Capital Gains Tax Regulations 1967 that a person must be resident (or ordinarily resident) in the United Kingdom or carrying on a trade in the United Kingdom in order to:

(a) be joined as a third party to an appeal where the market value of an asset on a particular date or the apportionment of any amount or value is a material question in that appeal and may affect that person’s liability to capital gains tax; or

(b) make an application to the tribunal for the determination of the market value of an asset on a particular date or the apportionment of any amount or value.

7.3 This amendment is being made in order to take account of the proposed extension of capital gains tax to both UK resident and non-resident non-natural persons. These Regulations ensure that non-resident persons are afforded the same rights as resident persons in relation to the applications to the tribunal which are dealt with under the Capital Gains Tax Regulations 1967.

7.4 The amendment to the Capital Gains Tax Regulations 1967 applies for the tax year 2013/14 and subsequent years.

## **8. Consultation outcome**

8.1 A formal consultation on the specific changes in this instrument was not undertaken, but a formal consultation on the removal of ordinary residence was carried out in 2011, with further consultations on the details of the changes in 2012.

## **9. Guidance**

9.1 None

## **10. Impact**

10.1 The impact on the public sector is negligible.

10.2 A Tax Information and Impact Note has not been prepared for this Instrument as no impact on the private or voluntary sectors is foreseen.

## **11. Regulating small business**

11.1 The legislation applies to small businesses. However, no negative impact on small businesses is anticipated.

## **12. Monitoring & review**

12.1 Although there will be no specific monitoring of the effect of these amendments to the regulations, the policy of the abolition of ordinary residence will be kept under review by communication with affected taxpayer groups.

## **13. Contact**

Tony Zagara at Her Majesty's Revenue and Customs, tel: 0207 147 2861 or email: [antonio.zagara@hmrc.gsi.gov.uk](mailto:antonio.zagara@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.