

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, PART 4. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 45

#### STATUTORY RESIDENCE TEST

#### PART 4

#### ANTI-AVOIDANCE

##### *Introduction*

- 109 This Part of this Schedule—
- (a) explains when an individual is to be regarded for the purposes of certain enactments as temporarily non-resident,
  - (b) defines the year of departure and the period of return for the purposes of those enactments,
  - (c) makes consequential amendments to certain enactments containing special rules for temporary non-residents, and
  - (d) inserts some more special rules for temporary non-residents in certain cases.

##### *Meaning of temporarily non-resident*

- 110 (1) An individual is to be regarded as “temporarily non-resident” if—
- (a) the individual has sole UK residence for a residence period,
  - (b) immediately following that period (referred to as “period A”), one or more residence periods occur for which the individual does not have sole UK residence,
  - (c) at least 4 out of the 7 tax years immediately preceding the year of departure were either—
    - (i) a tax year for which the individual had sole UK residence, or
    - (ii) a split year that included a residence period for which the individual had sole UK residence, and
  - (d) the temporary period of non-residence is 5 years or less.
- (2) Terms used in sub-paragraph (1) are defined below.

##### *Residence periods*

- 111 In relation to an individual, a “residence period” is—
- (a) a tax year that, as respects the individual, is not a split year, or
  - (b) the overseas part or the UK part of a tax year that, as respects the individual, is a split year.

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*Sole UK residence*

- 112 (1) An individual has “sole UK residence” for a residence period consisting of an entire tax year if—
- (a) the individual is resident in the UK for that year, and
  - (b) there is no time in that year when the individual is Treaty non-resident.
- (2) An individual has “sole UK residence” for a residence period consisting of part of a split year if—
- (a) the residence period is the UK part of that year, and
  - (b) there is no time in that part of the year when the individual is Treaty non-resident.
- (3) An individual is “Treaty non-resident” at any time if at the time the individual falls to be regarded as resident in a country outside the UK for the purposes of double taxation arrangements having effect at the time.

*Temporary period of non-residence*

- 113 In relation to an individual, “the temporary period of non-residence” is the period between—
- (a) the end of period A, and
  - (b) the start of the next residence period after period A for which the individual has sole UK residence.

*Year of departure*

- 114 “The year of departure” is the tax year consisting of or including period A.

*Period of return*

- 115 “The period of return” is the first residence period after period A for which the individual has sole UK residence.

*Consequential amendments: income tax*

- 116 In ITEPA 2003, for section 576A substitute—

**“576A Temporary non-residents**

- (1) This section applies if a person is temporarily non-resident.
- (2) Any relevant withdrawals within subsection (3) are to be treated for the purposes of section 575 as if they arose in the period of return.
- (3) A relevant withdrawal is within this subsection if—
  - (a) it is paid to the person in the temporary period of non-residence, and
  - (b) ignoring this section, it is not chargeable to tax under this Part (or would not be if a DTR claim were made in respect of it).
- (4) A “relevant withdrawal” is an amount paid under a relevant non-UK scheme that—

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- (a) is paid to the person in respect of a flexible drawdown arrangement relating to the person under the scheme, and
  - (b) would, if the scheme were a registered pension scheme, be “income withdrawal” or “dependants' income withdrawal” within the meaning of paragraphs 7 and 21 of Schedule 28 to FA 2004.
- (5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the person for the year of return, any relevant withdrawal within subsection (3) that was remitted to the United Kingdom in the temporary period of non-residence is to be treated as remitted to the United Kingdom in the period of return.
- (6) This section does not apply to a relevant withdrawal if—
  - (a) it is paid to or in respect of a relieved member of the scheme and is not referable to the member's UK tax-relieved fund under the scheme, or
  - (b) it is paid to or in respect of a transfer member of the scheme and is not referable to the member's relevant transfer fund under the scheme.
- (7) Nothing in any double taxation relief arrangements is to be read as preventing the person from being chargeable to income tax in respect of any relevant withdrawal treated by virtue of this section as arising in the period of return (or as preventing a charge to that tax from arising as a result).
- (8) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
  - (a) when a person is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (9) In this section—
  - “double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;
  - “DTR claim” means a claim for relief under section 6 of that Act;
  - “flexible drawdown arrangement” means an arrangement to which section 165(3A) or 167(2A) of FA 2004 applies;
  - “remitted to the United Kingdom” has the same meaning as in Chapter A1 of Part 14 of ITA 2007;
  - “the year of return” means the tax year that consists of or includes the period of return.
- (10) The following expressions have the meaning given in Schedule 34 to FA 2004—
  - “relevant non-UK scheme” (see paragraph 1(5));
  - “relieved member” (see paragraph 1(7));
  - “transfer member” (see paragraph 1(8));
  - “member's UK tax-relieved fund” (see paragraph 3(2));
  - “member's relevant transfer fund” (see paragraph 4(2)).”

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### **“579CA Temporary non-residents**

- (1) This section applies if a person is temporarily non-resident.
- (2) Any relevant withdrawals within subsection (3) are to be treated for the purposes of section 579B as if they accrued in the period of return.
- (3) A relevant withdrawal is within this subsection if—
  - (a) it is paid to the person in the temporary period of non-residence, and
  - (b) ignoring this section, it is not chargeable to tax under this Part (or would not be if a DTR claim were made in respect of it).
- (4) A “relevant withdrawal” is any income withdrawal or dependants' income withdrawal paid to the person under a registered pension scheme in respect of a flexible drawdown arrangement relating to the person under the scheme.
- (5) Nothing in any double taxation relief arrangements is to be read as preventing the person from being chargeable to income tax in respect of any relevant withdrawal treated by virtue of this section as accruing in the period of return (or as preventing a charge to that tax from arising as a result).
- (6) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
  - (a) when a person is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (7) In this section—
 

“double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;

“DTR claim” means a claim for relief under section 6 of that Act;

“flexible drawdown arrangement” means an arrangement to which section 165(3A) or 167(2A) of FA 2004 applies.”

118 In ITTOIA 2005, for section 832A substitute—

### **“832A Section 832: temporary non-residents**

- (1) This section applies if an individual is temporarily non-resident.
- (2) Treat any of the individual's relevant foreign income within subsection (3) that is remitted to the United Kingdom in the temporary period of non-residence as remitted to the United Kingdom in the period of return.
- (3) Relevant foreign income is within this subsection if—
  - (a) it is relevant foreign income for the UK part of the year of departure or an earlier tax year, and
  - (b) section 832 applies to it.
- (4) Any apportionment required for the purposes of subsection (3)(a) is to be done on a just and reasonable basis.
- (5) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax in respect of

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any relevant foreign income treated by virtue of this section as remitted to the United Kingdom in the period of return (or as preventing a charge to that tax from arising as a result).

- (6) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
- (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (7) In this section, “double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010.”

*Consequential amendments: capital gains tax*

119 In TCGA 1992, for section 10A substitute—

**“10A Temporary non-residents**

- (1) This section applies if an individual (“the taxpayer”) is temporarily non-resident.
- (2) The taxpayer is chargeable to capital gains tax as if gains and losses within subsection (3) were chargeable gains or, as the case may be, losses accruing to the taxpayer in the period of return.
- (3) The gains and losses within this subsection are—
  - (a) chargeable gains and losses that accrued to the taxpayer in the temporary period of non-residence,
  - (b) chargeable gains that would be treated under section 13 as having accrued to the taxpayer in that period if the residence assumption were made,
  - (c) losses that would be allowable in the taxpayer's case under section 13(8) in that period if that assumption were made, and
  - (d) chargeable gains that would be treated under section 86 as having accrued to the taxpayer in a tax year falling wholly in that period if the taxpayer had been resident in the United Kingdom for that year.
- (4) The residence assumption is—
  - (a) that the taxpayer had been resident in the United Kingdom for the tax year in which the gain or loss accrued to the company, or
  - (b) if that tax year was a split year as respects the taxpayer, that the gain or loss had accrued to the company in the UK part of it.
- (5) But—
  - (a) a gain is not within subsection (3) if, ignoring this section, the taxpayer is chargeable to capital gains tax in respect of it (and could not cease to be so chargeable by making a claim under section 6 of TIOPA 2010), and
  - (b) a loss is not within subsection (3) if the test in paragraph (a) would be met if it were a gain.

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- (6) Subsection (2) is subject to sections 10AA and 86A.
- (7) To determine the losses mentioned in subsection (3)(c)—
- (a) calculate separately, for each tax year falling wholly or partly in the temporary period of non-residence, the portion of sum A that does not exceed sum B, and
  - (b) add up all those portions.
- (8) For the purposes of subsection (7)—
- “sum A” is the aggregate of the losses that were not available in accordance with section 13(8) for reducing gains accruing to the taxpayer by virtue of section 13 in the relevant tax year, but would have been available if the residence assumption had been made, and
- “sum B” is the amount of the gains that did not accrue to the taxpayer by virtue of section 13 in that tax year but would have so accrued if that assumption had been made.
- (9) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the taxpayer for the year of return, any foreign chargeable gains falling within subsection (3) by virtue of paragraph (a) of that subsection 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.
- (10) Part 4 of Schedule 45 to the Finance Act 2013 (statutory residence test: anti-avoidance) explains—
- (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (11) In this section—
- “foreign chargeable gains” has the meaning given by section 12(4);
- “remitted to the United Kingdom” has the same meaning as in Chapter A1 of Part 14 of ITA 2007;
- “the year of return” means the tax year that consists of or includes the period of return.

### **10AA Section 10A: supplementary**

- (1) Section 10A(2) does not apply to a gain or loss 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) is treated as having been a disposal on which neither a gain nor a loss accrued,
  - (c) the asset is not an interest created by or arising under a settlement, and
  - (d) the amount or value of the consideration for the acquisition of the asset by the taxpayer does not fall, by reference to any relevant

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disposal, to be treated as reduced under section 23(4)(b) or (5)(b), 152(1)(b), 153(1)(b), 162(3)(b) or 247(2)(b) or (3)(b).

- (2) “Relevant disposal” means a disposal of an asset acquired by the person making the disposal at a time when that person was resident in the United Kingdom and was not Treaty non-resident.
- (3) Subsection (1) does not apply if—
  - (a) the gain is one that (ignoring section 10A) would fall to be treated by virtue of section 116(10) or (11), 134 or 154(2) or (4) as accruing on the disposal of the whole or part of another asset, and
  - (b) that other asset meets the requirements of paragraphs (a) to (d) of subsection (1), but the asset in respect of which the gain actually accrued or would actually accrue does not.
- (4) Nothing in any double taxation relief arrangements is to be read as preventing the taxpayer from being chargeable to capital gains tax in respect of any chargeable gains treated under section 10A as accruing to the taxpayer in the period of return (or as preventing a charge to that tax from arising as a result).
- (5) Nothing in any enactment imposing any limit on the time within which an assessment to capital gains 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 (as defined in section 10A).”

120 For section 86A of TCGA 1992 substitute—

**“86A Attribution of gains to settlor in section 10A cases**

- (1) Subsection (3) applies if—
  - (a) chargeable gains of an amount equal to the amount referred to in section 86(1)(e) for a tax year (“year A”) are treated under section 10A as accruing to a settlor under section 86 in the period of return,
  - (b) there are amounts on which beneficiaries of the settlement are charged to tax under section 87 or 89(2) for one or more tax years, each of which is earlier than the year of return, and
  - (c) those amounts are in respect of matched capital payments received by the beneficiaries.
- (2) A “matched” capital payment is a capital payment, all or part of which is matched under section 87A with the section 2(2) amount for year A.
- (3) The amount of the chargeable gains mentioned in subsection (1)(a) for year A that are treated under section 10A as accruing to the settlor under section 86 in the period of return is to be reduced by the appropriate amount.
- (4) The appropriate amount is—
  - (a) the sum of the amounts mentioned in subsection (1)(c) to the extent that the matched capital payments are matched under section 87A with the section 2(2) amount for year A, or

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- (b) if the property comprised in the settlement has at any time included property not originating from the settlor, so much (if any) of that sum as, on a just and reasonable apportionment, is properly referable to the settlor.
- (5) If a reduction falls to be made under subsection (3) for the year of return, the deduction to be made in accordance with section 87(4)(b) for the settlement for that year must not be made until—
- (a) all the reductions to be made under subsection (3) for that year for each settlor have been made, and
  - (b) those reductions are to be made starting with the year immediately preceding the year of return and working backwards.
- (6) Subsection (7) applies if, with respect to year A, an amount remains to be treated under section 10A as accruing to any of the settlors in the period of return after having made the reductions under subsection (3) with respect to year A.
- (7) The aggregate of the amounts remaining to be so treated (for all of the settlors) is to be applied in reducing so much of the section 2(2) amount for year A as has not already been matched with a capital payment under section 87A for any year prior to the year of return (but not so as to reduce the section 2(2) amount below zero).
- (8) In this section—
- (a) “the settlement” means the settlement in relation to which the settlor mentioned in subsection (1)(a) is a settlor,
  - (b) a reference to “the settlors” or “each settlor” is to the settlors or each settlor in relation to the settlement,
  - (c) “period of return” and “year of return” have the same meanings as in section 10A, and
  - (d) paragraph 8 of Schedule 5 applies in construing the reference to property originating from the settlor.”
- 121 In section 96 (payment by and to companies), in subsection (9A), for the words from “which in his case” to the end substitute “for which he or she was not so resident if—
- (a) section 10A applies to him or her, and
  - (b) the year falls within the temporary period of non-residence.”
- 122 (1) Section 279B (deferred unascertainable consideration: supplementary provisions) is amended as follows.
- (2) In subsection (7), for “year of return” substitute “ period of return ”.
  - (3) In subsection (8)(a) and (b), for “year” substitute “ period ”.
- 123 (1) Schedule 4C (transfers of value: attribution of gains to beneficiaries) is amended as follows.
- (2) In paragraph 6(1)(b), for “year of return” substitute “ period of return ”.
  - (3) In paragraph 12(1)—
    - (a) for paragraph (a) substitute—



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- “(a) by virtue of section 10A, an amount of chargeable gains within section 86(1)(e) that accrued in a tax year (“year A”) to the trustees of a settlement would be treated as accruing to a person (“the settlor”) in the period of return, and”, and
  - (b) in paragraph (b), for “the intervening year” substitute “ year A ”.
- (4) In paragraph 12(2), for “year of return” substitute “ period of return ”.
- (5) In paragraph 12A(1)—
- (a) for “year of return” substitute “ period of return ”, and
  - (b) for “an intervening year” substitute “ the temporary period of non-residence ”.

*New special rule: lump sum payments under pension schemes etc*

- 124 ITEPA 2003 is amended as follows.
- 125 In Chapter 2 of Part 6 (employer-financed retirement benefits), after section 394 insert—

#### **“394A Temporary non-residents**

- (1) This section applies if an individual is temporarily non-resident.
- (2) Any benefits within subsection (3) are to be treated for the purposes of section 394(1) as if they were received by the individual in the period of return.
- (3) A benefit is within this subsection if—
  - (a) this Chapter applies to it,
  - (b) it is in the form of a lump sum,
  - (c) it is received by the individual in the temporary period of non-residence, and
  - (d) ignoring this section—
    - (i) no charge to tax arises by virtue of section 394(1) in respect of it, but
    - (ii) such a charge would arise if the existence of any double taxation relief arrangements were disregarded.
- (4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.
- (5) Subsection (2) does not affect the operation of section 394(1A) (and, accordingly, “the relevant tax year” for the purposes of section 394(1A) remains the tax year in which the benefit is actually received).
- (6) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax in respect of any benefit treated by virtue of this section as received in the period of return (or as preventing a charge to that tax from arising as a result).
- (7) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—

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- (a) when an individual is to be regarded as “temporarily non-resident”, and
- (b) what “the temporary period of non-residence” and “the period of return” mean.

(8) In this section—

“double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;

“DTR claim” means a claim for relief under section 6 of that Act.”

126 In Chapter 2 of Part 7A (employment income provided through third parties: treatment of relevant step for income tax purposes), after section 554Z4 insert—

**“554Z4A Temporary non-residents**

- (1) This section applies if A is temporarily non-resident.
- (2) Any relevant step within subsection (3) is to be treated for the purposes of section 554Z2 as if it were taken in the period of return.
- (3) A relevant step is within this subsection if—
  - (a) it is the payment of a lump sum to a relevant person (see section 554C(2)),
  - (b) the lump sum is a relevant benefit provided under a relevant scheme,
  - (c) the step is taken in the temporary period of non-residence, and
  - (d) ignoring this section—
    - (i) no charge to tax arises by virtue of section 554Z2 by reason of the step, but
    - (ii) such a charge would arise if the existence of any double taxation relief arrangements were disregarded.
- (4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.
- (5) Nothing in any double taxation relief arrangements is to be read as preventing A from being chargeable to income tax in respect of any relevant step treated by virtue of this section as taken in the period of return (or as preventing a charge to that tax from arising as a result).
- (6) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
  - (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (7) In this section—
  - “double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;
  - “DTR claim” means a claim for relief under section 6 of that Act;
  - “relevant benefit” has the same meaning as in Chapter 2 of Part 6;

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“relevant scheme” means an employer-financed retirement benefits scheme (within the meaning of that Chapter) or a superannuation fund to which section 615(3) of ICTA applies.”

127 In that Chapter, after section 554Z11 insert—

**“554Z11A Temporary non-residents**

- (1) This section applies if A is temporarily non-resident.
- (2) Any amount within subsection (3) is to be treated for the purposes of section 554Z9(2) or (as the case may be) 554Z10(2) as if it were remitted to the United Kingdom in the period of return.
- (3) An amount is within this subsection if—
  - (a) it is all or part of a relevant benefit provided to a relevant person (see section 554C(2)) under a relevant scheme,
  - (b) it is provided in the form of the lump sum,
  - (c) it is remitted to the United Kingdom in the temporary period of non-residence, and
  - (d) ignoring this section—
    - (i) no charge to tax arises by virtue of section 554Z9(2) or 554Z10(2) in respect of it, but
    - (ii) such a charge would arise by virtue of one of those sections if the existence of any double taxation relief arrangements were disregarded.
- (4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.
- (5) Nothing in any double taxation relief arrangements is to be read as preventing A from being chargeable to income tax in respect of any income treated by virtue of this section as remitted to the United Kingdom in the period of return (or as preventing a charge to that tax from arising as a result).
- (6) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
  - (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (7) In this section—

“double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;

“DTR claim” means a claim for relief under section 6 of that Act;

“relevant benefit” has the same meaning as in Chapter 2 of Part 6;

“relevant scheme” means an employer-financed retirement benefits scheme (within the meaning of that Chapter) or a superannuation fund to which section 615(3) of ICTA applies;

“remitted to the United Kingdom” has the same meaning as in Chapter A1 of Part 14 of ITA 2007.”

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128 In that Chapter, in section 554Z12 (relevant step taken after A's death etc), after subsection (8) insert—

“(9) Section 554Z4A and section 554Z11A apply for the purposes of subsection (4) as for the purposes of section 554Z2 and section 554Z9(2) or 554Z10(2) respectively (reading references in sections 554Z4A and 554Z11A to “A” as references to “the relevant person”).

(10) But those sections do not apply for the purposes of subsection (4) if the relevant person's temporary period of non-residence began before A died.”

129 In Chapter 3 of Part 9 (United Kingdom pensions: general rules), after section 572 insert—

**“572A Temporary non-residents**

- (1) This section applies if an individual is temporarily non-resident.
- (2) Any pension within subsection (3) is to be treated for the purposes of section 571 as if it accrued in the period of return.
- (3) A pension is within this subsection if—
  - (a) section 569 applies to it,
  - (b) it is in the form of a lump sum,
  - (c) it accrued in the temporary period of non-residence, and
  - (d) ignoring this section—
    - (i) it is not chargeable to tax under this Chapter, but
    - (ii) it would be so chargeable if the existence of any double taxation relief arrangements were disregarded.
- (4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.
- (5) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax in respect of any pension treated by virtue of this section as accruing in the period of return (or as preventing a charge to that tax from arising as a result).
- (6) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
  - (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (7) In this section—
 

“double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;

“DTR claim” means a claim for relief under section 6 of that Act.”

130 (1) In Chapter 1 of Part 11 (pay as you earn: introduction), section 683 is amended as follows.

(2) After subsection (3) insert—

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“(3ZA) PAYE employment income” for a tax year does not include any taxable specific income treated as paid or received in that tax year by section 394A or 554Z4A (temporary non-residents).”

(3) For subsection (3B) substitute—

“(3B) PAYE pension income” for a tax year does not include any taxable pension income that is treated as accruing in that tax year by section 572A or 579CA (temporary non-residents).”

*New special rule: distributions to participators in close companies etc*

131 Part 4 of ITTOIA 2005 (savings and investment income) is amended as follows.

132 In Chapter 1 (introduction), after section 368 insert—

**“368A Interpretation of special rules for temporary non-residents**

(1) This section concerns provisions of this Part that are expressed to apply if an individual is “temporarily non-resident” (“TNR provisions”).

(2) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains for the purposes of TNR provisions—

(a) when an individual is to be regarded as “temporarily non-resident”, and

(b) what the following terms mean—

(i) “the temporary period of non-residence”,

(ii) “the year of departure”, and

(iii) “the period of return”.

(3) A reference in TNR provisions to “the year of return” is to the tax year consisting of or including the period of return.

(4) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax by virtue of any TNR provisions (or as preventing a charge to that tax from arising as a result).

(5) In this section and in TNR provisions, “double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010.”

133 In Chapter 3 (dividends etc from UK resident companies and tax credits etc in respect of certain distributions), after section 401B insert—

*“Anti-avoidance*

**401C Temporary non-residents**

(1) This section applies if—

(a) an individual is temporarily non-resident,

(b) a relevant distribution is made or treated as made to the individual in the temporary period of non-residence,

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- (c) the tax year in which it is made or treated as made (“the distribution year”) is a tax year for which the individual is UK resident, and
  - (d) the amount of income tax charged on the distribution under this Chapter is less than it would have been if the existence of double taxation relief arrangements were disregarded.
- (2) Subsections (3) and (4) have effect in cases where the distribution year is not the year of return.
- (3) The total income (see Step 1 of the calculation in section 23 of ITA 2007) on which the individual is charged to income tax for the year of return is to be increased by an amount equal to the amount on which tax would be charged under this Chapter in respect of the distribution disregarding any double taxation relief arrangements.
- (4) But the notional UK tax on that distribution is to be allowed as a credit against the individual's liability to income tax for the year of return under Step 6 of the calculation in section 23.
- (5) If the distribution year is the year of return, the tax charged under this Chapter in respect of the relevant distribution is to be charged and assessed without regard to the existence of double taxation relief arrangements.
- (6) For the purposes of this section, a dividend or other distribution is a “relevant distribution” if—
- (a) it is a dividend or other distribution of a close company, and
  - (b) it is made or treated as made to the individual because the individual was at a relevant time—
    - (i) a material participator in the company, or
    - (ii) an associate of a material participator in the company.
- (7) But a dividend or other distribution within subsection (6) in the form of a cash dividend is not a “relevant distribution” to the extent that the dividend is paid in respect of post-departure trade profits.
- (8) “Post-departure trade profits” are—
- (a) trade profits of the close company arising in an accounting period that begins after the start of the temporary period of non-residence, and
  - (b) so much of any trade profits of the close company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.
- (9) The extent to which a dividend is paid in respect of post-departure trade profits is to be determined on a just and reasonable basis.
- (10) The “notional UK tax” on the relevant distribution is so much of the income tax paid by the individual for the distribution year as is attributable on a just and reasonable basis to the relevant distribution.
- (11) If section 393 applies, references in this section to a distribution being made to the individual are to a cash dividend being paid over to the individual.
- (12) In this section—

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“associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454);

“material participator” means a participator who has a material interest in the company, as defined in section 457 of that Act;

“relevant time” means—

- (a) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
- (b) any time in one or more of the 3 tax years preceding that year;

“trade profits of the close company” means the profits of any trade carried on by the close company, as calculated in accordance with Part 3 of CTA 2009 (trading income).”

134 In Chapter 4 (dividends from non-UK resident companies), after section 408 insert—

*“Anti-avoidance*

**408A Temporary non-residents**

- (1) This section applies if an individual is temporarily non-resident.
- (2) Dividends within subsection (3) are to be treated for the purposes of this Chapter as if they were received by the individual, or as if the individual became entitled to them, in the period of return.
- (3) A dividend is within this subsection if—
  - (a) the individual receives or becomes entitled to it in the temporary period of non-residence,
  - (b) it is a dividend of a company that would be a close company if the company were UK resident,
  - (c) the individual receives or becomes entitled to it by virtue of being at a relevant time—
    - (i) a material participator in the company, or
    - (ii) an associate of a material participator in the company, and
  - (d) ignoring this section, the individual—
    - (i) is not liable for tax under this Chapter in respect of the dividend, but
    - (ii) would have been so liable if the individual had received the dividend, or become entitled to it, in the period of return.
- (4) For the purposes of subsection (3)—
  - (a) “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454),
  - (b) a “material participator” is a participator who has a material interest in the company, as defined in section 457 of that Act,
  - (c) “relevant time” means—
    - (i) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
    - (ii) any time in one or more of the 3 tax years preceding that year, and

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- (d) paragraph (d)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.
- (5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the year of return, any dividend within subsection (3) that was remitted to the United Kingdom in the temporary period of non-residence is to be treated as remitted to the United Kingdom in the period of return.
- (6) This section does not apply to a dividend within subsection (3) to the extent that it is paid in respect of post-departure trade profits.
- (7) “Post-departure trade profits” are—
  - (a) trade profits of the company arising in an accounting period that begins after the start of the temporary period of non-residence, and
  - (b) so much of any trade profits of the company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.
- (8) The extent to which a dividend is paid in respect of post-departure trade profits is to be determined on a just and reasonable basis.
- (9) If section 406 or 407 applies, references in this section to a dividend being received by the individual are to a cash dividend being paid over to the individual or (as the case may be) a dividend being treated as paid to the individual.
- (10) In this section—
  - “remitted to the United Kingdom” has the meaning given in Chapter A1 of Part 14 of ITA 2007;
  - “trade profits of the company” means the profits of any trade carried on by the company, as they would be calculated in accordance with Part 3 of CTA 2009 (trading income) if the company were UK resident.”

135 In Chapter 5 (stock dividends from UK resident companies), after section 413 insert—

**“413A Temporary non-residents**

- (1) This section applies if—
  - (a) an individual is temporarily non-resident,
  - (b) relevant stock dividend income is treated under this Chapter as arising to the individual in the temporary period of non-residence,
  - (c) the tax year in which it is treated as arising (“the arising year”) is a tax year for which the individual is UK resident, and
  - (d) the amount of income tax charged on the relevant stock dividend income under this Chapter is less than it would have been if the existence of double taxation relief arrangements were disregarded.
- (2) Subsections (3) and (4) have effect in cases where the arising year is not the year of return.



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- (3) The total income (see Step 1 of the calculation in section 23 of ITA 2007) on which the individual is charged to income tax for the year of return is to be increased by an amount equal to the amount on which tax would be charged under this Chapter in respect of the relevant stock dividend income disregarding any double taxation relief arrangements.
- (4) But the notional UK tax on that relevant stock dividend income is to be allowed as a credit against the individual's liability to income tax for the year of return under Step 6 of the calculation in section 23.
- (5) If the arising year is the year of return, the tax charged under this Chapter in respect of the relevant stock dividend income is to be charged and assessed without regard to the existence of double taxation relief arrangements.
- (6) Stock dividend income is “relevant stock dividend income” if—
  - (a) the UK resident company that issues the share capital or bonus share capital is a close company, and
  - (b) the individual is beneficially entitled to that share capital or bonus share capital by virtue of being at a relevant time—
    - (i) a material participator in the company, or
    - (ii) an associate of a material participator in the company.
- (7) But stock dividend income within subsection (6) is not “relevant stock dividend income” to the extent that the share capital or bonus share capital is issued in respect of post-departure trade profits.
- (8) “Post-departure trade profits” are—
  - (a) trade profits of the close company arising in an accounting period that begins after the start of the temporary period of non-residence, and
  - (b) so much of any trade profits of the close company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.
- (9) The extent to which share capital or bonus share capital is issued in respect of post-departure trade profits is to be determined on a just and reasonable basis.
- (10) The “notional UK tax” on the relevant stock dividend income is so much of the income tax paid by the individual for the arising year as is attributable on a just and reasonable basis to that income.
- (11) In this section—

“associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454);

“material participator” means a participator who has a material interest in the company, as defined in section 457 of that Act;

“relevant time” means—

  - (a) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
  - (b) any time in one or more of the 3 tax years preceding that year;

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“trade profits of the close company” means the profits of any trade carried on by the close company, as calculated in accordance with Part 3 of CTA 2009 (trading income).”

136 In Chapter 6 (release of loan to participator in close company), after section 420 insert—

**“420A Temporary non-residents**

- (1) This section applies if an individual is temporarily non-resident.
- (2) Debts within subsection (3) are to be treated for the purposes of this Chapter as if they had been released or written off in the period of return.
- (3) A debt is within this subsection if—
  - (a) it is the debt, or a part of the debt, in respect of a loan or advance made by a company to the individual,
  - (b) it is released or written off in the temporary period of non-residence, and
  - (c) ignoring this section, the individual—
    - (i) is not liable for tax under this Chapter in respect of the release or write-off, but
    - (ii) would have been so liable, had the release or write-off taken place in the period of return.
- (4) Subsection (3)(c)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.”

137 In Chapter 8 of Part 5 of that Act (income not otherwise charged), after section 689 insert—

**“689A Temporary non-residents**

- (1) This section applies if an individual is temporarily non-resident.
- (2) Distributions within subsection (3) are to be treated for the purposes of this Chapter as if they had been received by the individual, or as if the individual had become entitled to them, in the period of return.
- (3) A distribution is within this subsection if—
  - (a) the individual receives or becomes entitled to it in the temporary period of non-residence,
  - (b) it is a distribution of a company that is a close company or that would be a close company if the company were UK resident,
  - (c) the individual receives or becomes entitled to the distribution by virtue of being at a relevant time—
    - (i) a material participator in the company, or
    - (ii) an associate of a material participator in the company, and
  - (d) ignoring this section, the individual—
    - (i) is not liable for tax under this Chapter in respect of the distribution, but

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(ii) would have been so liable if the individual had received the distribution, or become entitled to it, in the period of return.

(4) For the purposes of subsection (3)—

- (a) “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454),
- (b) a “material participator” is a participator who has a material interest in the company, as defined in section 457 of that Act,
- (c) “relevant time” means—
  - (i) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
  - (ii) any time in one or more of the 3 tax years preceding that year, and
- (d) paragraph (d)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.

(5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the year of return, any distribution within subsection (3) that is relevant foreign income and is remitted to the United Kingdom in the temporary period of non-residence is to be treated as remitted to the United Kingdom in the period of return.

(6) In this section, “remitted to the United Kingdom” has the meaning given in Chapter A1 of Part 14 of ITA 2007.”

138 In Chapter 1 of Part 14 of ITA 2007 (limits on liability to income tax of non-UK residents), after section 812 insert—

**“812A Temporary non-residents**

- (1) This section applies if—
  - (a) an individual is temporarily non-resident,
  - (b) the individual's liability to income tax for a tax year is limited under section 811,
  - (c) that tax year (“the non-resident year”) falls within the temporary period of non-residence, and
  - (d) the individual's income for that tax year includes relevant investment income.
- (2) The total income (see Step 1 of the calculation in section 23) on which the individual is charged to income tax for the year of return is to be increased by an amount equal to the amount of that relevant investment income.
- (3) But the notional UK tax on that relevant investment income is to be allowed as a credit against the individual's liability to income tax for the year of return under Step 6 of the calculation in section 23.
- (4) Income is “relevant investment income” if—

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- (a) it is chargeable under Chapter 3 or 5 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies and stock dividends from UK resident companies),
  - (b) the distributing company is a close company, and
  - (c) the income arises or is treated as arising to the individual because the individual was at a relevant time—
    - (i) a material participator in that company, or
    - (ii) an associate of a material participator in the company.
- (5) But income within subsection (4) in the form of a cash or stock dividend is not “relevant investment income” to the extent that the dividend is paid, or the share capital is issued, in respect of post-departure trade profits.
- (6) “Post-departure trade profits” are—
- (a) trade profits of the distributing company arising in an accounting period that begins after the start of the temporary period of non-residence, and
  - (b) so much of any trade profits of the distributing company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.
- (7) The “notional UK tax” on relevant investment income is—
- (a) the total of any sums in respect of that income that were included within amount A in determining the limit under section 811, less
  - (b) any credit for foreign tax paid in respect of that income that was allowed under Chapter 2 of Part 2 of TIOPA 2010 against the individual's liability to income tax for the non-resident year.
- (8) The following matters are to be determined on a just and reasonable basis—
- (a) the extent to which a dividend is paid, or share capital is issued, in respect of post-departure trade profits, and
  - (b) the extent to which a sum included within amount A is a sum in respect of relevant investment income.
- (9) Nothing in any double taxation arrangements is to be read as preventing the individual from being chargeable to income tax by virtue of this section (or as preventing a charge to that tax from arising as a result).
- (10) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
- (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence”, “the year of departure” and “the period of return” mean.
- (11) In this section—
- “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454);
  - “the distributing company” means the UK resident company mentioned in section 383(1) or, as the case may be, 410(1) of ITTOIA 2005;

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“material participator” means a participator who has a material interest in the company, as defined in section 457 of CTA 2010;

“relevant time” means—

- (a) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
- (b) any time in one or more of the 3 tax years preceding that year;

“trade profits of the distributing company” means the profits of any trade carried on by the distributing company, as calculated in accordance with Part 3 of CTA 2009 (trading income);

“year of return” means the tax year consisting of or including the period of return.”

*New special rule: chargeable event gains*

139 Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc) is amended as follows.

140 After section 465A insert—

**“465B Temporary non-residents**

- (1) This section applies if an individual is temporarily non-resident.
- (2) The individual is liable for tax under this Chapter for the year of return in respect of any gain that meets the conditions in subsection (3).
- (3) The conditions are—
  - (a) the gain arose in the temporary period of non-residence,
  - (b) it arose from a policy issued in respect of an insurance made, or from a contract made, before the start of that period,
  - (c) the chargeable event giving rise to it was neither a death nor a chargeable event treated as occurring under section 525(2),
  - (d) no-one is liable under section 466 or 467 in respect of the gain,
  - (e) no-one is liable by virtue of section 468 for either the year of return or an earlier tax year as a result of the gain, and
  - (f) the individual would have been liable under section 465 in respect of the gain, applying the assumptions in subsection (4).
- (4) The assumptions are—
  - (a) the individual was UK resident for the tax year in which the gain arose, and
  - (b) that tax year was not a split year as respects the individual.
- (5) If the individual is liable by virtue of subsection (2) in respect of a gain—
  - (a) the amount of the gain in respect of which he or she is liable is the amount on which tax would have been charged under this Chapter applying the assumptions in subsection (4), but
  - (b) in determining that amount, section 528 must be applied ignoring those assumptions.
- (6) That amount is treated as income of the individual for the year of return.

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- (7) If the gain arises from a policy or contract treated under section 473A as a single policy or contract, the date, for the purposes of subsection (3)(b), on which the insurance or contract is made is the date on which the first insurance is made in respect of which the connected policies were issued or, as the case may be, the date on which the first of the connected contracts is made.
- (8) This section does not apply to a gain if—
- (a) in relation to the policy or contract from which the gain arises, a terminal event occurs in the temporary period of non-residence or in the period of return,
  - (b) the chargeable event giving rise to the gain occurred before that terminal event,
  - (c) the chargeable event giving rise to the gain is one that is treated as occurring under section 509(1) as a result of the application of section 498(1)(a),
  - (d) section 498(1)(a) applies other than by virtue of section 500, and
  - (e) a person (whether or not the individual) is liable for tax under this Chapter (including by virtue of this section) in respect of any gain resulting from the terminal event.
- (9) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being liable for tax under this Chapter in respect of any gain in respect of which the individual is liable for tax by virtue of subsection (2) (or as preventing a charge to tax on that gain from arising under this Chapter).
- (10) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
- (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (11) In this section—
- “terminal event” means an event mentioned in section 499(3);
- “year of return” means the tax year that consists of or includes the period of return.””
- 141 In section 468 (non-UK resident trustees and foreign institutions), after subsection (6) insert—
- “(7) This section does not apply if someone is liable under section 465B in respect of the gain.”
- 142 In section 514 (chargeable events where transaction-related calculations show gains), after subsection (4) insert—
- “(4A) Subsection (3)(b) includes a case where a person would be liable to tax on the gain under section 465B for the tax year in which the transaction occurs (because the transaction occurs in the year of return, as defined in that section).”

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- 143 In section 541 (calculation of deficiencies), in subsection (4)(b), after “that section” insert “ or formed part of the total income of that individual by virtue of section 465B for the tax year mentioned in section 539(1) ”.
- 144 In section 552 of ICTA (information: duties of insurers), in subsection (13), for “section 541A” substitute “ section 465B or 541A ”.

**Status:**

Point in time view as at 16/11/2017.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2013, PART 4.