

*Status: Point in time view as at 16/11/2017.*

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## SCHEDULES

### SCHEDULE 46

#### ORDINARY RESIDENCE

#### PART 3

#### CAPITAL GAINS TAX: ACCRUALS BASIS OF TAXATION

##### *TCGA 1992*

- 74 TCGA 1992 is amended as follows.
- 75 (1) Section 2 (persons and gains chargeable to capital gains tax, and allowable losses) is amended as follows.
- (2) In subsection (1), for the words from “during any part” to the end substitute “ if the residence condition is met ”.
- (3) After that subsection insert—
- “(1A) The residence condition is—
- (a) in the case of an individual, that the individual is resident in the United Kingdom for the year in question,
- (b) in the case of personal representatives of a deceased person, that the single and continuing body mentioned in section 62(3) is resident in the United Kingdom,
- (c) in the case of the trustees of a settlement, that the single person mentioned in section 69(1) is resident in the United Kingdom during any part of the year in question, and
- (d) in any other case, that the person is resident in the United Kingdom when the gain accrues.”
- 76 In section 10 (non-resident with United Kingdom branch or agency), in subsection (1), for “in which he is not resident and not ordinarily resident in the United Kingdom but” substitute “ if the residence condition is not met (see section 2(1A)) but the person ”.
- 77 (1) Section 13 (attribution of gains to members of non-resident companies) is amended as follows.
- (2) In subsection (2), omit “or ordinarily resident”.
- (3) In subsection (10), for “neither resident nor ordinarily resident” substitute “ not resident ”.
- (4) In subsection (13)(b), omit “or ordinarily resident”.

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- 78 In section 16 (computation of losses), in subsection (3), for “during no part of which he is resident or ordinarily resident in the United Kingdom” substitute “ where the residence condition is not met (see section 2(1A)) ”.
- 79 In section 62 (death: general provisions), in subsection (3), omit “, ordinary residence,”.
- 80 In section 65 (liability for tax of trustees or personal representatives), in subsection (3)(b), for “become neither resident nor ordinarily resident” substitute “ cease to be resident ”.
- 81 In section 67 (provisions applicable where section 79 of the Finance Act 1980 has applied), in subsection (6)(a), in paragraph (b) of the substituted subsection (1), for “ becomes neither resident nor ordinarily resident ” substitute “ ceases to be resident ”.
- 82 (1) Section 69 (trustees of settlements) is amended as follows.
- (2) In subsection (2), omit “and ordinarily resident”.
- (3) In subsection (2B)(c), omit “, ordinarily resident”.
- (4) In subsection (2E), for the words from “and ordinarily resident” to the end substitute “ in the United Kingdom, then for the purposes of this Act it is treated as being not resident in the United Kingdom ”.
- 83 In section 76 (disposal of interests in settled property), in subsection (1B)(a), for “neither resident nor ordinarily resident” substitute “ not resident ”.
- 84 In section 80 (trustees ceasing to be resident in UK), in subsection (1), for “neither resident nor ordinarily resident” substitute “ not resident ”.
- 85 (1) Section 81 (death of trustee: special rules) is amended as follows.
- (2) In subsection (1)(b), omit “and ordinarily resident”.
- (3) In subsection (3)(b), omit “and ordinarily resident”.
- (4) In subsection (4)(b), omit “and ordinarily resident”.
- (5) In subsection (5)(a), omit “and ordinarily resident”.
- 86 In section 82 (past trustees: liability for tax), in subsection (3)(b), for “become neither resident nor ordinarily resident” substitute “ cease to be resident ”.
- 87 In section 83 (trustees ceasing to be liable to UK tax), in subsection (1), omit “and ordinarily resident”.
- 88 (1) Section 83A (trustees both resident and non-resident in a year of assessment) is amended as follows.
- (2) In subsection (3)(a), omit “and ordinarily resident”.
- (3) In subsection (4)—
- (a) in paragraph (a), for “neither resident nor ordinarily resident” substitute “ not resident ”, and
- (b) in paragraph (b), omit “and ordinarily resident”.
- 89 In section 84 (acquisition by dual resident trustees), in subsection (1)(b), omit “and ordinarily resident”.

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- 90 In section 85 (disposal of interests in non-resident settlements), in subsection (1), for “neither resident nor ordinarily resident” substitute “ not resident ”.
- 91 (1) Section 86 (attribution of gains to settlors with interest in non-resident or dual resident settlements) is amended as follows.
- (2) In subsection (1)(c), for the words from “either resident” to the end substitute “ resident in the United Kingdom for the year ”.
- (3) For subsection (2) substitute—
- “(2) The condition as to residence is that—
- (a) there is no time in the year when the trustees are resident in the United Kingdom, or
- (b) there is such a time but, whenever the trustees are resident in the United Kingdom during the year, they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.”
- (4) In subsection (3), omit “and ordinarily resident”.
- 92 (1) Section 87 (non-UK resident settlements: attribution of gains to beneficiaries) is amended as follows.
- (2) In subsection (1), for the words from “the trustees” to the end substitute “ there is no time in that year when the trustees are resident in the United Kingdom ”.
- (3) In subsection (4)(a), omit “and ordinarily resident”.
- 93 In section 88(1) (gains of dual resident settlements)—
- (a) in paragraph (a), omit “and ordinarily resident”, and
- (b) in paragraph (b), omit “and ordinary residence”.
- 94 (1) Section 96 (payments by and to companies) is amended as follows.
- (2) In subsection (3), omit “or ordinarily resident”.
- (3) In subsection (4), in each of paragraphs (a) and (b), omit “or ordinarily resident”.
- (4) In subsection (5)(b), omit “or ordinary residence”.
- 95 In section 97 (supplementary provisions), in subsection (1)(a), for “neither resident nor ordinarily resident” substitute “ not resident ”.
- 96 In section 99 (application of Act to unit trust schemes), in subsection (1)(c), omit “and ordinarily resident”.
- 97 In section 106A(5A) (identification of securities: capital gains tax)—
- (a) in paragraph (a), for “neither resident nor ordinarily resident” substitute “ not resident ”, and
- (b) in paragraph (b), omit “or ordinarily resident”.
- 98 (1) Section 159 (non-residents: roll-over relief) is amended as follows.
- (2) In subsection (2)(b), omit “or ordinarily resident”.
- (3) In subsection (5), in the definition of “dual resident”, omit “or ordinarily resident”.
- 99 (1) Section 166 (gifts to non-residents) is amended as follows.

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- (2) In subsection (1), for “neither resident nor ordinarily resident” substitute “ not resident ”.
- (3) In subsection (2)(a), omit “or ordinarily resident”.
- 100 (1) Section 167 (gifts to foreign-controlled companies) is amended as follows.
- (2) In subsection (2)(a), for “neither resident nor ordinarily resident” substitute “ not resident ”.
- (3) In subsection (3), for the words from “or ordinarily resident” to “nor ordinarily resident” substitute “ in the United Kingdom is to be regarded as not resident ”.
- 101 (1) Section 168 (emigration of donee) is amended as follows.
- (2) In subsection (1)(b), for “becomes neither resident nor ordinarily resident” substitute “ ceases to be resident ”.
- (3) In subsection (4), for “becoming neither resident nor ordinarily resident” substitute “ ceasing to be resident ”.
- (4) In subsection (5)—
- (a) in paragraph (a), for “becoming neither resident nor ordinarily resident” substitute “ ceasing to be resident ”, and
- (b) in paragraph (b), omit “or ordinarily resident”.
- 102 In section 169 (gifts into dual resident trusts), in subsection (3)(a), omit “and ordinarily resident”.
- 103 In section 199 (exploration or exploitation assets: deemed disposals), in subsection (2), for “who is not resident and not ordinarily resident in the United Kingdom” substitute “ in respect of whom the residence condition (see section 2(1A)) is not met ”.
- 104 (1) Section 261 (section 260 relief: gifts to non-residents) is amended as follows.
- (2) In subsection (1), for “neither resident nor ordinarily resident” substitute “ not resident ”.
- (3) In subsection (2)(a), omit “or ordinarily resident”.
- 105 In Schedule 1 (application of exempt amount and reporting limits in cases involving settled property), in paragraph 2(7)(a), omit “and ordinarily resident”.
- 106 (1) Schedule 4A (disposal of interest in settled property: deemed disposal of underlying assets) is amended as follows.
- (2) In paragraph 5(1) and (2), omit “and ordinarily resident”.
- (3) In paragraph 6(1)—
- (a) for “in the relevant” substitute “ as respects the relevant ”, and
- (b) for the words from “either” to the end substitute “ met the residence condition set out in section 2(1A) ”.
- (4) If any of the previous 5 years of assessment mentioned in paragraph 6(1) of Schedule 4A ends before 6 April 2013, the test in that paragraph is to be applied, as respects any such year ending before that date, as if that paragraph had not been amended by sub-paragraph (3).

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- 107 (1) Schedule 4C (transfers of value: attribution of gains to beneficiaries) is amended as follows.
- (2) In paragraph 1A(3), for the words from “the beneficiary” to the end substitute “, as respects that year, the beneficiary meets the residence condition set out in section 2(1A)”.
- (3) In paragraph 4—
- (a) in sub-paragraph (1), omit “and ordinarily resident”, and
- (b) in sub-paragraph (2), omit “and ordinarily resident”.
- (4) In paragraph 5(1)—
- (a) in paragraph (a), omit “and ordinarily resident”, and
- (b) in paragraph (b), omit “and ordinary residence”.
- (5) In paragraph 9(3)(a)(i), omit “and ordinarily resident”.
- (6) In paragraph 10(1), omit “and ordinarily resident”.
- 108 (1) Schedule 5 (attribution of gains to settlors with interest in non-resident or dual resident settlement) is amended as follows.
- (2) In paragraph 2A(4)—
- (a) in paragraph (a), for “become on or after 17th March 1998 neither resident nor ordinarily resident” substitute “cease on or after 17 March 1998 to be resident”, and
- (b) in paragraph (b), omit “and ordinarily resident”.
- (3) In paragraph 9(4)—
- (a) in paragraph (a), for “become on or after 19th March 1991 neither resident nor ordinarily resident” substitute “cease on or after 19 March 1991 to be resident”, and
- (b) in paragraph (b), omit “and ordinarily resident”.
- (4) The amendments made by this paragraph apply to changes in the residence status of trustees on or after 6 April 2013.
- 109 (1) Schedule 5A (settlements with foreign element: information) is amended as follows.
- (2) In paragraph 2(1)—
- (a) in paragraph (c), for “neither resident nor ordinarily resident” substitute “not resident”, and
- (b) in paragraph (d), omit “and ordinarily resident”.
- (3) In paragraph 3—
- (a) in sub-paragraph (1)—
- (i) in paragraph (a), for “neither resident nor ordinarily resident” substitute “not resident”, and
- (ii) in paragraph (b), omit “and ordinarily resident”, and
- (b) in sub-paragraph (3), for “either resident or ordinarily resident” substitute “resident”.
- (4) In paragraph 4—
- (a) in sub-paragraph (1)—

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- (i) in paragraph (a), for “neither resident nor ordinarily resident” substitute “not resident”, and
  - (ii) in paragraph (b), omit “and ordinarily resident”, and
  - (b) in sub-paragraph (3), for “either resident or ordinarily resident” substitute “resident”.
- (5) In paragraph 5(1)—
- (a) in paragraph (a), for the words from “become” to “ordinarily resident” substitute “cease at any time (the relevant time) on or after the commencement day to be resident”, and
  - (b) in paragraph (b), omit “and ordinarily resident”.
- (6) The amendments made by this paragraph apply as follows—
- (a) the amendments made by sub-paragraph (2) apply in relation to transfers of property made on or after 6 April 2013,
  - (b) the amendments made by sub-paragraphs (3) and (4) apply in relation to settlements created on or after that date, and
  - (c) the amendments made by sub-paragraph (5) apply to changes in the residence status of trustees on or after that date.
- 110 (1) Schedule 5B (enterprise investment scheme: re-investment) is amended as follows.
- (2) In paragraph 1—
- (a) in sub-paragraph (1)(d), omit “or ordinarily resident”, and
  - (b) in sub-paragraph (4)(a), omit “or ordinarily resident”.
- (3) In paragraph 3(3)(b), omit “or ordinarily resident”.
- (4) In paragraph 19(1), in the definition of “non-resident”, for “neither resident nor ordinarily resident” substitute “not resident”.
- (5) The amendments made by this paragraph apply in cases where the accrual time is on or after 6 April 2013 (even if the qualifying investment was made before that date).
- 111 In Schedule 7C (reliefs for transfers to approved share plans), in paragraph 8, for paragraph (a) substitute—
- “(a) the claimant would be chargeable to capital gains tax under section 2(1) (persons and gains chargeable to capital gains tax) in respect of the gain, or”.

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