IBC CONFERENCE:

TAX PLANNING FOR NON-DOMICILIARIES

RESIDENCY AND ASSOCIATED ISSUES AND CHALLENGES

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SECTION I

EXAMPLES

EXAMPLE 1

The Situation

Mr A has lived in Shangri-La all of his life, running a small business. On reaching his 60th birthday on 31st March 2012 he retired and sold his business. He decided to visit his daughter who lived in the UK. He arrived on the 6th April 2013 intending to stay until the 20th May. On the 20th May he was knocked over by a car on the way to the airport. He was in a coma in one hospital until 31st August, in intensive care in another until 31st October and convalescing in another until the 31st December. On 31st December he flew home, that being the first opportunity he had after being told that he was fit to do so.

During 2013/14 his only source of income was bank interest of £500,000 earned on the proceeds of the sale of his business which he had deposited with a UK bank, having made the declarations required by ITA 2007 s.858.

EXAMPLE 2

The Situation

Mr A had lived and worked all of his life in Shangri-La. At the beginning of 2013/14 he was employed by the Shangri-Layan company, Eden Plc, which operated internationally. On 30th September 2013 he came to the UK on a one-year secondment to Eden Plc's UK branch and began work in his new position on 1st October 2013. He returned to Shangri-La on 30th September 2014 when his secondment ended. Throughout the period of his secondment he had a home in the UK. Under his employment contract, his working week was Monday to Friday and his working hours were 9 hours per day. His holiday entitlement was to such leave as, taking account of public holidays and weekends, would enable him to be on holiday for the entire month of August and for the period from Christmas Eve to New Year's Day inclusive.[1] He spent his August and Christmas holidays in Shangri-La, flying to Shangri-La on the evening before they started and flying back to the UK on the evening on which they finished unless that day was a Friday in which case he flew back on the following Sunday evening.

The duties of his new position required him to return to Shangri-La on each Wednesday in the final complete week of each month in order to be able to attend

[1] In 2013/14 that would have amounted to 25 days

meetings on Thursday and to return to the UK on Friday. No meeting was to be held where it clashed with the August or Christmas holidays.[2] On the day of his travel he performed no other work than travelling.

He did not leave the UK during his secondment except during these monthly business trips and during his August and Christmas holidays.

The flying time between Shangri-La and the UK was just over 3 hours. His journeys in the UK to and from Heathrow all took less than 3 hours. It is assumed that he worked for 6 hours in total on a day when he was travelling.

During his secondment period he had homes both in Shangri-La and in the UK.

There were no public holidays in Shangri-La. Eden Plc employees who were seconded to other countries were entitled to the public holidays normal in those countries in addition to their normal annual leave.

EXAMPLE 3

The Situation

Mr A had lived in the UK all of his life. In 2010 he sold his trading company for loan notes in the acquiring company. The loan notes were to be redeemed on 30th June 2014 resulting in a gain of £25 million accruing to Mr A under TCGA 1992 s.116(10)(b).

Sometime after the issue of the loan notes, he decided that he would go to live permanently in Shangri-La.[3] He had two adult children, both of whom had young children and lived in London. He and his wife wished to continue to be able to see a good deal of them. Having taken advice he decided on the following pattern for their future life. He would keep his UK home as a base at which to stay on their visits here and buy a home in Shangri-La. He and his wife would leave the UK on 1st April 2013 flying to Shangri-La and establishing themselves in their Shangri-Layan home on that day.

In 2013/14 and 2014/15 they would spend 80 days per year in the UK. From 2015/16 onwards they would spend 110 days in the UK. In each year he would ensure that they spent at least 10 more days in Shangri-La than they did in the UK.

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2 Which meant that 10 monthly meetings were held in the 365-day period

3 It is important that Mr A's decision to move to Shangri-La came after his decision to accept the loan notes. If it had not been, it might have been the case that the condition of TCGA 1992 s.137 that 'the exchange ... [was] ... effected for bona fide commercial reasons and ... [did] ... not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, ... [was] ... avoidance of liability to Capital Gains Tax or Corporation Tax' was not satisfied. See *Coll and another v HMRC* [2010] UKUT 114 (TCC)

For the remainder of the time, he and his wife would travel around the world.

EXAMPLE 4

The Situation

Mr A, who was not domiciled in the UK at any time, became resident here in 1998/99 and continued to be so. From this time, he had a home in the UK and nowhere else until, on 10th May 2014, he left the UK to live in Shangri-La, the country of his domicile. He completed the sale of his home in the UK on that day and he shortly afterwards acquired a Shangri-Layan home. He died on 31st March 2015 leaving an estate consisting entirely of non-UK situated assets with a value of £20 million which did not qualify for any IHT reliefs.

On every day that he was present in the UK in 2014/15 he spent some time in his home.

After arriving in Shangri-La on 10th May 2014 he did not leave that country at any time. He spent all but 5 nights from 10th May 2014 onwards in his Shangri-Layan home. He had no minor children or spouse, civil partner or unmarried equivalent.

EXAMPLE 5

The Situation

Mr A was a widower[4] who had lived all of his life in Shangri-La up to and including the year 2013/14 and was domiciled in that country under English Law.

Becoming absolutely entitled to settled property

He was the beneficiary of a trust established by his grandfather, now deceased, who was also domiciled in Shangri-La. In 2010/11 the trust had sold its only asset realising a gain of £2 million. This was the only gain which the trustees had made and no capital payments had been made within TCGA 1992 s.97(1). On 31st May 2014, the trust came to an end under its terms, and Mr A received 50% of the trust assets being £1 million.

This sum was paid to his bank account in Shangri-La. He transferred this amount to an investment management company ('MCo') which held its own accounts and those of its clients with UK banks except where it had been instructed that its client was UK resident but not UK domiciled. It held client moneys on bare trusts subject to discretionary investment management agreements. Under these agreements MCo could buy and sell listed investments at its discretion and the investments were to be held on bare trusts for the client.

[4] He was not married, a member of a civil partnership or in an equivalent informal relationship

The acquisition and redemption of loan notes issued by SLPlc

On 30th June 2014 Mr A sold some shares which he had acquired when they had an insubstantial value in exchange for loan notes issued by the acquiring Shangri-Layan company ('SLPlc'). The loan notes were qualifying corporate bonds within TCGA 1992 s.117 and had a principal amount of £600,000.[5] This was an exchange within TCGA 1992 s.116(10). The loan notes were to be redeemed on 30th June 2015. He gave an instruction that on redemption the amount payable should be paid to MCo to be held by that company under the terms of his discretionary investment management agreement.

Mr A's sojourn in the UK

Mr A was a computer consultant. Most of his work was performed remotely. He usually worked for 10 hours a day from Monday to Friday.

On 31st July 2014 his daughter married an Englishman and, after their honeymoon, they established a home in Somersetshire. His daughter invited him to make an extended stay and he flew to the UK on 1st February 2015 intending to stay for four months. During this period he intended to work for four days a week (Monday to Thursday) but to continue to work for 10 hours on each working day (accessing his clients' computers remotely) but he decided to take some breaks for sightseeing. He intended to stay partly with his daughter and partly in hotels.

[5] At this stage Mr A was not considering UK tax and so the exchange was not prevented from falling within TCGA 1992 s.116(1)(a) by TCGA 1992 s.137

He took a break from his work for sightseeing on the weeks beginning 2nd February, 9th February, 23rd March and 13th April 2015.

On 23rd April 2015 his daughter was involved in a car accident. Although her injuries were extensive and she broke many bones it was thought, at first, that her life was not threatened. Nonetheless he decided to extend his stay until the end of June so as to visit her and help her convalesce.

On 25th June 2015, his daughter's condition suddenly worsened because of complications from the accident. In view of her condition, Mr A decided to stay on until he felt she was out of danger and his help was no longer needed.

On the 30th June 2015 the loan notes were redeemed in accordance with their terms and, as instructed, the amount payable on redemption was paid to MCo to be held to his order subject to the discretionary investment management agreement.

During the rest of June, July and August his daughter's condition was serious but in September she began to recover and on 30th September she was declared to be out of danger. She still faced a considerable period of convalescence, however, and he decided to stay on. He finally returned to Shangri-La on 24th January 2016.

In the week after his daughter's accident, from the 27 April 2015 onwards, he

reverted to working 5 days a week in his practice. His only other break was after his daughter's discharge from hospital on 14th December 2015 until 1st January 2016 (inclusive). He did not work on the day he flew to the UK.

Throughout this time, Mr A had a Shangri-Layan home. He spent over 30 days in this home both in 2014/15 and 2015/16.

The Sale of a commercial building

On the 15th March 2016, Mr A sold a commercial building which he owned in the UK making of a loss of £500,000.

EXAMPLE 6

The Situation

Mr A was an investment banker who had always lived in the UK. On his retirement, tired with the constant denigration of his profession in the UK, he decided to move with his family to Shangri-La where the contribution of bankers to the world economy was respected. On 1st June 2013 he moved with his wife, infant son and daughter and widowed mother to take up residence in a house in Shangri-La, which he owned and which had previously been let to tenants, as his home. On 30th August 2013 he sold his home in the UK. It is assumed that this UK property ceased to be his home on that day. He had no other homes than these at any time relevant to this example.

From moving to Shangri-La on 1st June 2013 until the end of the fiscal year 2017/18 he spent just 14 days in the UK in each year visiting it in November to see friends and staying in hotels when he did so.

On 30th April 2015 he sold some shares in a UK company which he had acquired many years before, making a gain of £20 million.

On 1st August 2018 his mother, on a visit to the UK, was involved in a serious car accident. She was in a coma until 31st December 2018, was in serious danger of her life until 28th February 2019 and was convalescing until 3rd April 2019. Mr A

and his wife flew to the UK on 2nd August 2018 and stayed in hotels near to the hospital to be near Mr A's mother until 3rd April 2019. It is assumed that none of the hotels in which they stayed became their home. On 3rd April 2019, Mr and Mrs A, his mother and children returned to Shangri-La together.

Mr A was not Treaty non-resident at any time.

Mr A's wife was not an employee or director or conducting a trade at any time relevant to this example.

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SECTION II

FINANCE ACT 2013 SCHEDULE 45

"HMRC" means Her Majesty's Revenue and Customs,

"increased disablement pension" means an increase of disablement pension under—

(a) section 104 of SSCBA 1992, or

(b) section 104 of SSCB(NI)A 1992,

"personal independence payment" means personal independence payment under—

(a) WRA 2012, or

(b) the corresponding provision having effect in Northern Ireland,

"SSCBA 1992" means the Social Security Contributions and Benefits Act 1992,

"SSCB(NI)A 1992" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992,

"WRA 2012" means the Welfare Reform Act 2012."

Interpretation: relevant settlement

20 (1) In this Schedule, "relevant settlement" means—

(a) a settlement created before 8 April 2013 the trusts of which have not been altered on or after that date, or

(b) a settlement arising on or after 8 April 2013 under the will of a testator, if—

(i) the will was executed before 8 April 2013 and its provisions, so far as relating to the settlement, have not been altered on or after that date, or

(ii) the will was executed or confirmed on or after 8 April 2013 and its provisions, so far as relating to the settlement, are in the same terms as those contained in a will executed by the same testator before that date.

(2) In this Schedule a reference to a will includes a reference to a codicil.

SCHEDULE 45

Section 218

STATUTORY RESIDENCE TEST

PART 1

THE RULES

Introduction

1 (1) This Part of this Schedule sets out the rules for determining for the purposes of relevant tax whether individuals are resident or not resident in the UK.

(2) The rules are referred to collectively as "the statutory residence test".

(3) The rules do not apply in determining for the purposes of relevant tax whether individuals are resident or not resident in England, Wales, Scotland or Northern Ireland specifically (rather than in the UK as a whole).

(4) "Relevant tax" means—
  (a) income tax,
  (b) capital gains tax, and
  (c) (so far as the residence status of individuals is relevant to them) inheritance tax and corporation tax.

(5) Key concepts used in the rules are defined in Part 2 of this Schedule.

Interpretation of enactments

2 (1) In enactments relating to relevant tax, a reference to being resident (or not resident) in the UK is, in the case of individuals, a reference to being resident (or not resident) in the UK in accordance with the statutory residence test.

(2) Sub-paragraph (1) applies even if the reference relates to the tax liability of an actual or deemed person that is not an individual (for example, where the liability of another person depends on the residence status of an individual).

(3) An individual who, in accordance with the statutory residence test, is resident (or not resident) in the UK "for" a tax year is taken for the purposes of any enactment relating to relevant tax to be resident (or not resident) there at all times in that tax year.

(4) But see Part 3 of this Schedule (split year treatment) for cases where the effect of sub-paragraph (3) is relaxed in certain circumstances.

(5) This Schedule has effect subject to any express provision to the contrary in (or falling to be recognised and acknowledged in law by virtue of) any enactment.

The basic rule

3 An individual ("P") is resident in the UK for a tax year ("year X") if—
  (a) the automatic residence test is met for that year, or
  (b) the sufficient ties test is met for that year.

4 If neither of those tests is met for that year, P is not resident in the UK for that year.

The automatic residence test

5 The automatic residence test is met for year X if P meets—
  (a) at least one of the automatic UK tests, and
  (b) none of the automatic overseas tests.

The automatic UK tests

6 There are 4 automatic UK tests.

7 The first automatic UK test is that P spends at least 183 days in the UK in year X.

8 (1) The second automatic UK test is that—
  (a) P has a home in the UK during all or part of year X,
  (b) that home is one where P spends a sufficient amount of time in year X, and

(c) there is at least one period of 91 (consecutive) days in respect of which the following conditions are met—

(i) the 91-day period in question occurs while P has that home,

(ii) at least 30 days of that 91-day period fall within year X, and

(iii) throughout that 91-day period, condition A or condition B is met or a combination of those conditions is met.

(2) Condition A is that P has no home overseas.

(3) Condition B is that—

(a) P has one or more homes overseas, but

(b) each of those homes is a home where P spends no more than a permitted amount of time in year X.

(4) In relation to a home of P's in the UK, P "spends a sufficient amount of time" there in year X if there are at least 30 days in year X when P is present there on that day for at least some of the time (no matter how short a time).

(5) In relation to a home of P's overseas, P "spends no more than a permitted amount of time" there in year X if there are fewer than 30 days in year X when P is present there on that day for at least some of the time (no matter how short a time).

(6) In sub-paragraphs (4) and (5)—

(a) a reference to 30 days is to 30 days in aggregate, whether the days are consecutive or intermittent, and

(b) a reference to P being present at the home is to P being present there at a time when it is a home of P's (so presence there on any other occasion, for example to look round the property with a view to buying it, is to be disregarded).

(7) Sub-paragraph (1)(c) is satisfied so long as there is a period of 91 days in respect of which the conditions described there are met, even if those conditions are in fact met for longer than that.

(8) If P has more than one home in the UK—

(a) each of those homes must be looked at separately to see if the second automatic UK test is met, and

(b) the second automatic UK test is then met so long as it is met in relation to at least one of those homes.

9 (1) The third automatic UK test is that—

(a) P works sufficient hours in the UK, as assessed over a period of 365 days,

(b) during that period, there are no significant breaks from UK work,

(c) all or part of that period falls within year X,

(d) more than 75% of the total number of days in the 365-day period on which P does more than 3 hours' work are days on which P does more than 3 hours' work in the UK, and

(e) at least one day which falls in both that period and year X is a day on which P does more than 3 hours' work in the UK.

(2) Take the following steps to work out, for any given period of 365 days, whether P works "sufficient hours in the UK" as assessed over that period—

Step 1

Identify any days in the period on which P does more than 3 hours' work overseas, including ones on which P also does work in the UK on the same day.

The days so identified are referred to as "disregarded days".

Step 2

Add up (for all employments held and trades carried on by P) the total number of hours that P works in the UK during the period, but ignoring any hours that P works in the UK on disregarded days.

The result is referred to as P's "net UK hours".

Step 3

Subtract from 365—

(a) the total number of disregarded days, and

(b) any days that are allowed to be subtracted, in accordance with the rules in paragraph 28 of this Schedule, to take account of periods of leave and gaps between employments.

The result is referred to as the "reference period".

Step 4

Divide the reference period by 7. If the answer is more than 1 and is not a whole number, round down to the nearest whole number. If the answer is less than 1, round up to 1.

Step 5

Divide P's net UK hours by the number resulting from step 4.

If the answer is 35 or more, P is considered to work "sufficient hours in the UK" as assessed over the 365-day period in question.

(3) This paragraph does not apply to P if—

(a) P has a relevant job on board a vehicle, aircraft or ship at any time in year X, and

(b) at least 6 of the trips that P makes in year X as part of that job are cross-border trips that either begin in the UK, end in the UK or begin and end in the UK.

10 (1) The fourth automatic UK test is that—

(a) P dies in year X,

(b) for each of the previous 3 tax years, P was resident in the UK by virtue of meeting the automatic residence test,

(c) even assuming P were not resident in the UK for year X, the tax year preceding year X would not be a split year as respects P (see Part 3 of this Schedule),

(d) when P died, either—

(i) P's home was in the UK, or

(ii) P had more than one home and at least one of them was in the UK, and

(e) if P had a home overseas during all or part of year X, P did not spend a sufficient amount of time there in year X.

(2) In relation to a home of P's overseas, P "spent a sufficient amount of time" there in year X if—

(a) there were at least 30 days in year X when P was present there on that day for at least some of the time (no matter how short a time), or

(b) P was present there for at least some of the time (no matter how short a time) on each day of year X up to and including the day on which P died.

(3) In sub-paragraph (2)—
(a) the reference to 30 days is to 30 days in aggregate, whether the days were consecutive or intermittent, and
(b) the reference to P being present at the home is to P being present there at a time when it was a home of P's.

(4) If P had more than one home overseas—
(a) each of those homes must be looked at separately to see if the requirement of sub-paragraph (1)(e) is met, and
(b) that requirement is then met so long as it is met in relation to each of them.

The automatic overseas tests

11 There are 5 automatic overseas tests.

12 The first automatic overseas test is that—
(a) P was resident in the UK for one or more of the 3 tax years preceding year X,
(b) the number of days in year X that P spends in the UK is less than 16, and
(c) P does not die in year X.

13 The second automatic overseas test is that—
(a) P was resident in the UK for none of the 3 tax years preceding year X, and
(b) the number of days that P spends in the UK in year X is less than 46.

14 (1) The third automatic overseas test is that—
(a) P works sufficient hours overseas, as assessed over year X,
(b) during year X, there are no significant breaks from overseas work,
(c) the number of days in year X on which P does more than 3 hours' work in the UK is less than 31, and
(d) the number of days in year X falling within sub-paragraph (2) is less than 91.

(2) A day falls within this sub-paragraph if—
(a) it is a day spent by P in the UK, but
(b) it is not a day that is treated under paragraph 23(4) as a day spent by P in the UK.

(3) Take the following steps to work out whether P works "sufficient hours overseas" as assessed over year X—
Step 1
Identify any days in year X on which P does more than 3 hours' work in the UK, including ones on which P also does work overseas on the same day.
The days so identified are referred to as "disregarded days".
Step 2

Add up (for all employments held and trades carried on by P) the total number of hours that P works overseas in year X, but ignoring any hours that P works overseas on disregarded days.

The result is referred to as P's "net overseas hours".

Step 3

Subtract from 365 (or 366 if year X includes 29 February)—

(a) the total number of disregarded days, and

(b) any days that are allowed to be subtracted, in accordance with the rules in paragraph 28 of this Schedule, to take account of periods of leave and gaps between employments.

The result is referred to as the "reference period".

Step 4

Divide the reference period by 7. If the answer is more than 1 and is not a whole number, round down to the nearest whole number. If the answer is less than 1, round up to 1.

Step 5

Divide P's net overseas hours by the number resulting from step 4.

If the answer is 35 or more, P is considered to work "sufficient hours overseas" as assessed over year X.

(4) This paragraph does not apply to P if—

(a) P has a relevant job on board a vehicle, aircraft or ship at any time in year X, and

(b) at least 6 of the trips that P makes in year X as part of that job are cross-border trips that either begin in the UK, end in the UK or begin and end in the UK.

15 (1) The fourth automatic overseas test is that—

(a) P dies in year X,

(b) P was resident in the UK for neither of the 2 tax years preceding year X or, alternatively, P's case falls within sub-paragraph (2), and

(c) the number of days that P spends in the UK in year X is less than 46.

(2) P's case falls within this sub-paragraph if—

(a) P was not resident in the UK for the tax year preceding year X, and

(b) the tax year before that was a split year as respects P because the circumstances of the case fell within Case 1, Case 2 or Case 3 (see Part 3 of this Schedule).

16 (1) The fifth automatic overseas test is that—

(a) P dies in year X,

(b) P was resident in the UK for neither of the 2 tax years preceding year X because P met the third automatic overseas test for each of those years or, alternatively, P's case falls within sub-paragraph (2), and

(c) P would meet the third automatic overseas test for year X if paragraph 14 were read with the relevant modifications.

(2) P's case falls within this sub-paragraph if—

(a) P was not resident in the UK for the tax year preceding year X because P met the third automatic overseas test for that year, and

(b) the tax year before that was a split year as respects P because the circumstances of the case fell within Case 1 (see Part 3 of this Schedule).

(3) The relevant modifications of paragraph 14 are—

(a) in sub-paragraph (1)(a) and (b) and sub-paragraph (3), for "year X" read "the period from the start of year X up to and including the day before the day of P's death", and

(b) in step 3 of sub-paragraph (3), for "365 (or 366 if year X includes 29 February)" read "the number of days in the period from the start of year X up to and including the day before the day of P's death".

The sufficient ties test

17 (1) The sufficient ties test is met for year X if—

(a) P meets none of the automatic UK tests and none of the automatic overseas tests, but

(b) P has sufficient UK ties for that year.

(2) "UK ties" is defined in Part 2 of this Schedule.

(3) Whether P has "sufficient" UK ties for year X will depend on—

(a) whether P was resident in the UK for any of the previous 3 tax years, and

(b) the number of days that P spends in the UK in year X.

(4) The Tables in paragraphs 18 and 19 show how many ties are sufficient in each case.

Sufficient UK ties

18 The Table below shows how many UK ties are sufficient in a case where P was resident in the UK for one or more of the 3 tax years preceding year X—

Days spent by P in the UK in year X	*Number of ties that are sufficient*
More than 15 but not more than 45	At least 4
More than 45 but not more than 90	At least 3
More than 90 but not more than 120	At least 2
More than 120	At least 1

19 The Table below shows how many UK ties are sufficient in a case where P was resident in the UK for none of the 3 tax years preceding year X—

Days spent by P in the UK in year X	*Number of ties that are sufficient*
More than 45 but not more than 90	All 4
More than 90 but not more than 120	At least 3
More than 120	At least 2

20 (1) If P dies in year X, paragraph 18 has effect as if the words "More than 15 but" were omitted from the first column of the Table.

(2) In addition to that modification, if the death occurs before 1 March in year X, paragraphs 18 and 19 have effect as if each number of days mentioned in the first column of the Table were reduced by the appropriate number.

(3) The appropriate number is found by multiplying the number of days, in each case, by—

$$\frac{A}{12}$$

where "A" is the number of whole months in year X after the month in which P dies.

(4) If, for any number of days, the appropriate number is not a whole number, the appropriate number is to be rounded up or down as follows—

(a) if the first figure after the decimal point is 5 or more, round the appropriate number up to the nearest whole number,

(b) otherwise, round it down to the nearest whole number.

PART 2

KEY CONCEPTS

Introduction

21 This Part of this Schedule defines some key concepts for the purposes of this Schedule.

Days spent

22 (1) If P is present in the UK at the end of a day, that day counts as a day spent by P in the UK.

(2) But it does not do so in the following two cases.

(3) The first case is where—

(a) P only arrives in the UK as a passenger on that day,

(b) P leaves the UK the next day, and

(c) between arrival and departure, P does not engage in activities that are to a substantial extent unrelated to P's passage through the UK.

(4) The second case is where—

(a) P would not be present in the UK at the end of that day but for exceptional circumstances beyond P's control that prevent P from leaving the UK, and

(b) P intends to leave the UK as soon as those circumstances permit.

(5) Examples of circumstances that may be "exceptional" are—

(a) national or local emergencies such as war, civil unrest or natural disasters, and

(b) a sudden or life-threatening illness or injury.

(6) For a tax year—

(a) the maximum number of days to which sub-paragraph (2) may apply in reliance on sub-paragraph (4) is limited to 60, and

(b) accordingly, once the number of days within sub-paragraph (4) reaches 60 (counting forward from the start of the tax year), any subsequent days within that sub-paragraph, whether involving the same or different exceptional circumstances, will count as days spent by P in the UK.

23 (1) If P is not present in the UK at the end of a day, that day does not count as a day spent by P in the UK.

(2) This is subject to the deeming rule.

(3) The deeming rule applies if—

(a) P has at least 3 UK ties for a tax year,

(b) the number of days in that tax year when P is present in the UK at some point in the day but not at the end of the day ("qualifying days") is more than 30, and

(c) P was resident in the UK for at least one of the 3 tax years preceding that tax year.

(4) The deeming rule is that, once the number of qualifying days in the tax year reaches 30 (counting forward from the start of the tax year), each subsequent qualifying day in the tax year is to be treated as a day spent by P in the UK.

(5) The deeming rule does not apply for the purposes of sub-paragraph (3)(a) (so, in deciding for those purposes whether P has a 90-day tie, qualifying days in excess of 30 are not to be treated as days spent by P in the UK).

Days spent "in" a period

24 Any reference to a number of days spent in the UK "in" a given period is a reference to the total number of days spent there (in aggregate) in that period, whether continuously or intermittently.

Home

25 (1) A person's home could be a building or part of a building or, for example, a vehicle, vessel or structure of any kind.

(2) Whether, for a given building, vehicle, vessel, structure or the like, there is a sufficient degree of permanence or stability about P's arrangements there for

the place to count as P's home (or one of P's homes) will depend on all the circumstances of the case.

(3) But somewhere that P uses periodically as nothing more than a holiday home or temporary retreat (or something similar) does not count as a home of P's.

(4) A place may count as a home of P's whether or not P holds any estate or interest in it (and references to "having" a home are to be read accordingly).

(5) Somewhere that was P's home does not continue to count as such merely because P continues to hold an estate or interest in it after P has moved out (for example, if P is in the process of selling it or has let or sub-let it, having set up home elsewhere).

Work

26 (1) P is considered to be "working" (or doing "work") at any time when P is doing something—

(a) in the performance of duties of an employment held by P, or

(b) in the course of a trade carried on by P (alone or in partnership).

(2) In deciding whether something is being done in the performance of duties of an employment, regard must be had to whether, if value were received by P for doing the thing, it would fall within the definition of employment income in section 7 of ITEPA 2003.

(3) In deciding whether something is being done in the course of a trade, regard must be had to whether, if expenses were incurred by P in doing the thing, the expenses could be deducted in calculating the profits of the trade for income tax purposes.

(4) Time spent travelling counts as time spent working—

(a) if the cost of the journey could, if it were incurred by P, be deducted in calculating P's earnings from that employment under section 337, 338, 340 or 342 of ITEPA 2003 or, as the case may be, in calculating the profits of the trade under ITTOIA 2005, or

(b) to the extent that P does something else during the journey that would itself count as work in accordance with this paragraph.

(5) Time spent undertaking training counts as time spent working if—

(a) in the case of an employment held by P, the training is provided or paid for by the employer and is undertaken to help P in performing duties of the employment, and

(b) in the case of a trade carried on by P, the cost of the training could be deducted in calculating the profits of the trade for income tax purposes.

(6) Sub-paragraphs (4) and (5) have effect without prejudice to the generality of sub-paragraphs (2) and (3).

(7) Assume for the purposes of sub-paragraphs (2) to (5) that P is someone who is chargeable to income tax under ITEPA 2003 or ITTOIA 2005.

(8) A voluntary post for which P has no contract of service does not count as an employment for the purposes of this Schedule.

Location of work

27 (1) Work is done where it is actually done, regardless of where the employment is held or the trade is carried on by P.

(2) But work done by way of or in the course of travelling to or from the UK by air or sea or via a tunnel under the sea is assumed to be done overseas even during the part of the journey in or over the UK.

(3) For these purposes, travelling to or from the UK is taken to—

(a) begin when P boards the aircraft, ship or train that is bound for a destination in the UK or (as the case may be) overseas, and

(b) end when P disembarks from that aircraft, ship or train.

(4) This paragraph is subject to express provisions in this Schedule about the location of work done by people with relevant jobs on board vehicles, aircraft or ships.

Rules for calculating the reference period

28 (1) This paragraph applies in calculating the "reference period" (which is a step taken in determining whether P works "sufficient hours in the UK" or "sufficient hours overseas" as assessed over a given period of days).

(2) The number of days in the given period may be reduced to take account of—

(a) reasonable amounts of annual leave or parenting leave taken by P during the period (for all employments held and trades carried on by P during the period, whether in the UK or overseas),

(b) absences from work at times during the period when P is on sick leave and cannot reasonably be expected to work as a result of the illness or injury in question, and

(c) non-working days embedded within a block of leave for which a reduction is made under paragraph (a) or (b).

(3) But no reduction may be made in respect of any day that is a "disregarded day" (see paragraphs 9(2) and 14(3) in Part 1 of this Schedule).

(4) For any particular employment or trade, "reasonable" amounts of annual leave or parenting leave are to be assessed having regard to (among other things)—

(a) the nature of the work, and

(b) the country or countries where P is working.

(5) Non-working days are "embedded within" a block of leave only if there are, as part of that block of leave—

(a) at least 3 consecutive days of leave taken before the non-working day or series of non-working days in question, and

(b) at least 3 consecutive days of leave taken after the non-working day or series of non-working days in question.

(6) A "non-working day" is any day of the week, month or year on which P—

(a) is not normally expected to work (according to P's contract of employment or usual pattern of work), and

(b) does not in fact work.

(7) In calculating the reductions to be made under sub-paragraph (2)—

(a) if it turns out, after applying sub-paragraph (3), that the reasonable amounts of annual leave or parenting leave or, as the case may be, the absences from work on sick leave do not add up (across the period) to a whole number of days, the number in that case is to be rounded down to the nearest whole number, but

(b) any such rounding is to be ignored for the purposes of sub-paragraph (2)(c).

(8) If—

(a) P changes employment during the given period,

(b) there is a gap between the two employments, and

(c) P does not work at all at any time between the two employments,

the number of days in the given period may be reduced by the number of days in that gap.

(9) But—

(a) if the gap lasts for more than 15 days, only 15 days may be subtracted, and

(b) if there is more than one change of employment during the period, the maximum number of days that may be subtracted under sub-paragraph (8) for all the gaps in total is 30.

Significant breaks from UK or overseas work

29 (1) There is a "significant break from UK work" if at least 31 days go by and not one of those days is—

(a) a day on which P does more than 3 hours' work in the UK, or

(b) a day on which P would have done more than 3 hours' work in the UK but for being on annual leave, sick leave or parenting leave.

(2) There is a "significant break from overseas work" if at least 31 days go by and not one of those days is—

(a) a day on which P does more than 3 hours' work overseas, or

(b) a day on which P would have done more than 3 hours' work overseas but for being on annual leave, sick leave or parenting leave.

Relevant jobs on board vehicles, aircraft or ships

30 (1) P has a "relevant" job on board a vehicle, aircraft or ship if condition A and condition B are met.

(2) Condition A is that P either—

(a) holds an employment, the duties of which consist of duties to be performed on board a vehicle, aircraft or ship while it is travelling, or

(b) carries on a trade, the activities of which consist of work to be done or services to be provided on board a vehicle, aircraft or ship while it is travelling.

(3) Condition B is that substantially all of the trips made in performing those duties or carrying on those activities are ones that involve crossing an international boundary at sea, in the air or on land (referred to as "cross-border trips").

(4) Sub-paragraph (2)(b) is not satisfied unless, in order to do the work or provide the services, P has to be present (in person) on board the vehicle, aircraft or ship while it is travelling.

(5) Duties or activities of a purely incidental nature are to be ignored in deciding whether the duties of an employment or the activities of a trade consist of duties or activities of a kind described in sub-paragraph (2)(a) or (b).

UK ties

31 (1) What counts as a "UK tie" depends on whether P was resident in the UK for one or more of the 3 tax years preceding year X.

(2) If P was resident in the UK for one or more of those 3 tax years, each of the following types of tie counts as a UK tie—

(a) a family tie,
(b) an accommodation tie,
(c) a work tie,
(d) a 90-day tie, and
(e) a country tie.

(3) Otherwise, each of the following types of tie counts as a UK tie—

(a) a family tie,
(b) an accommodation tie,
(c) a work tie, and
(d) a 90-day tie.

(4) In order to have the requisite number of UK ties for year X, each tie of P's must be of a different type.

Family tie

32 (1) P has a family tie for year X if—

(a) in year X, a relevant relationship exists at any time between P and another person, and
(b) that other person is someone who is resident in the UK for year X.

(2) A relevant relationship exists at any time between P and another person if at the time—

(a) P and the other person are husband and wife or civil partners and, in either case, are not separated,
(b) P and the other person are living together as husband and wife or, if they are of the same sex, as if they were civil partners, or
(c) the other person is a child of P's and is under the age of 18.

(3) P does not have a family tie for year X by virtue of sub-paragraph (2)(c) if P sees the child in the UK on fewer than 61 days (in total) in—

(a) year X, or
(b) if the child turns 18 during year X, the part of year X before the day on which the child turns 18.

(4) A day counts as a day on which P sees the child if P sees the child in person for all or part of the day.

(5) "Separated" means separated—

(a) under an order of a court of competent jurisdiction,
(b) by deed of separation, or
(c) in circumstances where the separation is likely to be permanent.

33 (1) This paragraph applies in deciding for the purposes (only) of paragraph 32(1)(b) whether a person with whom P has a relevant relationship (a "family member") is someone who is resident in the UK for year X.

(2) A family tie based on the fact that a family member has, by the same token, a relevant relationship with P is to be disregarded in deciding whether that family member is someone who is resident in the UK for year X.

(3) A family member falling within sub-paragraph (4) is to be treated as being not resident in the UK for year X if the number of days that he or she spends in the UK in the part of year X outside term-time is less than 21.

(4) A family member falls within this sub-paragraph if he or she—
(a) is a child of P's who is under the age of 18,
(b) is in full-time education in the UK at any time in year X, and
(c) is resident in the UK for year X but would not be so resident if the time spent in full-time education in the UK in that year were disregarded.

(5) In sub-paragraph (4)—
(a) references to full-time education in the UK are to full-time education at a university, college, school or other educational establishment in the UK, and
(b) the reference to the time spent in full-time education in the UK is to the time spent there during term-time.

(6) For the purposes of this paragraph, half-term breaks and other breaks when teaching is not provided during a term are considered to form part of "term-time".

Accommodation tie

34 (1) P has an accommodation tie for year X if—
(a) P has a place to live in the UK,
(b) that place is available to P during year X for a continuous period of at least 91 days, and
(c) P spends at least one night at that place in that year.

(2) If there is a gap of fewer than 16 days between periods in year X when a particular place is available to P, that place is to be treated as continuing to be available to P during the gap.

(3) P is considered to have a "place to live" in the UK if—
(a) P's home or at least one of P's homes (if P has more than one) is in the UK, or
(b) P has a holiday home or temporary retreat (or something similar) in the UK, or
(c) accommodation is otherwise available to P where P can live when P is in the UK.

(4) Accommodation may be "available" to P even if P holds no estate or interest in it and even if P has no legal right to occupy it.

(5) If the accommodation is the home of a close relative of P's, sub-paragraph (1)(c) has effect as if for "at least one night" there were substituted "a total of at least 16 nights".

(6) A "close relative" is—

(a) a parent or grandparent,

(b) a brother or sister,

(c) a child aged 18 or over, or

(d) a grandchild aged 18 or over,

in each case, including by half-blood or by marriage or civil partnership.

Work tie

35 (1) P has a work tie for year X if P works in the UK for at least 40 days (whether continuously or intermittently) in year X.

(2) For these purposes, P works in the UK for a day if P does more than 3 hours' work in the UK on that day.

36 (1) This paragraph applies for the purposes of paragraph 35.

(2) It applies in cases where P has a relevant job on board a vehicle, aircraft or ship.

(3) When making a cross-border trip as part of that job—

(a) if the trip begins in the UK, P is assumed to do more than 3 hours' work in the UK on the day on which it begins,

(b) if the trip ends in the UK, P is assumed to do fewer than 3 hours' work in the UK on the day on which it ends.

(4) Those assumptions apply regardless of how late in the day the trip begins or ends (even if it begins or ends just before midnight).

(5) For the purposes of sub-paragraph (3)(a), it does not matter whether the trip ends on that same day.

(6) A day that falls within both paragraph (a) and paragraph (b) of sub-paragraph (3) is to be treated as if it fell only within paragraph (a).

(7) In the case of a cross-border trip to or from the UK that is undertaken in stages—

(a) the day on which the trip begins or, as the case may be, ends is the day on which the stage of the trip that involves crossing the UK border begins or ends, and

(b) accordingly, any day on which a stage is undertaken by P solely within the UK must (if it lasts for more than 3 hours) be counted separately as a day on which P does more than 3 hours' work in the UK.

90-day tie

37 P has a 90-day tie for year X if P has spent more than 90 days in the UK in—

(a) the tax year preceding year X,

(b) the tax year preceding that tax year, or

(c) each of those tax years separately.

Country tie

38 (1) P has a country tie for year X if the country in which P meets the midnight test for the greatest number of days in year X is the UK.

(2) If—

(a) P meets the midnight test for the same number of days in year X in two or more countries, and

(b) that number is the greatest number of days for which P meets the midnight test in any country in year X,

P has a country tie for year X if one of those countries is the UK.

(3) P meets the "midnight test" in a country for a day if P is present in that country at the end of that day.

PART 3

SPLIT YEAR TREATMENT

Introduction

39 This Part of this Schedule—

(a) explains when, as respects an individual, a tax year is a split year,

(b) defines the overseas part and the UK part of a split year, and

(c) amends certain enactments to provide for special charging rules in cases involving split years.

40 (1) The effect of a tax year being a split year is to relax the effect of paragraph 2(3) (which treats individuals who are UK resident "for" a tax year as being UK resident at all times in that year).

(2) When and how the effect of paragraph 2(3) is relaxed is defined in the special charging rules introduced by the amendments made by this Part.

(3) Subject to those special charging rules (and any other special charging rules for split years that may be introduced in the future), nothing in this Part alters an individual's residence status for a tax year or affects his or her liability to tax.

41 This Part—

(a) does not apply in determining the residence status of personal representatives, and

(b) applies to only a limited extent in determining the residence status of the trustees of a settlement (see section 475 of ITA 2007 and section 69 of TCGA 1992, as amended by this Part).

42 The existence of special charging rules for cases involving split years is not intended to affect any question as to whether an individual would fall to be regarded under double taxation arrangements as a resident of the UK.

Definition of a "split year"

43 (1) As respects an individual, a tax year is a "split year" if—

(a) the individual is resident in the UK for that year, and

(b) the circumstances of the case fall within—

(i) Case 1, Case 2 or Case 3 (cases involving actual or deemed departure from the UK), or

(ii) Case 4, Case 5, Case 6, Case 7 or Case 8 (cases involving actual or deemed arrival in the UK).

(2) The 8 Cases are described in paragraphs 44 to 51.

(3) In those paragraphs, the individual is referred to as "the taxpayer" and the tax year as "the relevant year".

(4) In applying Part 2 of this Schedule to those paragraphs, for "P" read "the taxpayer".

Case 1: starting full-time work overseas

44 (1) The circumstances of a case fall within Case 1 if they are as described in sub-paragraphs (2) to (4).

(2) The taxpayer was resident in the UK for the previous tax year (whether or not it was a split year).

(3) There is at least one period (consisting of one or more days) that—

(a) begins with a day that—

(i) falls within the relevant year, and

(ii) is a day on which the taxpayer does more than 3 hours' work overseas,

(b) ends with the last day of the relevant year, and

(c) satisfies the overseas work criteria.

(4) The taxpayer is not resident in the UK for the next tax year because the taxpayer meets the third automatic overseas test for that year (see paragraph 14).

(5) A period "satisfies the overseas work criteria" if—

(a) the taxpayer works sufficient hours overseas, as assessed over that period,

(b) during that period, there are no significant breaks from overseas work,

(c) the number of days in that period on which the taxpayer does more than 3 hours' work in the UK does not exceed the permitted limit, and

(d) the number of days in that period falling within sub-paragraph (6) does not exceed the permitted limit.

(6) A day falls within this sub-paragraph if—

(a) it is a day spent by the taxpayer in the UK, but

(b) it is not a day that is treated under paragraph 23(4) as a day spent by the taxpayer in the UK.

(7) To work out whether the taxpayer works "sufficient hours overseas" as assessed over a given period, apply paragraph 14(3) but with the following modifications—

(a) for "P" read "the taxpayer",

(b) for "year X" read "the period under consideration",

(c) for "365 (or 366 if year X includes 29 February)" read "the number of days in the period under consideration", and

(d) in paragraph 28(9)(b), as it applies for the purposes of step 3, for "30" read "the permitted limit".

(8) The permitted limit is—

(a) for sub-paragraphs (5)(c) and (7)(d), the number found by reducing 30 by the appropriate number, and

(b) for sub-paragraph (5)(d), the number found by reducing 90 by the appropriate number.

(9) The appropriate number is the result of—

$$A \times \frac{B}{12}$$

where—

"A" is—

(a) 30, for sub-paragraphs (5)(c) and (7)(d), or

(b) 90, for sub-paragraph (5)(d), and

"B" is the number of whole months in the part of the relevant year before the day mentioned in sub-paragraph (3)(a).

Case 2: the partner of someone starting full-time work overseas

45 (1) The circumstances of a case fall within Case 2 if they are as described in sub-paragraphs (2) to (6).

(2) The taxpayer was resident in the UK for the previous tax year (whether or not it was a split year).

(3) The taxpayer has a partner whose circumstances fall within Case 1 for—

(a) the relevant year, or

(b) the previous tax year.

(4) On a day in the relevant year, the taxpayer moves overseas so the taxpayer and the partner can continue to live together while the partner is working overseas.

(5) In the part of the relevant year beginning with the deemed departure day—

(a) the taxpayer has no home in the UK at any time, or has homes in both the UK and overseas but spends the greater part of the time living in the overseas home, and

(b) the number of days that the taxpayer spends in the UK does not exceed the permitted limit.

(6) The taxpayer is not resident in the UK for the next tax year.

(7) If sub-paragraph (3)(a) applies, the "deemed departure day" is the later of—

(a) the day mentioned in sub-paragraph (4), and

(b) the first day of what is, for the partner, the overseas part of the relevant year as defined for Case 1 (see paragraph 53).

(8) If sub-paragraph (3)(b) applies, the "deemed departure day" is the day mentioned in sub-paragraph (4).

(9) The permitted limit is the number found by reducing 90 by the appropriate number.

(10) The appropriate number is the result of—

$$A \times \frac{B}{12}$$

where—

"A" is 90, and

"B" is the number of whole months in the part of the relevant year before the deemed departure day.

Case 3: ceasing to have a home in the UK

46 (1) The circumstances of a case fall within Case 3 if they are as described in sub-paragraphs (2) to (6).

(2) The taxpayer was resident in the UK for the previous tax year (whether or not it was a split year).

(3) At the start of the relevant year the taxpayer had one or more homes in the UK but—

(a) there comes a day in the relevant year when P ceases to have any home in the UK, and

(b) from then on, P has no home in the UK for the rest of that year.

(4) In the part of the relevant year beginning with the day mentioned in sub-paragraph (3)(a), the taxpayer spends fewer than 16 days in the UK.

(5) The taxpayer is not resident in the UK for the next tax year.

(6) At the end of the period of 6 months beginning with the day mentioned in sub-paragraph (3)(a), the taxpayer has a sufficient link with a country overseas.

(7) The taxpayer has a "sufficient link" with a country overseas if and only if—

(a) the taxpayer is considered for tax purposes to be a resident of that country in accordance with its domestic laws, or

(b) the taxpayer has been present in that country (in person) at the end of each day of the 6-month period mentioned in sub-paragraph (6), or

(c) the taxpayer's only home is in that country or, if the taxpayer has more than one home, they are all in that country.

Case 4: starting to have a home in the UK only

47 (1) The circumstances of a case fall within Case 4 if they are as described in sub-paragraphs (2) to (4).

(2) The taxpayer was not resident in the UK for the previous tax year.

(3) At the start of the relevant year, the taxpayer did not meet the only home test, but there comes a day in the relevant year when that ceases to be the case and the taxpayer then continues to meet the only home test for the rest of that year.

(4) For the part of the relevant year before that day, the taxpayer does not have sufficient UK ties.

(5) The "only home test" is met if—

(a) the taxpayer has only one home and that home is in the UK, or
(b) the taxpayer has more than one home and all of them are in the UK.

(6) Paragraphs 17 to 20 (and Part 2 of this Schedule so far as it relates to those paragraphs) apply for the purposes of sub-paragraph (4) with the following adjustments—
(a) references in those paragraphs and that Part to year X are to be read as references to the part of the relevant year mentioned in sub-paragraph (4), and
(b) each number of days mentioned in the first column of the Table in paragraphs 18 and 19 is to be reduced by the appropriate number.

(7) The appropriate number is found by multiplying the number of days, in each case, by—

$$\frac{A}{12}$$

where "A" is the number of whole months in the part of the relevant year beginning with the day mentioned in sub-paragraph (3).

(8) Sub-paragraph (6)(a) does not apply to the references to year X in paragraphs 32(1)(b) and 33 of this Schedule (which relate to the residence status of family members) so those references must continue to be read as references to year X.

Case 5: starting full-time work in the UK

48 (1) The circumstances of a case fall within Case 5 if they are as described in sub-paragraphs (2) and (3).

(2) The taxpayer was not resident in the UK for the previous tax year.

(3) There is at least one period of 365 days in respect of which the following conditions are met—
(a) the period begins with a day that—
(i) falls within the relevant year, and
(ii) is a day on which the taxpayer does more than 3 hours' work in the UK,
(b) in the part of the relevant year before the period begins, the taxpayer does not have sufficient UK ties,
(c) the taxpayer works sufficient hours in the UK, as assessed over the period,
(d) during the period, there are no significant breaks from UK work, and
(e) at least 75% of the total number of days in the period on which the taxpayer does more than 3 hours' work are days on which the taxpayer does more than 3 hours' work in the UK.

(4) To work out whether the taxpayer works "sufficient hours in the UK" as assessed over a given period, apply paragraph 9(2) but for "P" read "the taxpayer".

(5) Paragraphs 17 to 20 (and Part 2 of this Schedule so far as it relates to those paragraphs) apply for the purposes of sub-paragraph (3)(b) with the following adjustments—

(a) references in those paragraphs and that Part to year X are to be read as references to the part of the relevant year mentioned in sub-paragraph (3)(b), and

(b) each number of days mentioned in the first column of the Table in paragraphs 18 and 19 is to be reduced by the appropriate number.

(6) The appropriate number is found by multiplying the number of days, in each case, by—

$$\frac{A}{12}$$

where "A" is the number of whole months in the part of the relevant year beginning with the day on which the 365-day period in question begins.

(7) Sub-paragraph (5)(a) does not apply to the references to year X in paragraphs 32(1)(b) and 33 of this Schedule (which relate to the residence status of family members) so those references must continue to be read as references to year X.

Case 6: ceasing full-time work overseas

49 (1) The circumstances of a case fall within Case 6 if they are as described in sub-paragraphs (2) to (4).

(2) The taxpayer—

(a) was not resident in the UK for the previous tax year because the taxpayer met the third automatic overseas test for that year (see paragraph 14), but

(b) was resident in the UK for one or more of the 4 tax years immediately preceding that year.

(3) There is at least one period (consisting of one or more days) that—

(a) begins with the first day of the relevant year,

(b) ends with a day that—

(i) falls within the relevant year, and

(ii) is a day on which the taxpayer does more than 3 hours' work overseas, and

(c) satisfies the overseas work criteria.

(4) The taxpayer is resident in the UK for the next tax year (whether or not it is a split year).

(5) A period "satisfies the overseas work criteria" if—

(a) the taxpayer works sufficient hours overseas, as assessed over that period,

(b) during that period, there are no significant breaks from overseas work,

(c) the number of days in that period on which the taxpayer does more than 3 hours' work in the UK does not exceed the permitted limit, and

(d) the number of days in that period falling within sub-paragraph (6) does not exceed the permitted limit.

(6) A day falls within this sub-paragraph if—

(a) it is a day spent by the taxpayer in the UK, but

(b) it is not a day that is treated under paragraph 23(4) as a day spent by the taxpayer in the UK.

(7) To work out whether the taxpayer works "sufficient hours overseas" as assessed over a given period, apply paragraph 14(3) but with the following modifications—

(a) for "P" read "the taxpayer",

(b) for "year X" read "the period under consideration",

(c) for "365 (or 366 if year X includes 29 February)" read "the number of days in the period under consideration", and

(d) in paragraph 28(9)(b), as it applies for the purposes of step 3, for "30" read "the permitted limit".

(8) The permitted limit is—

(a) for sub-paragraphs (5)(c) and (7)(d), the number found by reducing 30 by the appropriate number, and

(b) for sub-paragraph (5)(d), the number found by reducing 90 by the appropriate number.

(9) The appropriate number is the result of—

$$A \times \frac{B}{12}$$

where—

"A" is—

(a) 30, for sub-paragraphs (5)(c) and (7)(d), or

(b) 90, for sub-paragraph (5)(d), and

"B" is the number of whole months in the part of the relevant year after the 365-day period in question ends.

Case 7: the partner of someone ceasing full-time work overseas

50 (1) The circumstances of a case fall within Case 7 if they are as described in sub-paragraphs (2) to (6).

(2) The taxpayer was not resident in the UK for the previous tax year.

(3) The taxpayer has a partner whose circumstances fall within Case 6 for—

(a) the relevant year, or

(b) the previous tax year.

(4) On a day in the relevant year, the taxpayer moves to the UK so the taxpayer and the partner can continue to live together on the partner's return or relocation to the UK.

(5) In the part of the relevant year before the deemed arrival day—

(a) the taxpayer has no home in the UK at any time, or has homes in both the UK and overseas but spends the greater part of the time living in the overseas home, and

(b) the number of days that the taxpayer spends in the UK does not exceed the permitted limit.

(6) The taxpayer is resident in the UK for the next tax year (whether or not it is a split year).

(7) If sub-paragraph (3)(a) applies, the "deemed arrival day" is the later of—

(a) the day mentioned in sub-paragraph (4), and
(b) the first day of what is, for the partner, the UK part of the relevant year as defined for Case 6 (see paragraph 54).

(8) If sub-paragraph (3)(b) applies, the "deemed arrival day" is the day mentioned in sub-paragraph (4).

(9) The permitted limit is the number found by reducing 90 by the appropriate number.

(10) The appropriate number is the result of—

$$A \times \frac{B}{12}$$

where—

"A" is 90, and

"B" is the number of whole months in the part of the relevant year beginning with the deemed arrival day.

Case 8: starting to have a home in the UK

51 (1) The circumstances of a case fall within Case 8 if they are as described in sub-paragraphs (2) to (5).

(2) The taxpayer was not resident in the UK for the previous tax year.

(3) At the start of the relevant year, the taxpayer had no home in the UK but—
(a) there comes a day when, for the first time in that year, the taxpayer does have a home in the UK, and
(b) from then on, the taxpayer continues to have a home in the UK for the rest of that year and for the whole of the next tax year.

(4) For the part of the relevant year before the day mentioned in sub-paragraph (3)(a), the taxpayer does not have sufficient UK ties.

(5) The taxpayer is resident in the UK for the next tax year and that tax year is not a split year as respects the taxpayer.

(6) Paragraphs 17 to 20 (and Part 2 of this Schedule so far as it relates to those paragraphs) apply for the purposes of sub-paragraph (4) with the following adjustments—
(a) references in those paragraphs and that Part to year X are to be read as references to the part of the relevant year mentioned in sub-paragraph (4), and
(b) each number of days mentioned in the first column of the Table in paragraphs 18 and 19 is to be reduced by the appropriate number.

(7) The appropriate number is found by multiplying the number of days, in each case, by—

$$\frac{A}{12}$$

where "A" is the number of whole months in the part of the relevant year beginning with the day mentioned in sub-paragraph (3)(a).

(8) Sub-paragraph (6)(a) does not apply to the references to year X in paragraphs 32(1)(b) and 33 of this Schedule (which relate to the residence

status of family members) so those references must continue to be read as references to year X.

General rules for construing Cases 1 to 8

52 (1) This paragraph applies for the purposes of paragraphs 44 to 51.

(2) A reference to "the previous tax year" is to the tax year preceding the relevant year.

(3) A reference to "the next tax year" is to the tax year following the relevant year.

(4) "Partner", in relation to the taxpayer, means—

(a) a husband or wife or civil partner,

(b) if the taxpayer and another person are living together as husband and wife, that other person, or

(c) if the taxpayer and another person of the same sex are living together as if they were civil partners, that other person.

(5) If calculation of the appropriate number results in a number of days that is not a whole number, the appropriate number is to be rounded up or down as follows—

(a) if the first figure after the decimal point is 5 or more, round the appropriate number up to the nearest whole number,

(b) otherwise, round it down to the nearest whole number.

The overseas part

53 (1) "The overseas part" of a split year is the part of that year defined below—

(a) for the Case in question, or

(b) if the taxpayer's circumstances fall within more than one Case, for the Case which has priority (see paragraphs 54 and 55).

(2) For Case 1, the overseas part is—

(a) if there is only one period falling within paragraph 44(3), the part beginning with the first day of that period, and

(b) if there is more than one such period, the part beginning with the first day of the longest of those periods.

(3) For Case 2, the overseas part is the part beginning with the deemed departure day as defined in paragraph 45(7) and (8).

(4) For Case 3, the overseas part is the part beginning with the day mentioned in paragraph 46(3)(a).

(5) For Case 4, the overseas part is the part before the day mentioned in paragraph 47(3).

(6) For Case 5, the overseas part is—

(a) if there is only one period falling within paragraph 48(3), the part before that period begins, and

(b) if there is more than one such period, the part before the first of those periods begins.

(7) For Case 6, the overseas part is—

(a) if there is only one period falling within paragraph 49(3), the part ending with the last day of that period, and

(b) if there is more than one such period, the part ending with the last day of the longest of those periods.

(8) For Case 7, the overseas part is the part before the deemed arrival day as defined in paragraph 50(7) and (8).

(9) For Case 8, the overseas part is the part before the day mentioned in paragraph 51(3)(a).

Priority between Cases 1 to 3

54 (1) This paragraph applies to determine which Case has priority where the taxpayer's circumstances for the relevant year fall within two or all of the following—

Case 1 (starting full-time work overseas);

Case 2 (the partner of someone starting full-time work overseas);

Case 3 (ceasing to have a home in the UK).

(2) Case 1 has priority over Case 2 and Case 3.

(3) Case 2 has priority over Case 3.

Priority between Cases 4 to 8

55 (1) This paragraph applies to determine which Case has priority where the taxpayer's circumstances for the relevant year fall within two or more of the following—

Case 4 (starting to have a home in the UK only);

Case 5 (starting full-time work in the UK);

Case 6 (ceasing full-time work overseas);

Case 7 (the partner of someone ceasing full-time work overseas);

Case 8 (starting to have a home in the UK).

(2) In this paragraph "the split year date" in relation to a Case means the final day of the part of the relevant year defined in paragraph 53(5) to (9) for that Case.

(3) If Case 6 applies—

(a) if Case 5 also applies and the split year date in relation to Case 5 is earlier than the split year date in relation to Case 6, Case 5 has priority;

(b) otherwise, Case 6 has priority.

(4) If Case 7 (but not Case 6) applies—

(a) if Case 5 also applies and the split year date in relation to Case 5 is earlier than the split year date in relation to Case 7, Case 5 has priority;

(b) otherwise, Case 7 has priority

(5) If two or all of Cases 4, 5 and 8 apply (but neither Case 6 nor Case 7), the Case which has priority is the one with the earliest split year date.

(6) But if, in a case to which sub-paragraph (5) applies, two or all of the Cases which apply share the same split year date and that date is the only, or

earlier, split year date of the Cases which apply, the Cases with that split year date are to be treated as having priority.

The UK part

56 "The UK part" of a split year is the part of that year that is not the overseas part.

Special charging rules for employment income

57 ITEPA 2003 is amended as follows.

58 (1) In section 15 (earnings for year when employee UK resident), for subsection (1) substitute—

"(1) This section applies to general earnings for a tax year for which the employee is UK resident except that, in the case of a split year, it does not apply to any part of those earnings that is excluded.

(1A) General earnings are "excluded" if they—

(a) are attributable to the overseas part of the split year, and

(b) are neither—

(i) general earnings in respect of duties performed in the United Kingdom, nor

(ii) general earnings from overseas Crown employment subject to United Kingdom tax."

(2) After subsection (3) insert—

"(4) Any attribution required for the purposes of subsection (1A)(a) is to be done on a just and reasonable basis.

(5) The following provisions of Chapter 5 of this Part apply for the purposes of subsection (1A)(b) as for the purposes of section 27(2)—

(a) section 28 (which defines "general earnings from overseas Crown employment subject to United Kingdom tax"), and

(b) sections 38 to 41 (which contain rules for determining the place of performance of duties of employment).

(6) Subject to any provision made in an order under section 28(5) for the purposes of subsection (1A)(b), provisions made in an order under that section for the purposes of section 27(2) apply for the purposes of subsection (1A)(b) too."

59 In section 22 (chargeable overseas earnings for year when remittance basis applies and employee outside section 26), for subsection (7) substitute—

"(7) Section 15(1) does not apply to general earnings within subsection (1)."

60 (1) Section 23 (calculation of "chargeable overseas earnings") is amended as follows.

(2) In subsection (3), for step 1 substitute—

"*Step 1*

Identify—

(a) in the case of a tax year that is not a split year, the full amount of the overseas earnings for that year, and

(b) in the case of a split year, so much of the full amount of the overseas earnings for that year as is attributable to the UK part of the year."

(3) In that subsection, in step 2, for "those earnings" substitute "the earnings identified under step 1".

(4) After that subsection insert—

"(4) Any attribution required for the purposes of step 1 or step 2 in subsection (3) is to be done on a just and reasonable basis."

61 (1) Section 24 (limit on chargeable overseas earnings where duties of associated employment performed in UK) is amended as follows.

(2) After subsection (2) insert—

"(2A) If the tax year is a split year as respects the employee, subsection (2) has effect as if for "the aggregate earnings for that year from all the employments concerned" there were substituted "so much of the aggregate earnings for that year from all the employments concerned as is attributable to the UK part of that year"."

(3) After subsection (3) insert—

"(3A) Any attribution required for the purposes of subsection (2A) is to be done on a just and reasonable basis."

62 (1) Section 26 (foreign earnings for year when remittance basis applies and employee meets section 26A requirement) is amended as follows.

(2) In subsection (1), for the words from "if the general earnings" to the end substitute "if the general earnings meet all of the following conditions—

(a) they are neither—

(i) general earnings in respect of duties performed in the United Kingdom, nor

(ii) general earnings from overseas Crown employment subject to United Kingdom tax, and

(b) if the tax year is a split year as respects the employee, they are attributable to the UK part of the year."

(3) After subsection (5) insert—

"(5A) Any attribution required for the purposes of subsection (1)(b) is to be done on a just and reasonable basis."

(4) For subsection (6) substitute—

"(6) Section 15(1) does not apply to general earnings within subsection (1)."

63 In section 232 (giving effect to mileage allowance relief), after subsection (6) insert—

"(6A) If the earnings from which a deduction allowed under this section is deductible include earnings that are "excluded" within the meaning of section 15(1A)—

(a) the amount of the deduction allowed is a proportion of the amount that would be allowed under this section if the tax year were not a split year, and

(b) that proportion is equal to the proportion that the part of the earnings that is not "excluded" bears to the total earnings."

64 (1) Section 329 (deduction from earnings not to exceed earnings) is amended as follows.

(2) After subsection (1) insert—

"(1A) If the earnings from which a deduction allowed under this Part is deductible include earnings that are "excluded" within the meaning of section 15(1A)—

(a) the amount of the deduction allowed is a proportion of the amount that would be allowed under this Part if the tax year were not a split year, and

(b) that proportion is equal to the proportion that the part of the earnings that is not "excluded" bears to the total earnings."

(3) In subsection (2), after "those earnings" insert "(or, in a case within subsection (1A), the part of those earnings that is not "excluded")".

(4) In subsection (3), after "the earnings" insert "(or, in a case within subsection (1A), the part of the earnings that is not "excluded")".

65 (1) Section 394 (charge on employer-financed retirement benefits) is amended as follows.

(2) In subsection (4C), omit "or" at the end of paragraph (b) and after that paragraph insert—

"(ba) an amount which would count as employment income of the employee or former employee under that Chapter but for the application of section 554Z5 (overlap with earlier relevant step), or".

(3) In that subsection, for paragraph (c) substitute—

"(c) an amount which would be within paragraph (a), (b) or (ba) apart from—

(i) the employee or former employee having been non-UK resident for any tax year, or

(ii) any tax year having been a split year as respects the employee or former employee."

66 (1) Section 421E (income relating to securities: exclusions about residence etc) is amended as follows.

(2) For subsection (1) substitute—

"(1) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if the acquisition occurs in a tax year that is not a split year as respects the employee and—

(a) the earnings from the employment for that tax year are not general earnings to which section 15, 22 or 26 applies (earnings for year when employee UK resident), or

(b) had there been any earnings from the employment for that tax year, they would not have been general earnings to which any of those sections applied.

(1A) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if the acquisition occurs in the UK part of a tax year that is a split year as respects the employee and—

(a) the earnings from the employment attributable to that part of the year are not general earnings to which section 15, 22 or 26 applies, or

(b) had there been any earnings from the employment attributable to that part of the year, they would not have been general earnings to which any of those sections applied.

(1B) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if the acquisition occurs in the overseas part of a tax year that is a split year as respects the employee."

(3) After subsection (2) insert—

"(2A) But Chapters 3A to 3D do apply in relation to employment-related securities in relation to which they are disapplied by subsection (2) if—

(a) the acquisition takes place in the overseas part of a tax year that is a split year as respects the employee,

(b) the tax year is a split year because the circumstances of the case fall within Case 1, Case 2 or Case 3 as described in Part 3 of Schedule 45 to FA 2013 (split year treatment: cases involving actual or deemed departure from the United Kingdom), and

(c) had it not been a split year—

(i) the earnings from the employment for that tax year (or some of them) would have been general earnings to which section 15, 22 or 26 applied, or

(ii) if there had been any earnings from the employment for that tax year, they (or some of them) would have been general earnings to which any of those sections applied."

67 In section 474 (cases where Chapter 5 of Part 7 does not apply), for subsection (1) substitute—

"(1) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if the acquisition occurs in a tax year that is not a split year as respects the employee and—

(a) the earnings from the employment are not general earnings to which section 15, 22 or 26 applies (earnings for year when employee UK resident), or

(b) had there been any earnings from the employment, they would not have been general earnings to which any of those sections applied.

(1A) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if the acquisition

occurs in the UK part of a tax year that is a split year as respects the employee and—

(a) the earnings from the employment attributable to that part of the year are not general earnings to which section 15, 22 or 26 applies (earnings for year when employee UK resident), or

(b) had there been any earnings from the employment attributable to that part of the year, they would not have been general earnings to which any of those sections applied.

(1B) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if the acquisition occurs in the overseas part of a tax year that is a split year as respects the employee."

68 (1) Section 554Z4 (residence issues) is amended as follows.

(2) For subsections (3) to (5) substitute—

"(3) Subsection (4) applies if the value of the relevant step, or a part of it, is "for"—

(a) a tax year for which A is non-UK resident, or

(b) a tax year that is a split year as respects A.

(4) The value, or the part of it, is to be reduced—

(a) in a case within subsection (3)(a), by so much of the value, or the part of it, as is not in respect of UK duties, and

(b) in a case within subsection (3)(b), by so much of the value, or the part of it, as is both—

(i) attributable to the overseas part of the tax year, and

(ii) not in respect of UK duties.

(5) The extent to which—

(a) the value, or the part of it, is not in respect of UK duties, or

(b) so much of the value, or the part of it, as is attributable to the overseas part of the tax year is not in respect of UK duties,

is to be determined on a just and reasonable basis."

(3) After subsection (5) insert—

"(5A) Any attribution required for the purposes of subsection (4)(b)(i) is to be done on a just and reasonable basis.

(5B) "UK duties" means duties performed in the United Kingdom."

69 In section 554Z6 (overlap with certain earnings), in subsection (1)(a), after "UK resident" insert "(and, in the case of a tax year that is a split year as respects A, are not "excluded" by virtue of section 15(1A)(a) and (b)(i))".

70 In section 554Z9 (remittance basis: A is ordinarily UK resident), in subsection (5)—

(a) in paragraph (b), after "that income" insert "(or of so much of it as is attributable to the UK part of the relevant tax year, if it was a split year as respects A)", and

(b) in paragraph (c), after "tax year" insert "(or the UK part of it)".

71 (1) Section 554Z10 (remittance basis: A is not ordinarily resident) is amended as follows.

(2) In subsection (1), for paragraph (a) substitute—

"(a) the value of the relevant step, or a part of it, is "for" a tax year ("the relevant tax year") as determined under section 554Z4,".

(3) For subsection (2) substitute—

"(2) The overseas portion of (as the case may be)—

(a) A's employment income by virtue of section 554Z2(1), or

(b) the relevant part of A's employment income by virtue of that section,

is "taxable specific income" in a tax year so far as the overseas portion is remitted to the United Kingdom in that year."

(4) After that subsection insert—

"(2A) "The overseas portion" of A's employment income by virtue of section 554Z2(1), or of the relevant part of that income, is so much of that income, or of the relevant part of it, as is not in respect of UK duties.

(2B) "UK duties" means duties performed in the United Kingdom."

(5) In subsection (3), for "this purpose" substitute "the purposes of this section".

(6) For subsection (4) substitute—

"(4) The extent to which—

(a) the employment income, or the relevant part of it, is not in respect of UK duties, or

(b) so much of the employment income, or of the relevant part of it, as is attributable to the UK part of the relevant tax year is not in respect of UK duties,

is to be determined on a just and reasonable basis."

Special charging rules for pension income

72 (1) Section 575 of ITEPA 2003 (foreign pensions: taxable pension income) is amended as follows.

(2) In subsection (1), after "subsections" insert "(1A),".

(3) After that subsection insert—

"(1A) If the person liable for the tax under this Part is an individual and the tax year is a split year as respects that individual, the taxable pension income for the tax year is the full amount of the pension income arising in the UK part of the year, subject to subsections (2) and (3) and section 576A."

(4) In subsection (2), after "tax year" insert "or, as the case may be, the UK part of the tax year".

PAYE income

73 (1) Section 690 of ITEPA 2003 (employee non-residents etc) is amended as follows.

(2) In subsection (1), omit "only".

(3) After that subsection insert—

"(1A) This section also applies in relation to an employee in a tax year if it appears to an officer of Revenue and Customs that—

(a) the tax year is likely to be a split year as respects the employee, and

(b) the employee works or will work in the United Kingdom and also works or is likely to work outside the United Kingdom."

Special charging rules for trading income

74 ITTOIA 2005 is amended as follows.

75 In section 6 (territorial scope of charge to tax), after subsection (2) insert—

"(2A) If the tax year is a split year as respects a UK resident individual, this section has effect as if, for the overseas part of that year, the individual were non-UK resident."

76 (1) Section 17 (effect of becoming or ceasing to be UK resident) is amended as follows.

(2) For subsection (1) substitute—

"(1) This section applies if—

(a) an individual carries on a trade otherwise than in partnership, and

(b) there is a change of residence.

(1A) For the purposes of this section there is a "change of residence" if—

(a) the individual becomes or ceases to be UK resident, or

(b) a tax year is, as respects the individual, a split year.

(1B) The change of residence occurs—

(a) in a case falling within subsection (1A)(a), at the start of the tax year for which the individual becomes or ceases to be UK resident, and

(b) in a case falling within subsection (1A)(b), at the start of whichever of the UK part or the overseas part of the tax year is the later part."

(3) In subsection (2), at the beginning insert "If this section applies and the individual does not actually cease permanently to carry on the trade immediately before the change of residence occurs,".

77 In section 243 (post-cessation receipts: extent of charge to tax), after subsection (5) insert—

"(6) If the tax year is a split year as respects a UK resident individual, this section has effect as if, for the overseas part of that year, the individual were non-UK resident."

78 In section 849 (calculation of firm's profits or losses), after subsection (3)

insert—

"(3A) For any tax year that is a split year as respects the partner, this section has effect as if the partner were non-UK resident in the overseas part of the year."

79 (1) Section 852 (carrying on by partner of notional trade) is amended as follows.

(2) For subsection (6) substitute—

"(6) If there is a change of residence, the partner is treated as permanently ceasing to carry on one notional trade when that change of residence occurs and starting to carry on another immediately afterwards."

(3) After subsection (7) insert—

"(8) Subsections (1A) and (1B) of section 17 apply for the purposes of subsection (6)."

80 (1) Section 854 (carrying on by partner of notional business) is amended as follows.

(2) For subsection (5) substitute—

"(5) If there is a change of residence, the partner is treated as permanently ceasing to carry on one notional business when that change of residence occurs and starting to carry on another immediately afterwards."

(3) After that subsection insert—

"(5A) Subsections (1A) and (1B) of section 17 apply for the purposes of subsection (5)."

Special charging rules for property income

81 In section 270 of ITTOIA 2005 (profits of property businesses: income charged), after subsection (2) insert—

"(3) If, as respects an individual carrying on an overseas property business, the tax year is a split year—

(a) tax is charged under this Chapter on so much of the profits referred to in subsection (1) as arise in the UK part of the tax year, and

(b) the portion of the profits arising in the overseas part of the tax year is, accordingly, not chargeable to tax under this Chapter.

(4) In determining how much of the profits arise in the UK part of the tax year—

(a) determine first how much of the non-CAA profits arise in the UK part by apportioning the non-CAA profits between the UK part and the overseas part on a just and reasonable basis, and

(b) then adjust the portion of the non-CAA profits arising in the UK part by deducting any CAA allowances for the year and adding any CAA charges for the year.

(5) In subsection (4)—

"CAA allowances" means allowances treated under section 250 or 250A of CAA 2001 (capital allowances for overseas property businesses) as an expense of the business;

"CAA charges" means charges treated under either of those sections as a receipt of the business;

"non-CAA profits" means profits before account is taken of any CAA allowances or CAA charges."

Special charging rules for savings and investment income

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

83 In section 368 (territorial scope of charges in respect of savings and investment income), after subsection (2) insert—

"(2A) If income arising to an individual who is UK resident arises in the overseas part of a split year, it is to be treated for the purposes of this section as arising to a non-UK resident."

84 In section 465 (person liable for tax on gains from life insurance etc: individuals), after subsection (1) insert—

"(1A) But if the tax year is a split year as respects the individual, the individual is not liable for tax under this Chapter in respect of gains arising in the overseas part of that year (subject to section 465B)."

85 In section 467 (person liable: UK resident trustees), in subsection (4), after paragraph (a) insert—

"(aa) is UK resident but the gain arises in the overseas part of a tax year that is, as respects the person who created the trusts, a split year,".

86 (1) Section 528 (reduction in amount charged under Chapter 9 of Part 4: non-UK resident policy holders) is amended as follows.

(2) The amendments made by sub-paragraphs (3) to (6) apply to section 528 as substituted by paragraph 3 of Schedule 8 to this Act, and have effect in relation to policies and contracts in relation to which that section as so substituted has effect.

(3) In subsection (1)(b), for the words from "on which" to the end substitute "that are foreign days".

(4) After subsection (1) insert—

"(1A) "Foreign days" are—

(a) days falling within any tax year for which the individual is not UK resident, and

(b) days falling within the overseas part of any tax year that is a split year as respects the individual."

(5) In subsection (3), in the definition of "A", for "days falling within subsection (1)(b)" substitute "foreign days".

(6) In subsection (8), for "subsection (1)(b)" substitute "subsection (1A)(a) and (b)".

(7) The amendments made by sub-paragraphs (8) to (10) apply to section 528 as in force immediately before the substitution mentioned in sub-paragraph (2) so far as that section as so in force continues to have effect after the substitution.

(8) In subsection (1), for the words from "the policy holder" to the end substitute "there are one or more days in the policy period that are foreign days."

(9) After that subsection insert—

"(1A) "Foreign days" are—

(a) days on which the policy holder is not UK resident, and

(b) days falling within the overseas part of any tax year that is a split year as respects the policy holder (if the policy holder is an individual)."

(10) In subsection (3), in the definition of "A", for the words from "on which" to the end substitute "in the policy period that are foreign days, and".

87 (1) Section 528A (reduction in amount charged on basis of non-UK residence of deceased person), as inserted by paragraph 3 of Schedule 8 to this Act, is amended as follows.

(2) In subsection (1)(b), for the words from "on which" to the end substitute "that were foreign days".

(3) In subsection (2)—

(a) in paragraph (b), for the words from "on which" to the end substitute "that were foreign days, and", and

(b) for paragraph (c), substitute—

"(c) the deceased died—

(i) in a tax year for which the deceased was UK resident but not one that was a split year as respects the deceased, or

(ii) in the UK part of a tax year that was a split year as respects the deceased."

(4) After that subsection insert—

"(2A) "Foreign days" are—

(a) days falling within any tax year for which the deceased was not UK resident, and

(b) days falling within the overseas part of any tax year that was a split year as respects the deceased."

(5) In subsection (4), in the definition of "A", for the words from "are days falling" to the end substitute "were foreign days, and".

(6) In subsection (8), for "subsection (1)(b) or (2)(b)" substitute "subsection (2A)(a) and (b)".

88 (1) Section 536 (top slicing relieved liability: one chargeable event) is amended as follows.

(2) The amendment made by sub-paragraph (3) applies to section 536 as amended by paragraph 5 of Schedule 8 to this Act, and has effect in accordance with paragraph 7 of that Schedule.

(3) For subsection (7) substitute—

"(7) If in the case of the individual the gain is reduced under section 528—

(a) divide the number of foreign days in the material interest period (as determined in accordance with that section, including subsections (7) and (8)) by 365,

(b) if the result is not a whole number, round it down to the nearest whole number, and

(c) reduce N, for steps 1 and 3 in subsection (1), by the number found by applying paragraphs (a) and (b)."

(4) The amendment made by sub-paragraph (5) applies to section 536 as in force immediately before it is amended by paragraph 5 of Schedule 8 to this Act, so far as that section as so in force continues to have effect after it is so amended.

(5) For subsection (7) substitute—

"(7) If the gain is from such a policy—

(a) divide the number of foreign days in the policy period (as defined in section 528) by 365,

(b) if the result is not a whole number, round it down to the nearest whole number, and

(c) reduce N, for steps 1 and 3 in subsection (1), by the number found by applying paragraphs (a) and (b)."

Special charging rules for miscellaneous income

89 In section 577 (territorial scope of charges in respect of miscellaneous income), after subsection (2) insert—

"(2A) If income arising to an individual who is UK resident arises in the overseas part of a split year, it is to be treated for the purposes of this section as arising to a non-UK resident."

Special charging rules for relevant foreign income charged on remittance basis

90 In section 832 of ITTOIA 2005 (relevant foreign income charged on remittance basis), for subsection (2) substitute—

"(2) For any tax year for which the individual is UK resident, income tax is charged on the full amount of so much (if any) of the relevant foreign income as is remitted to the United Kingdom—

(a) in that year, or

(b) in the UK part of that year, if that year is a split year as respects the individual."

91 (1) Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad) is amended as follows in consequence of the amendment made by the preceding paragraph.

(2) In section 726 (non-UK domiciled individuals to whom remittance basis applies), after subsection (4) insert—

"(5) In the application of section 832 of ITTOIA 2005 to the foreign deemed income, subsection (2) of that section has effect with the omission of paragraph (b)."

(3) In section 730 (non-UK domiciled individuals to whom remittance basis applies), after subsection (4) insert—

"(5) In the application of section 832 of ITTOIA 2005 to the foreign deemed income, subsection (2) of that section has effect with the omission of paragraph (b)."

(4) In section 735 (non-UK domiciled individuals to whom remittance basis applies), after subsection (4) insert—

"(5) In the application of section 832 of ITTOIA 2005 to the foreign deemed income, subsection (2) of that section has effect with the omission of paragraph (b)."

Special charging rules for capital gains

92 TCGA 1992 is amended as follows.

93 (1) Section 2 (persons and gains chargeable to capital gains tax, and allowable losses) is amended as follows.

(2) After subsection (1A) (inserted by Schedule 46 to this Act) insert—

"(1B) If the year is a split year as respects an individual, the individual is not chargeable to capital gains tax in respect of any chargeable gains accruing to the individual in the overseas part of that year.

(1C) But subsection (1B)—

(a) does not apply to chargeable gains in respect of which the individual would have been chargeable to capital gains tax under section 10, had the individual been not resident in the UK for the year, and

(b) is without prejudice to section 10A."

(3) In subsection (2)—

(a) after "the year of assessment" insert "or, where subsection (1B) applies, the UK part of that year", and

(b) in paragraph (a), after "that year of assessment" insert "or that part (as the case may be)".

94 (1) Section 3A (reporting limits) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), after "year of assessment" insert "or, if that year is a split year as respects the individual, the UK part of that year", and

(b) in paragraph (b), after "in that year" insert "or, as the case may be, that part of the year".

(3) In subsection (2), after "year of assessment" insert "(or the UK part of such a year)".

95 (1) Section 12 (non-UK domiciled individuals to whom remittance basis applies) is amended as follows.

(2) After subsection (2) insert—

"(2A) If that tax year is a split year as respects the individual, the chargeable gains are treated as accruing to the individual in the part

of the year (the overseas part or the UK part) in which the foreign chargeable gains are so remitted."

(3) In subsection (3), after "that year" insert "or, where applicable, that part of the year".

96 In section 13 (attribution of gains to members of non-resident companies), after subsection (3) insert—

"(3A) Subsection (2) does not apply in the case of a participator who is an individual if—

(a) the tax year in which the chargeable gain accrues to the company is a split year as respects the participator, and

(b) the chargeable gain accrues to the company in the overseas part of that year."

97 In section 16 (computation of losses), after subsection (3) insert—

"(3A) If the person is an individual and the year is a split year as respects that individual, subsection (3) also applies to a loss accruing to the individual in the overseas part of that year."

98 In section 16ZB (individual who has made election under section 16ZA: foreign chargeable gains remitted in tax year after tax year in which accrue), in subsection (1)(c), after "tax year" insert "or a part of the applicable tax year".

99 (1) Section 16ZC (individual who has made election under section 16ZA and to whom remittance basis applies) is amended as follows.

(2) In subsection (3)—

(a) in paragraph (a), after "that year" insert "or, if that year is a split year as respects the individual, in the UK part of that year", and

(b) in paragraph (b), after "that year" insert "or they are so remitted in that year but it is a split year as respects the individual and they are so remitted in the overseas part of the year".

(3) In subsection (7), in the definition of "relevant allowable losses", after "tax year" insert "or a part of the tax year".

100 In section 86 (attribution of gains to settlors with interest in non-resident or dual resident settlements), in subsection (4)(a), after "the year" insert "or if, as respects the settlor, the year is a split year, in the UK part of that year".

101 In section 87 (non-UK resident settlements: attribution of gains to beneficiaries), after subsection (6) insert—

"(7) If the relevant tax year is a split year as respects a beneficiary of the settlement—

(a) the amount on which the beneficiary is chargeable to capital gains tax by virtue of this section for that year (in respect of the settlement) is a portion of the amount on which the beneficiary would have been so chargeable if the relevant tax year had not been a split year, and

(b) the portion is the portion attributable to the UK part of the relevant tax year calculated on a time apportionment basis."

Trustees of a settlement

102 In section 69 of TCGA 1992 (trustees of settlements), after subsection (2D) insert—

"(2DA) A trustee who is resident in the United Kingdom for a tax year is to be treated for the purposes of subsections (2A) and (2B) as if he or she were not resident in the United Kingdom for that year if—

(a) the trustee is an individual,

(b) the individual becomes or ceases to be a trustee of the settlement during the tax year,

(c) that year is a split year as respects the individual, and

(d) in that year, the only period when the individual is a trustee of the settlement falls wholly within the overseas part of the year.

(2DB) Subsection (2DA) is subject to subsection (2D) and, accordingly, an individual who is treated under subsection (2DA) as not resident is, in spite of that, to be regarded as resident whenever the individual acts as mentioned in subsection (2D)."

103 In section 475 of ITA 2007 (residence of trustees), after subsection (6) insert—

"(7) Subsection (8) applies if—

(a) an individual becomes or ceases to be a trustee of the settlement during a tax year,

(b) that year is a split year as respects the individual, and

(c) the only period in that year when the individual is a trustee of the settlement falls wholly within the overseas part of the year.

(8) The individual is to be treated for the purposes of subsections (4) and (5) as if he or she had been non-UK resident for the year (and hence for the period in that year when he or she was a trustee of the settlement).

(9) But subsection (8) is subject to subsection (6) and, accordingly, an individual who is treated under subsection (8) as having been non-UK resident is, in spite of that, to be treated as UK resident whenever the individual acts as mentioned in subsection (6)."

Definitions in enactments relating to income tax and CGT

104 (1) Section 288 of TCGA 1992 (interpretation) is amended as follows.

(2) In subsection (1), insert the following definition in the appropriate place—

""split year", as respects an individual, means a tax year that, as respects that individual, is a split year within the meaning of Part 3 of Schedule 45 to the Finance Act 2013 (statutory residence test: split year treatment);".

(3) After subsection (1ZA) insert—

"(1ZB) A reference in this Act to "the overseas part" or "the UK part" of a split year is to be read in accordance with Part 3 of Schedule 45 to the Finance Act 2013 (statutory residence test: split year treatment)."

105 In Part 2 of Schedule 1 to ITEPA 2003 (index of defined expressions), insert the following entries in the appropriate places—

"the overseas part	section 989 of ITA 2007",
"split year	section 989 of ITA 2007", and
"the UK part	section 989 of ITA 2007".

106 In Part 2 of Schedule 4 to ITTOIA 2005 (index of defined expressions), insert the following entries in the appropriate places—

"the overseas part	section 989 of ITA 2007",
"split year	section 989 of ITA 2007", and
"the UK part	section 989 of ITA 2007".

107 In section 989 of ITA 2007 (definitions for purposes of Income Tax Acts), insert the following definitions in the appropriate places—

""the overseas part", in relation to a split year, has the meaning given in Part 3 of Schedule 45 to FA 2013 (statutory residence test: split year treatment);",

""split year", in relation to an individual, means a tax year that, as respects that individual, is a split year within the meaning of Part 3 of Schedule 45 to FA 2013 (statutory residence test: split year treatment);", and

""the UK part", in relation to a split year, has the meaning given in Part 3 of Schedule 45 to FA 2013 (statutory residence test: split year treatment);".

108 In Schedule 4 to that Act (index of defined expressions), insert the following entries in the appropriate places—

"the overseas part	section 989",
"split year	section 989", and
"the UK part	section 989".

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.

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—

"576ATemporary 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—
(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))."

117 In ITEPA 2003, for section 579CA substitute—

"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 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.

(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 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

(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—

"(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—

"394ATemporary 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—

(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;

"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."

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—

"572ATemporary 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—

"(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,

(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—

"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

(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.

(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;

"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—

"689ATemporary 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

(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—

"812ATemporary 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—
(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;

"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.

(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)."

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".

PART 5

MISCELLANEOUS

Interpretation

145 In this Schedule—

"corporation tax" includes any amount assessable or chargeable as if it were corporation tax;

"country" includes a state or territory;

"cross-border trip" is defined in paragraph 30;

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

"employment"—

(a) has the meaning given in section 4 of ITEPA 2003, and

(b) includes an office within the meaning of section 5(3) of that Act;

"enactment" means an enactment whenever passed (including this Act) and includes—

(a) an Act of the Scottish Parliament,

(b) a Measure or Act of the National Assembly for Wales,

(c) any Northern Ireland legislation as defined by section 24(5) of the Interpretation Act 1978, and

(d) any Orders in Council, orders, rules, regulations, schemes warrants, byelaws and other instruments made under an enactment (including anything mentioned in paragraphs (a) to (c) of this definition);

"home" is to be construed in accordance with paragraph 25;

"individual" means an individual acting in any capacity (including as trustee or personal representative);

"overseas" means anywhere outside the UK;

"parenting leave" means maternity leave, paternity leave, adoption leave or parental leave (whether statutory or otherwise);

"relevant job on board a vehicle, aircraft or ship" is defined in paragraph 30;

"ship" includes any kind of vessel (including a hovercraft);

"significant break from overseas work" is defined in paragraph 29;

"significant break from UK work" is defined in paragraph 29;

"split year", as respects an individual, means a tax year that is, as respects that individual, a split year within the meaning of Part 3 of this Schedule;

"trade" also includes—

(a) a profession or vocation,

(b) anything that is treated as a trade for income tax purposes, and

(c) the commercial occupation of woodlands (within the meaning of section 11(2) of ITTOIA 2005);

"work" is defined in paragraph 26;

"UK" means the United Kingdom, including the territorial sea of the United Kingdom;

"UK tie" is defined in paragraph 31;

"whole month" means the whole of January, the whole of February and so on, except that the period from the start of a tax year to the end of April is to count as a whole month.

146 In relation to an individual who carries on a trade—

(a) a reference in this Schedule to annual leave or parenting leave is to reasonable amounts of time off from work for the same purposes as the purposes for which annual leave or parenting leave is taken, and

(b) what are "reasonable amounts" is to be assessed having regard to the annual leave or parenting leave to which an employee might reasonably expect to be entitled if doing similar work.

147 A reference in this Schedule to a number of days being less than a specified number includes a case where the number of days is zero.

Consequential amendments

148 (1) TCGA 1992 is amended as follows.

(2) Omit section 9.

(3) In section 288 (interpretation)—

(a) in subsection (1), insert the following definition at the appropriate place—

""resident" means resident in accordance with the statutory residence test in Part 1 of Schedule 45 to the Finance Act 2013;", and

(b) in the Table in subsection (8), omit the entry for the expressions "resident" and "ordinarily resident".

149 In section 27 of ITEPA 2003 (UK-based earnings for year when employee not UK resident), in subsection (1), for "in which" substitute "for which".

150 In section 465 of ITTOIA 2005 (gains from contracts for life insurance etc: liability of individuals), in subsection (1), for "in the tax year" substitute "for the tax year".

151 (1) Chapter 4 of Part 2 of FA 2005 (trusts with vulnerable beneficiary) is amended as follows.

(2) In section 28 (vulnerable person's liability: VQTI), for subsection (4) substitute—

"(4) Where the vulnerable person is non-UK resident for the tax year, his or her income tax liability for the purposes of determining TLV1 and TLV2 is to be computed in accordance with the Income Tax Acts on the assumption that—

(a) he or she is UK resident for the tax year,

(b) that year is not, as respects him or her, a split year within the meaning of Part 3 of Schedule 45 to FA 2013, and

(c) he or she is domiciled in the United Kingdom throughout that year."

(3) In section 30 (qualifying trusts gains: special capital gains tax treatment)—

(a) in subsection (2)(a) and (b), for "during" substitute "for", and

(b) omit subsection (5).

(4) In section 31 (UK resident vulnerable persons: amount of relief), in subsection (1), for "during" substitute "for".

(5) In section 32 (non-UK resident vulnerable persons: amount of relief), in subsection (1), for "during" substitute "for".

(6) In section 41—

(a) in subsection (1), insert the following definitions in the appropriate places—

""non-UK resident" means not resident in the United Kingdom in accordance with the statutory residence test in Part 1 of Schedule 45 to FA 2013,", and

""UK resident" means resident in the United Kingdom in accordance with the statutory residence test in Part 1 of Schedule 45 to FA 2013.", and

(b) omit subsection (2).

152 (1) ITA 2007 is amended as follows.

(2) In section 809B (claim for remittance basis to apply), in subsection (1)(a), for "in that year" substitute "for that year".

(3) In section 809D (application of remittance basis without claim where unremitted foreign income and gains under £2,000), in subsection (1)(a), for "in that year" substitute "for that year".

(4) In section 809E (application of remittance basis without claim: other cases), in subsection (1)(a), for "in that year" substitute "for that year".

(5) In section 810 (limits on liability to income tax of non-UK residents: overview of Chapter), after subsection (3) insert—

"(4) In relation to an individual—

(a) a reference in this Chapter to a non-UK resident's liability to income tax is a reference to the liability of someone who is non-UK resident for the tax year for which the liability arises, and

(b) accordingly, enactments under which income arising to a UK resident in the overseas part of a split year is treated as arising to a non-UK resident are of no relevance to this Chapter."

(6) Omit sections 829 to 832.

Commencement

153 (1) Parts 1 and 2 of this Schedule have effect for determining whether individuals are resident or not resident in the UK for the tax year 2013-14 or any subsequent tax year.

(2) Part 3 of this Schedule has effect in calculating an individual's liability to income tax or capital gains tax for the tax year 2013-14 or any subsequent tax year.

(3) Part 4 of this Schedule has effect if the year of departure (as defined in that Part) is the tax year 2013-14 or a subsequent tax year.

Transitional and saving provision

154 (1) This paragraph applies if—

(a) year X or, in Part 3 of this Schedule, the relevant year is the tax year 2013-14, 2014-15, 2015-16, 2016-17 or 2017-18, and

(b) it is necessary to determine under this Schedule whether an individual was resident or not resident in the UK for a tax year before the tax year 2013-14 (a "pre-commencement tax year").

(2) The question under this Schedule is to be determined in accordance with the rules in force for determining an individual's residence for that pre-commencement tax year (and not in accordance with the statutory residence test).

(3) But an individual may by notice in writing to Her Majesty's Revenue and Customs elect, as respects one or more pre-commencement tax years, for the question under this Schedule to be determined instead in accordance with the statutory residence test.

(4) A notice under sub-paragraph (3)—

(a) must be given no later than the first anniversary of the end of year X or, in a Part 3 case, the relevant year, and

(b) is irrevocable.

(5) Unless, in relation to a pre-commencement tax year, an election is made under sub-paragraph (3) as respects that year—

(a) paragraph 10(b) of this Schedule has effect in relation to that year as if the words "by virtue of meeting the automatic residence test" were omitted,

(b) paragraph 16 of this Schedule has effect in relation to that year as if—

(i) in sub-paragraph (1)(b), the words "because P met the third automatic overseas test for each of those years" were omitted, and

(ii) in sub-paragraph (2)(a), the words "because P met the third automatic overseas test for that year" were omitted, and

(c) paragraph 49 of this Schedule has effect in relation to that year as if in sub-paragraph (2)(a) for the words from "because" to the end there were substituted "in circumstances where the taxpayer was working overseas full-time for the whole of that year."

155 (1) This paragraph applies if—

(a) year X or, for Part 3 of this Schedule, the tax year for which an individual's liability to tax is being calculated is the tax year 2013-14 or a subsequent tax year, and

(b) it is necessary to determine under a provision of this Schedule, or a provision inserted by Part 3 of this Schedule, whether a tax year before the tax year 2013-14 (a "pre-commencement tax year") was a split year as respects the individual.

(2) The provision is to have effect as if—

(a) the reference to a split year were to a tax year to which the relevant ESC applied, and

(b) any reference to the UK part or the overseas part of such a year were to the part corresponding as far as possible, in accordance with the terms of the relevant ESC, to the UK part or the overseas part of a split year.

(3) Where the provision also refers to cases involving actual or deemed departure from the UK, the reference is to be read and given effect so far as possible in accordance with the terms of the relevant ESC.

(4) "The relevant ESC" means whichever of the extra-statutory concessions to which effect is given by Part 3 of this Schedule is relevant in the individual's case.

156 (1) Sub-paragraph (2) applies in determining whether the test in paragraph 50(3) is met where the relevant year is the tax year 2013-14.

(2) The circumstances of a partner of the taxpayer are to be treated as falling within Case 6 for the previous tax year if the partner was eligible for split year treatment in relation to that tax year under the relevant ESC on the grounds that he or she returned to the United Kingdom after a period working overseas full-time.

(3) Where the circumstances of a partner are treated as falling within Case 6 under sub-paragraph (2), the reference in paragraph 50(7)(b) to the UK part of the relevant year as defined for Case 6 is a reference to the part corresponding, so far as possible, in accordance with the terms of the relevant ESC, to the UK part of that year.

(4) "The relevant ESC" means whichever of the extra-statutory concessions to which effect is given by Part 3 of this Schedule is relevant in the partner's case.

157 (1) This paragraph applies in determining whether the test in paragraph 110(1)(c) is met in relation to a tax year before the tax year 2013-14 (a "pre-commencement tax year").

(2) Paragraph 110(1) is to have effect as if for paragraph (c) there were substituted—

"(c) at least 4 out of the 7 tax years immediately preceding the year of departure was a tax year meeting the following conditions—

(i) the individual was resident in the UK for that year, and

(ii) there was no time in that year when the individual was Treaty non-resident (see paragraph 112(3))."

(3) Whether an individual was resident in the UK for a pre-commencement tax year is to be determined in accordance with the rules in force for determining an individual's residence for that pre-commencement tax year (and not in accordance with the statutory residence test).

158 (1) The existing temporary non-resident provisions, as in force immediately before the day on which this Act is passed, continue to have effect on and after that day in any case where the year of departure (as defined in Part 4 of this Schedule) is a tax year before the tax year 2013-14.

(2) Where those provisions continue to have effect by virtue of sub-paragraph (1)—

(a) the question of whether a person is or is not resident in the UK for the tax year 2013-14 or a subsequent tax year is to be determined for the purposes of those provisions in accordance with Part 1 of this Schedule, but

(b) the effect of Part 3 is to be ignored.

(3) The existing temporary non-resident provisions are—

(a) section 10A of TCGA 1992 (chargeable gains),

(b) section 576A of ITEPA 2003 (income withdrawals under certain foreign pensions),
(c) section 579CA of that Act (income withdrawals under registered pension schemes), and
(d) section 832A of ITTOIA (relevant foreign income charged on remittance basis).

159 Section 13 of FA 2012 (Champions League final 2013) is to be read and given effect, on and after the day on which this Act is passed, as if section 218 and this Schedule had not been enacted.

SCHEDULE 46

Section 219

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

SECTION III

ANALYSES

ANALYSIS: EXAMPLE 1

Mr A spent 269 midnights in the UK in 2013/14. 225 of those were due to exceptional circumstances[1] so a maximum of 60 days did not count as days spent in the UK under the Exceptional Circumstances Exception. That left 209 days (269 – 60) as days which counted as days spent in the UK. He did not satisfy any of the Automatic Overseas Tests. He did, however, satisfy the First Automatic UK Test because he had spent more than 182 days in the UK. He was, therefore, resident in the UK for 2013/14.

Assuming that none of the hospitals in which he has stayed has been his 'home', he does not fall within any of the Split Year Cases and so he is subject to tax on all of the gains and income arising to him in the year, subject to the Remittance Basis.[2] Unfortunately, because his only source of income was the income arising on the proceeds of his business disposal which he had deposited with a UK bank, as a UK resident he was fully taxable on all of the income which arose to him in

[1] This assumes that the Courts would so construe para. 22(4)(b) (see Chapter 4) that his period in a coma would be a period to which the Exceptional Circumstances Exception could apply

[2] As Mr A had lived in Shangri-La 'all of his life' and had only made what was intended to be a short term visit, it is clear that it is very unlikely that he would have a UK domicile

the year as the Remittance Basis does not apply to UK source income. If he had been not ordinarily resident[3] in 2013/14, having made the declaration required by ITA 2007 s.858, his UK tax liability would have been restricted to nil by ITA 2007 s.811.

[3] For 2013/14 the declaration required is that the individual concerned is not ordinarily resident in the UK. From the 6th April 2014 this is amended to 'not resident' (FA 2013 Sch. 46, paras. 54 & 68)

ANALYSIS: EXAMPLE 2

Mr A did not meet any of the Automatic Overseas Tests in 2013/14 or 2014/15 nor the First, Second or Fourth Automatic UK Tests. Did he meet the Third Automatic UK Test?

Para. 9(1)(a): Did Mr A work sufficient hours in the UK assessed over a period of 365 days?

As we have said, there could be many 365-day periods over which compliance with para. 9(1) might be assessed. We shall look at the period from 1st October 2013 to 30th September 2014 because that period starts with the first day on which Mr A does more than 3 hours in the UK.

Step 1

Identify any days in the period on which P does more than 3 hours' work overseas, including ones on which P also does work in the UK on the same day. The days so identified are referred to as "disregarded days".

There were 30 days on which Mr A did more than 3 hours work overseas and so there were 30 disregarded days.

Step 2

Add up (for all employments held and trades carried on by P) the total number

of hours that P works in the UK during the period, but ignoring any hours that P works in the UK on disregarded days. The result is referred to as P's "net UK hours".

Mr A had 1791 ((229 – 30) x 9) net UK hours.

Step 3

Subtract from 365 -

(a) the total number of disregarded days, and

(b) any days that are allowed to be subtracted, in accordance with the rules in paragraph 28 of this Schedule, to take account of periods of leave and gaps between employments.

The result is referred to as the "reference period".

	365
Disregarded days	<30>
Annual leave:-	
24th – 27th, 30th & 31st December 2013 1st January 2014 18th and 21st April 2014 5th & 26th May 2014 1st, 4th – 8th, 11th – 15th, 18th – 22nd, 25th – 29th August 2014	<32>
Embedded Days being the weekends of:-	
28th & 29th December 2013 9th & 10th, 16th & 17th, 23rd & 24th August 2014	<8>
	295

Step 4

Divide the reference period by 7. If the answer is more than 1 and is not a whole number, round down to the nearest whole number. If the answer is less than 1, round up to 1.

$$\frac{295}{7} = 42$$

Step 5

Divide P's net UK hours by the number resulting from step 4.

If the answer is 35 or more, P is considered to work "sufficient hours in the UK" as assessed over the 365-day period in question.

$$\frac{1791}{42} = 42.6$$

Mr A, therefore, worked sufficient hours in the UK over the period.

<u>Para. 9(1)(b): Were there any significant breaks from UK work in this period?</u>

Mr A had no significant breaks from his UK work in this period because, although he did not work throughout August 2014 which was a period of 31 days, 17[4] days of this period were annual leave on 'which [he] would have done more than 3 hours work in the UK but for being on annual leave...'.[5]

[4] Mr A took 20 days of annual leave in August but 3 of those days would have been days on which he would have been working overseas attending the monthly meeting

[5] Para. 29(1)(b)

Para. 9(1)(c): All or part of the period in (a) falls within the fiscal year

As the period used in (a) was 1st October 2013 to 30th September 2014 this condition was satisfied both in respect of 2013/14 and 2014/15.

Para. 9(1)(d): More than 75% of the total number of days in the 365-day period when Mr A did more than 3 hours work were days when he did more than 3 hours work in the UK

All the days on which Mr A worked in the period were days when he did more than 3 hours of work in the UK except the 3 days of each month (except August and December) which he spent travelling to and attending the meetings in Shangri-La. The calculation under (d) was therefore:-

$$\frac{229 - 30}{229} \times 100 = 86.9\%$$

Mr A, therefore, met the Third Automatic UK Test in both 2013/14 and 2014/15 and was resident in the UK in both years. This was in spite of the fact that in these two fiscal years he spent less than 42% of all midnights in the UK, spent all of the rest of his time in Shangri-La, had only one UK tie in 2013/14 (a Work Tie) and two in 2014/15 (a Work Tie and a 90-Day Tie) and had no other connection with the UK at all.

ANALYSIS: EXAMPLE 3

For 2013/14 onwards he would not meet any of the Automatic Overseas Tests nor any of the Automatic UK Tests.

In the years 2013/14 to 2015/16 he would have been UK resident in at least one of the 3 preceding fiscal years. Therefore the number of ties which would be sufficient for him to meet the Sufficient Ties Test would be as shown in the centre column of the table in para. 21.1.1 above. He would have an Accommodation Tie in every year because his UK home would be available for his use. In 2013/14 and 2014/15 he would have a 90-Day Tie because he would have spent more than 90 days in the UK in 2011/12 and 2012/13.

In respect of each year from 2013/14 onwards he would not have a Family Tie, a Work Tie or a Country Tie.

So in 2013/14 and 2014/15, having 2 UK ties, he would be able to spend up to 90 days in the UK without satisfying the Sufficient Ties Test and without, therefore, being UK resident.

In 2015/16 he would not have a 90-Day Tie[6] and so he could spend up to 120 days in the UK without becoming UK resident. From 2016/17 onwards he would not have been resident in the UK in any of the 3 preceding fiscal years. The number of ties required for Mr A to meet the Sufficient Ties Test, therefore, would be as set out in the right hand column of the table at para. 21.1.1. In those years he would have an Accommodation Tie and a 90-Day Tie[7] so he could spend up to 120 days per year in the UK without becoming UK resident.

It will be noticed that in each year he intended to spend 10 days less in the UK than the maximum he could spend without becoming UK resident. That was to leave himself a small margin for error in case some unforeseen circumstance arose which would not qualify as an exceptional circumstance under the Exceptional Circumstances Exception.[8]

6 Because he would have spent less than 91 days in the UK in 2013/147 and 2014/15
7 Because he proposes to spend 110 days in the UK in 2015/16 onwards
8 His carefully laid plans might still have failed if he had died in any of the years concerned, particularly if he had died in 2014/15 shortly after the redemption of the loan notes and his planned visits had been made in the early part of the fiscal year

ANALYSIS: EXAMPLE 4

In 2014/15, Mr A did not meet any of the Automatic Overseas Tests. He met the Second Automatic UK Test because he had a home in the UK for part of the fiscal year and there was a 91-day period (for example, the 91-day period ending on 10th May 2014) during which he had that home and no other, 30 days of which fell within 2014/15 and he spent at least 30 days (in fact 35) in that home in 2014/15. He was therefore resident in 2014/15.

He fell within Case 3 of the Split Year Rules because:-

- during the fiscal year there was a day (10th May 2014, 'that day') on which he ceased to have a home in the UK;
- he had no UK home thereafter;
- he spent fewer than 16 days in the UK in the period beginning with that day (in fact he spent no days in the UK at all in that period);
- he was not resident in the UK in the following fiscal year (being dead);
- at the end of six months beginning with that day he had a sufficient link with Shangri-La.

2014/15 was, therefore, a split year in respect of Mr A and the overseas part of that year was 10th May 2014 to 5th April 2015 (inclusive). That did not, however,

affect his residence status. The time immediately before his death was the key time for determining his estate by reference to which IHT was charged on his death.[9] That time fell in 2014/15 for which he was UK resident. He had been resident in the UK for 17 of the 20 years of assessment ending with the year assessment (2014/15) in which he died and so was deemed to be domiciled in the UK under IHTA 1984 s.267 immediately before his death.[10]

His entire estate was, therefore, not excluded property[11] and was charged to Inheritance Tax of £7,870,000 ((£20 million - £325,000) @ 40%). Had he died on 6th April 2015 no IHT would have been chargeable on his estate because he would have been UK resident for only 16 out of the previous 20 years at the point immediately before his death. [12]

[9] IHTA 1984 ss.4 – 6
[10] IHTA 1984 s.4
[11] IHTA 1984 s.6
[12] Unless, arguably, he died at the first instant of that day

ANALYSIS: EXAMPLE 5

Analysis

Residence

2014/15

In 2014/15 Mr A did not meet any of the Automatic Overseas Tests. He did not meet the First, Second[13] or Fourth UK Tests. Did he meet the Third Automatic UK Test?

Para. 9(1)(a)

Did he work sufficient hours in the UK as assessed over a period of 365 days? We shall consider the period from 2nd February 2015 – 1st February 2016.

Step 1

Identify any days in the period on which P does more than 3 hours' work overseas, including ones on which P also does work in the UK on the same day. The days so identified are referred to as "disregarded days".

Mr A worked overseas on 6 days (24th January 2016 – 29th January 2016 inclusive and 1st February 2016). He therefore had 6 disregarded days.

[13] This assumes that neither his daughter's home nor the hotels in which he stayed were Mr A's home at any time

Step 2

Add up (for all employments held and trades carried on by P) the total number of hours that P works in the UK during the period, but ignoring any hours that P works in the UK on disregarded days.

The result is referred to as P's "net UK hours".

In this period Mr A did 2,120 hours of work in the UK.

Step 3

Subtract from 365 -

(a) the total number of disregarded days, and

(b) any days that are allowed to be subtracted, in accordance with the rules in paragraph 28 of this Schedule, to take account of periods of leave and gaps between employments.

The result is referred to as the "reference period".

Days in Period		365
Less:		
Disregarded Days	6	
Annual Leave[14]	43	
Parental Leave	0	
Sick Leave	0	
Embedded Days[15]	6	
		55
Reference Period		310

Step 4

Divide the reference period by 7. If the answer is more than 1 and is not a whole number, round down to the nearest whole number. If the answer is less than 1,

[14] Annual Leave for this purpose is a reference to 'reasonable amounts of time off from work for the same purposes as the purposes for which annual leave … is taken' (para. 146). Mr A did not work on the weeks beginning 2nd February, 9th February, 23rd March, 13th April, 14th December, 21st December and 28th December 2015. He also did not work on the Fridays of 20th & 27th February, 6th, 13th and 20th March and 3rd, 10th and 24th April 2015. It is assumed that this leave was taken for the same purposes as annual leave within para. 146 and was of a reasonable amount within para. 28. It will be noticed that although Mr A did no work in the UK between 23rd January 2016 and 1st February 2016 these were not days of annual leave. The 23rd & 24th and 30th & 31st January 2016 were weekends and 25th – 29th January 2016 were days on which he worked overseas. We have assumed that when Mr A changed from working 5 days a week to 4 days a week that the Fridays he took off were equivalent to annual leave rather than being days on which Mr A was 'not normally expected to work … according to [his] … usual pattern of work' (para. 28(6))

[15] The Embedded Days were 7th & 8th February 2015 and 19th & 20th, and 26th & 27th December 2015. Although Mr A did not work in the UK from 23rd January to 1st February 2016 none of these days met the conditions of para. 28(5) because the days when he did not work in the UK from 25th January – 29th January 2016 and 1st February were not annual leave

round up to 1.

$$\frac{310}{7} = 44 \text{ (Rounded)}$$

Step 5

Divide P's net UK hours by the number resulting from step 4. If the answer is 35 or more, P is considered to work "sufficient hours in the UK" as assessed over the 365-day period in question.

$$\frac{2120}{44} = 48.18$$

Mr A, therefore, worked sufficient hours in the UK over the 365-day period.

Para. 9(1)(b)

During this period there were no significant breaks from UK work because there was no period of 31 days or more on each day of which Mr A either did not work for 3 hours in the UK or would not have worked that amount of time were it not for the fact that he was on annual leave.

Para. 9(1)(c)

Part of the 365-day period fell within the fiscal year 2014/15.

Para. 9(1)(d)

More than 75% of the total number of days in the 365-day period on which Mr A did more than 3 hours work on the days on which he did more than 3 hours work

in the UK. The calculation was:-

$$\frac{\text{212 days working in the UK}}{\text{218 days}^{16}\text{ working in total}} \times 100 = 97.2\%$$

Para. 9(1)(e)

At least one day which fell both in the 365-day period and in the fiscal year 2014/15 was a day on which Mr A did more than 3 hours work in the UK.

Mr A therefore met the Third Automatic UK Test for the fiscal year 2014/15 and was, therefore, resident in the UK in that year.

2015/16

Mr A did not meet any of the Automatic Overseas Tests in 2015/16. He spent 293 days in the UK subject to the Exceptional Circumstances Exception in the year. Did the Exceptional Circumstances Exception apply at all and, if so, during what period? Immediately after the accident, one might argue that Mr A was not prevented from leaving in the UK by his daughter's accident. Although she was badly injured she was not in a critical condition and was not thought to be in danger. From 25th June to 30th September 2015 she was considered to be in danger. Thereafter she was not. Arguably the Exceptional Circumstances Exception only applied during the period when she was considered to be 'in

[16] 213 days plus 6 disregarded days

danger'. If that is the case that was a period of 97 midnights. The Exceptional Circumstances Exception is restricted to 60 days in the year.[17] So it cannot reduce a period in the UK by more than that. For that reason, even if it applied, Mr A was still treated as having spent 233 (293 – 60) days in the UK in 2015/16 and therefore he met the First Automatic UK Test.

He also met the Third Automatic UK Test by reference to the same period as he met it in respect of 2014/15.

The Split Year Rules

In 2014/15 Cases 1 – 3 did not apply to Mr A because he was not resident in the UK for 2013/14. He also did not meet the conditions of Case 4, Case 6, Case 7 and Case 8. Did his circumstances fall within Case 5?

Para. 48(2)

Mr A was not resident in 2013/14.

Para. 48(3)

We cannot consider whether the conditions of para. 48(3) are satisfied by reference to the same period which we used to consider the application of the Third Automatic UK Test to 2014/15 (and indeed to 2015/16 as well). That is because

[17] So even if he satisfied the condition of being prevented from leaving the UK by Exceptional Circumstances for a longer period than just the period from 25th June 2015 to 30th September 2015 the number of days deducted under the exception would still have been only 60

the first day of that period was not a day on which Mr A did more than 3 hours work in the UK. We must, therefore, look at the period starting on 16th February 2015 and ending on 15th February 2016.

In the part of the Relevant Year before this period began, did Mr A have sufficient UK Ties? In order to answer that question we have to apply the modifications in para. 48(5) to paras. 17 – 20 and Part 2 of the *SRT Schedule*. The numbers in the table in para. 19 are to be reduced by the appropriate number in each case. The appropriate number is found by multiplying the number of days in each case by:-

$$\frac{\text{The number of whole months in the part of the relevant year beginning with the day on which the 365-day in question begins (that is 16th February 2015)}}{12}$$

$$\frac{1}{12}$$

The table in para. 19 therefore became:-

Days Spent by Mr A in the UK in 2014/15	**Number of Ties that are Sufficient**
More than 41 but not more than 82	All 4
More than 82 but not more than 110	At least 3
More than 110	At least 2

Mr A spent just 15 days in the UK in the part of the Relevant Year before the 365-

day period so he could not have Sufficient UK Ties in that period.

Did Mr A work sufficient hours in the UK as assessed over the period? The amount under Step 5 of para. 9(2) as modified by para. 48(4) was again 48.18 hours so Mr A worked sufficient hours in the UK in this period.

During this period there were no significant breaks from UK work. There would have been a significant break from UK work if at least 31 days went by and not one of those days was a day on which Mr A did more than 3 hours work in the UK or a day on which Mr A would have done more than 3 hours work in the UK but for being on annual leave, sick leave or parenting leave.

Mr A's longest break from work in the UK in the 365-day period was between 24th January 2016 and 15th February 2016. This was a period of less than 31 days.

At least 75% of the total number of days in the period on which Mr A did more than 3 hours work were days on which he did more than 3 hours in the UK calculated as follows:-

$$\frac{\text{Working days in the UK}}{\text{Total working days}}$$

$$\frac{212}{228} \times 100 = 93.0\%$$

Mr A's circumstances therefore fell within Case 5 of the Split Year Rules. The overseas part of the year was the period from 6th April 2014 to 15th February 2015 (inclusive) and the UK part was the period from 16th February 2015 to 5th April 2015 (inclusive).

2015/16

In 2015/16 Cases 4 – 8 could not apply to Mr A because he was resident in the UK in 2014/15. In 2015/16 Mr A's circumstances did not fall within Cases 2 or 3 of the Split Year Rules. Did they fall within Case 1 of those rules?

Para. 44(2)

Mr A was resident in the UK for 2014/15.

Para. 44(3)

Mr A met the condition of para. 44(3) in respect of the period 25th January 2016 – 5th April 2016 (inclusive) because this was a period which began with a day that fell within the Relevant Year on which Mr A did more than 3 hours work overseas and ended with the last day of the Relevant Year and satisfied the overseas work criteria in this period.

Para. 44(4)

Mr A was not resident in the UK for the following fiscal year, 2016/17. He not only met the Third Automatic Overseas Test in that year but also the First

Automatic Overseas Test. It is assumed that this is sufficient to satisfy the condition that he was not resident in the UK for the next fiscal year because he met the Third Automatic Overseas Test for that year.

On this basis Mr A's circumstances fell within Case 1 of the Split Year Rules. The overseas part of the year was the period from 25th January 2016 to 5th April 2016 and the UK part of the year was the period from 6th April 2015 to 24th January 2016.

A Summary of Mr A's Residence and split year status

Mr A was, therefore, resident in the UK in both 2014/15 and 2015/16. Both years were split years in respect of Mr A. The overseas part of 2014/15 was the period from 6th April 2014 to 15th February 2015 (inclusive) and so the UK part was the period from 16th February 2015 to 5th April 2015 (inclusive). The UK part of 2015/16 was the period from 6th April 2015 to 24th January 2016 and the overseas part was the period from 25th January 2016 to 5th April 2016.

CGT Consequences

Becoming absolutely entitled to settled property

Mr A's grandfather's trust fell within TCGA 1992 s.87. The payment of the trust capital to Mr A on 31st May 2014 was a capital payment which was matched with one half of the unmatched trust gains of £2 million so he was deemed to realise a

gain of £1 million. Under TCGA 1992 s.87(7) a portion of this gain is chargeable even though the capital payment was made in the overseas part of the year. The portion which is chargeable is the 'portion attributable to the UK part of the relevant fiscal year calculated on a time apportionment basis'. The following proportion is treated as chargeable:-

$$\frac{\text{Days in the UK part of the year}}{\text{Days in the year}} \times \text{£1m}$$

$$\frac{49}{365} \times \text{£1m} = \text{£134,247}$$

As a non-domiciliary, provided Mr A makes a claim, the Remittance Basis will apply to him. Section 87B applies a Remittance Basis to the capital payments charge. Under those provisions the moneys advanced to Mr A are treated as property deriving from the chargeable gains.[18] If this property was remitted to the UK, the chargeable gains will be treated as having been remitted to the UK. The property was remitted to the UK because it was transferred to MCo's UK bank account to be held on bare trusts for Mr A.

[18] TCGA 1992 s.87B(3)

The acquisition & redemption of Mr A's loan notes issued by SLPlc

When Mr A disposed of his shares in exchange for loan notes on 30th June 2014 no gain arose because the exchange fell within TCGA 1992 s.116(10).[19]

The chargeable gain instead accrued on the redemption of the loan notes under TCGA 1992 s.116(10)(b) on 30th June 2015. Because that was in the UK part of the split year and the proceeds of the disposal were remitted on that day Mr A realised a chargeable gain of £600,000 in 2015/16.

The Disposal of a commercial building

The disposal of a commercial building on 15th March 2016 gave rise to a loss but it was not an allowable loss as the disposal was made in the overseas part of the split year.

Mr A had therefore realised the following chargeable gains:-

2014/15	-	£134,247
2015/16	-	£600,000

He received no relief for the capital loss he realised in 2015/16.

His failure to appreciate the complexities of the interaction between the SRT, the

[19] There is no election for this treatment. Where the conditions of TCGA 1992 s.116(1) & (10) are satisfied the treatment is mandatory

Split Year Rules and CGT had been an expensive mistake.

ANALYSIS: EXAMPLE 6

Analysis

Para. 110(1)(a)

All years up to and including 2012/13 were years when Mr A had sole UK residence.[20] In respect of Mr A, 2013/14 was a split year under Case 3 of the Split Year Rules.[21] The overseas part of that year began on 30th August 2013 when Mr A ceased to have any home in the UK and so the period up to 29th August 2013 was a sole UK residence period.[22] So Mr A had a sole UK residence period (Period A) which ran from 6th April 2013 to 29th August 2013 (inclusive).

Para. 110(1)(b)

Immediately following the ending of Period A on 29th August 2013 Mr A did not have sole UK residence. In respect of a residence period which is a part of a split year, an individual can have sole UK residence only in the UK part.[23]

Para. 110(1)(c)

His year of departure was the fiscal year which included Period A; that is, 2013/14. At least 4 of the 7 years immediately preceding his year of departure had been years in which Mr A had sole UK residence. He had in fact been resident in the UK in all 7 of those years.

[20] Para. 112(1)
[21] Para. 46
[22] Paras. 46(3)(a), 53(4) and 112(2)
[23] Para. 112(2)

Para. 110(1)(d)

Mr A became UK resident again in 2018/19 under the First Automatic UK Test because he spent more than 183 days in the UK in that year. This was so even if his entire stay in the UK in the fiscal year 2018/19 was due to exceptional circumstances within paras. 22(4) and (5).[24]

He spent 244 days in the UK in that fiscal year and only 60 of these could be disregarded under the Exceptional Circumstances Exception. So at least 184 days were counted as days spent in the UK and he was UK resident under the First Automatic UK Test.

He did not meet the conditions of Cases 4 – 8 of the Split Year Rules in that year (the cases which apply to persons becoming resident in the UK) because he did not have a home in the UK in the year,[25] he did not work at all in the year[26] and he did not move to the UK with a partner whose circumstances fell within Case 6.[27]

[24] In respect of fiscal years before 2013/14 the Authors' understand that HMRC has not normally accepted that an individual who travelled to the UK to be with such a relative falls within the non-statutory exceptional circumstances exception. The *Guidance* says, however, in respect of the SRT that '... there may also be limited situations where an individual who comes back to the UK to deal with a sudden life threatening illness or injury to a partner or dependent child can have those days spent in the UK ignored ...' (see Chapter 4 and *Guidance* paras. B11 & B12)

[25] Paras. 47 & 51

[26] Paras. 48 & 49

[27] Para. 50

His temporary period of non-residence, therefore, began on 30th August 2013 and ended on 5th April 2018 (inclusive).[28] That was a period of five years or less and so he was temporarily non-resident.[29]

The result of this was that the gain he made on 30th April 2015 was deemed to accrue on 6th April 2018 under TCGA 1992 s.10A and he was chargeable to UK CGT.[30]

His care for his mother had proved to be very costly indeed.

[28] Para. 113
[29] Para. 110(1)(d)
[30] Para. 119 and TCGA 1992 s.10A