

Status: Point in time view as at 17/07/2014.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, PART 1. (See end of Document for details)

SCHEDULES

SCHEDULE 46

ORDINARY RESIDENCE

PART 1

INCOME TAX AND CAPITAL GAINS TAX: REMITTANCE BASIS OF TAXATION

Remittance basis restricted to non-doms

- 1 Chapter A1 of Part 14 of ITA 2007 (remittance basis) is amended as follows.
- 2 In section 809A (overview of Chapter), omit “or are not ordinarily UK resident”.
- 3 In section 809B (claim for remittance basis to apply)—
- (a) in subsection (1)(b), omit “or is not ordinarily UK resident in that year”, and
- (b) omit subsection (2).
- 4 In section 809D (application of remittance basis without claim where unremitted foreign income and gains under £2,000)—
- (a) in subsection (1)(b), omit “or is not ordinarily UK resident in that year”, and
- (b) in subsection (1A), omit “the individual is not domiciled in the United Kingdom in that year and”.
- 5 In section 809E (application of remittance basis without claim: other cases), in subsection (1)(b), omit “or is not ordinarily UK resident in that year”.

Treatment of relevant foreign earnings

- 6 ITEPA 2003 is amended as follows.
- 7 (1) In section 22 (chargeable overseas earnings for year when remittance basis applies and employee ordinarily UK resident), in subsection (1), for paragraph (b) substitute—
- “(b) the employee does not meet the requirement of section 26A for that year.”
- (2) Accordingly—
- (a) in the heading of that section, for “**ordinarily UK resident**” substitute “**outside section 26**”, and
- (b) in the italicised heading before that section, for “*UK ordinarily resident employees*” substitute “*employees outside section 26*”.
- 8 In section 23 (calculation of “chargeable overseas earnings”), in subsection (2), for paragraph (aa) substitute—
- “(aa) the employee does not meet the requirement of section 26A for that year.”

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- 9 (1) In section 26 (foreign earnings for year when remittance basis applies and employee not ordinarily UK resident), in subsection (1), for “is not ordinarily UK resident in” substitute “meets the requirement of section 26A for”.
- (2) Accordingly—
- (a) in the heading of that section, for “**not ordinarily UK resident**” substitute “**meets section 26A requirement**”, and
- (b) in the italicised heading before that section, for “*not UK ordinarily resident*” substitute “*who meet section 26A requirement*”.

10 After that section insert—

“26A Section 26: requirement for 3-year period of non-residence

- (1) An employee meets the requirement of this section for a tax year if the employee was—
- (a) non-UK resident for the previous 3 tax years, or
- (b) UK resident for the previous tax year but non-UK resident for the 3 tax years before that, or
- (c) UK resident for the previous 2 tax years but non-UK resident for the 3 tax years before that, or
- (d) non-UK resident for the previous tax year, UK resident for the tax year before that and non-UK resident for the 3 tax years before that.
- (2) The residence status of the employee before the 3 years of non-UK residence is not relevant for these purposes.”
- 11 (1) Section 41C (foreign securities income) is amended as follows.
- (2) In subsection (4), for paragraph (b) substitute—
- “(b) the individual does not meet the requirement of section 26A for the year (reading references there to the employee as references to the individual).”.
- (3) In subsection (6), for paragraph (b) substitute—
- “(b) the individual meets the requirement of section 26A for the year (reading references there to the employee as references to the individual), and”.
- 12 In section 271 (limited exemption of removal benefits and expenses: general), in subsection (2)—
- (a) in paragraph (a), for “ordinarily UK resident” substitute “outside section 26”, and
- (b) in paragraph (b), for “not ordinarily UK resident” substitute “meets section 26A requirement”.
- 13 (1) In section 554Z9 (remittance basis: A is ordinarily UK resident), in subsection (1), for paragraph (c) substitute—
- “(c) A does not meet the requirement of section 26A for the relevant tax year (reading references there to the employee as references to A).”.
- (2) Accordingly, in the heading of that section, for “**A is ordinarily UK resident**” substitute “**A does not meet section 26A requirement**”.

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- 14 (1) In section 554Z10 (remittance basis: A is not ordinarily resident), in subsection (1), for paragraph (c) substitute—
- “(c) A meets the requirement of section 26A for the relevant tax year (reading references there to the employee as references to A).”
- (2) Accordingly, in the heading of that section, for “**A is not ordinarily resident**” substitute “**A meets section 26A requirement**”.
- 15 (1) Section 690 (employee non-resident etc) is amended as follows.
- (2) In subsection (1), for paragraph (a) substitute—
- “(a) is either non-UK resident for the tax year or is UK resident but meets the requirement of section 26A for the tax year, and”.
- (3) In subsection (2A), for “but not ordinarily resident in a tax year” substitute “for a tax year but not domiciled in the United Kingdom in that tax year”.

Consequential amendments

- 16 In section 266A of ICTA (life assurance premiums paid by employer), in subsection (8)—
- (a) in paragraph (a), for “employee resident and ordinarily resident, but not domiciled, in UK” substitute “remittance basis applies and employee outside section 26”, and
- (b) in paragraph (b), for “employee resident, but not ordinarily resident, in UK” substitute “remittance basis applies and employee meets section 26A requirement”.
- 17 In section 12 of TCGA 1992 (non-UK domiciled individuals to whom remittance basis applies), for subsection (1) substitute—
- “(1) This section applies to foreign chargeable gains accruing to an individual in a tax year (“the foreign chargeable gains”) if section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year.”
- 18 In section 87B of that Act (section 87: remittance basis), in subsection (1)—
- (a) insert “and” at the end of paragraph (a),
- (b) omit “and” at the end of paragraph (b), and
- (c) omit paragraph (c).
- 19 In section 726 of ITA 2007 (non-UK domiciled individuals to whom remittance basis applies), for subsection (1) substitute—
- “(1) This section applies in relation to income treated under section 721 as arising to an individual in a tax year (“the deemed income”) if section 809B, 809D or 809E (remittance basis) applies to the individual for that year.”
- 20 In section 730 of that Act (non-UK domiciled individuals to whom remittance basis applies), for subsection (1) substitute—
- “(1) This section applies in relation to income treated under section 728 as arising to an individual in a tax year (“the deemed income”) if section 809B, 809D or 809E (remittance basis) applies to the individual for that year.”
- 21 In section 735 of that Act (non-UK domiciled individuals to whom remittance basis applies), for subsection (1) substitute—

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- “(1) This section applies in relation to income treated under section 732 as arising to an individual in a tax year (“the deemed income”) if section 809B, 809D or 809E (remittance basis) applies to the individual for that year.”
- 22 In section 809F of that Act (effect on what is chargeable), in subsection (4), for “If the individual is not domiciled in the United Kingdom in that year, the” substitute “The”.
- 23 In section 809YD of that Act (chargeable gains accruing on sales of exempt property), in subsection (3), omit “and P is not domiciled in the United Kingdom in that year”.
- 24 In section 809Z7 of that Act (meaning of “foreign income and gains” etc)—
- (a) in subsection (2)(d), omit “if the individual is not domiciled in the United Kingdom in that year,”, and
 - (b) in subsection (3)(a), for “is ordinarily UK resident in” substitute “does not meet the requirement of section 26A of ITEPA 2003 for”.

Commencement

- 25 The amendments made by this Part of this Schedule have effect in relation to an individual's foreign income and gains for the tax year 2013-14 or any subsequent tax year.

Savings

- 26 (1) This paragraph applies to an individual who—
- (a) was resident in the United Kingdom for the tax year 2012-13, but
 - (b) was not ordinarily resident there at the end of the tax year 2012-13.
- (2) Enactments relating to income tax or capital gains tax have effect, in relation to any eligible foreign income and gains of the individual, as if the amendments made by this Part of this Schedule had not been made.
- (3) “Eligible foreign income and gains” means—
- (a) if the individual was resident in the United Kingdom for the tax year 2010-11 and the tax year 2011-12, foreign income and gains for the tax year 2013-14,
 - (b) if the individual was not resident in the United Kingdom for the tax year 2010-11 but was resident in the United Kingdom for the tax year 2011-12, foreign income and gains for the tax year 2013-14 and the tax year 2014-15, and
 - (c) if the individual was not resident in the United Kingdom for the tax year 2011-12, foreign income and gains for the tax year 2013-14, the tax year 2014-15 and the tax year 2015-16.
- (4) Where, by virtue of this paragraph, it is necessary to determine whether an individual is (or is not) ordinarily resident in the United Kingdom at a time on or after 6 April 2013, the question is to be determined as it would have been in the absence of this Schedule.

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Interpretation

- 27 References in this Part of this Schedule to an individual's “foreign income and gains” for a tax year are to be read in accordance with section 809Z7 of ITA 2007 (interpretation of remittance basis rules).

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