

**EXPLANATORY MEMORANDUM TO**  
**THE INCOME TAX (REMOVAL OF ORDINARY RESIDENCE) ORDER 2014**

**2014 No. 3062**

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of the Treasury and is laid before the House of Commons by Command of Her Majesty.
2. **Purpose of the instrument**

This instrument removes the term 'and ordinarily resident' from section 628(6) of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA).
3. **Matters of special interest to the Select Committee on Statutory Instruments**

None
4. **Legislative Context**
  - 4.1 This instrument is the first use of the powers given by section 219(4) and (5) of the Finance Act 2013.
  - 4.2 The concept of 'ordinary residence' was abolished for most tax purposes by Schedule 46 to the Finance Act 2013. Section 219(4) and (5) provide for any consequential provision in consequence of Schedule 46.
  - 4.3 Section 628 of ITTOIA 2005 provides an exception to the rule that income which arises under a settlement is treated for income tax purposes as the income of the settlor if certain conditions are satisfied. Subsection (6) defines a "UK settlement" for the purposes of the exception. This Order removes the reference to "and ordinarily resident" from that definition.
  - 4.4 Section 474 of the Income Tax Act 2007 (ITA) provides that the trustees of a settlement are to be treated as a single person for the purposes of the Income Tax Acts (which include ITTOIA). Before the changes made by Schedule 46 to the Finance Act 2013 sections 475 and 476 ITA set out tests to establish whether or not that deemed single person was resident and ordinarily resident in the UK. After the changes made by Schedule 46 section 475 and 476 set out tests to establish whether that single person is to be treated as UK resident. Unfortunately, the reference to "and ordinarily resident" in section 628(6) of ITTOIA was overlooked at the time these changes were made.

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

This instrument applies to all of the United Kingdom.

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

The Financial Secretary to the Treasury, David Gauke, has made the following statement regarding human rights:

“In my view the provisions of the Income Tax (Removal of Ordinary Residence) Order 2014 are compatible with the Convention rights.”

## **7. Policy background**

- What is being done and why

7.1 At Budget 2012, the Government announced that it would abolish the concept of ordinary residence for tax purposes. This represented a major simplification to the UK tax system. The changes were made by Schedule 46 to the Finance Act 2013.

7.2 The Government intended to remove all references to ‘ordinary resident’, ‘ordinarily resident’ and ‘ordinary residence’ from tax legislation in 2013 (with three minor exceptions where it was decided to retain the existing references). Unfortunately, a reference to “and ordinarily resident” in section 628(6) of ITTOIA 2005 was overlooked.

7.3 This instrument removes the reference to ‘and ordinarily resident’ from section 628(6) to achieve abolition of this term as was intended in 2013.

- Consolidation

7.4 There are no plans to consolidate the amendments made by this instrument.

## **8. Consultation outcome**

8.1 No consultation was conducted in respect of this instrument as it does not introduce a substantive change to tax policy.

## **9. Guidance**

9.1 No guidance is required for this instrument as it merely reconciles section 628(6) ITTOIA with existing legislation.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is negligible as these regulations are directed at individuals.
- 10.2 The impact on the public sector is negligible.
- 10.3 A Tax Information and Impact Note has not been prepared for this Instrument as it gives effect to previously announced policy. A Tax Information and Impact Note covering the changes made by Schedule 46 to the Finance Act 2013 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>.

## **11. Regulating small business**

The legislation does not apply to small business.

## **12. Monitoring & review**

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

## **13. Contact**

Tracy Gribble at HM Revenue & Customs Tel: 03000 585169 or email: [tracy.gribble@hmrc.gsi.gov.uk](mailto:tracy.gribble@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.