



Income Tax Act 2007

2007 CHAPTER 3

PART 13

TAX AVOIDANCE

CHAPTER 1

TRANSACTIONS IN SECURITIES

Introduction

682 Overview of Chapter

- (1) This Chapter makes provision for counteracting income tax advantages obtained or obtainable by persons to whom section 684 applies in respect of a transaction or transactions in securities.
- (2) See section 698 (counteraction notices) for the way in which the income tax advantages may be counteracted.

683 Meaning of “income tax advantage”

- (1) In this Chapter “income tax advantage” means—
 - (a) a relief from income tax or increased relief from income tax,
 - (b) a repayment of income tax or increased repayment of income tax,
 - (c) the avoidance or reduction of a charge to income tax or an assessment to income tax, or
 - (d) the avoidance of a possible assessment to income tax.
- (2) For the purposes of subsection (1)(c) and (d) it does not matter whether the avoidance or reduction is effected—

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- (a) by receipts accruing in such a way that the recipient does not pay or bear income tax on them, or
 - (b) by a deduction in calculating profits or gains.
- (3) In this section “relief from income tax” includes a tax credit.

Person liable to counteraction of income tax advantages

684 Person liable to counteraction of income tax advantage

- (1) This section applies to a person in respect of a transaction in securities or two or more such transactions if the person is in a position to obtain or has obtained an income tax advantage—
- (a) in circumstances where any of the provisions specified in subsection (2) applies in relation to the person, and
 - (b) in consequence of—
 - (i) the transaction, or
 - (ii) the combined effect of the transactions.
- (2) The provisions are—
- section 686 (abnormal dividends used for exemptions or reliefs (circumstance A)),
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 ...
 - section 688 (receipt of consideration representing company's assets, future receipts or trading stock (circumstance C)),
 - section 689 (receipt of consideration in connection with relevant company distribution (circumstance D)), and
 - section 690 (receipt of assets of relevant company (circumstance E)).
- (3) For the purposes of this Chapter an income tax advantage is treated as obtained or obtainable by a person in consequence of—
- (a) a transaction in securities, or
 - (b) the combined effect of two or more such transactions,
- if it is obtained or obtainable by the person in consequence of the combined effect of the transaction or transactions and the liquidation of a company.
- (4) This section is subject to—
- section 685 (exception where no tax avoidance object shown),
 - section 696(3) (disapplication of this section where person receiving preliminary notification that this section may apply makes a statutory declaration and the relevant officer of Revenue and Customs sees no reason to take further action), and
 - section 697(5) (determination by tribunal that there is no prima facie case that this section applies).

Textual Amendments

- F1** S. 684(2) entry omitted (21.7.2008 with effect in accordance with s. 66(5) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), s. [66\(2\)\(a\)](#)

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685 Exception where no tax avoidance object shown

- (1) Section 684 does not apply to a person in respect of a transaction in securities or two or more such transactions if the person shows that the transaction or transactions meet conditions A and B.
- (2) Condition A is that the transaction or transactions are effected—
 - (a) for genuine commercial reasons, or
 - (b) in the ordinary course of making or managing investments.
- (3) Condition B is that enabling income tax advantages to be obtained is not the main object or one of the main objects of the transaction or, as the case may be, any of the transactions.

Circumstances in which income tax advantages obtained or obtainable

686 Abnormal dividends used for exemptions or reliefs (circumstance A)

- (1) This section applies in relation to a person if subsections (2) to (4) apply.
- (2) The person receives an abnormal amount by way of dividend (see section 692).
- (3) The receipt is in connection with—
 - (a) the purchase of securities where the purchase is followed by the sale of the same or other securities,
 - (b) the sale of securities where the sale is followed by the purchase of the same or other securities,
 - (c) the distribution, transfer or realisation of assets of a company, or
 - (d) the application of such assets in discharge of liabilities.
- (4) The amount so received is taken into account for the purposes of—
 - (a) any exemption from income tax,
 - (b) the setting-off of losses against profits or income, or
 - (c) the giving of relief under section 383 (relief for interest payments).

^{F2}687 Deductions from profits obtained following distribution or dealings (circumstance B)

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Textual Amendments

F2 S. 687 omitted (21.7.2008 with effect in accordance with s. 66(5) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), s. 66\(2\)\(b\)](#)

688 Receipt of consideration representing company's assets, future receipts or trading stock (circumstance C)

- (1) This section applies in relation to a person (“A”) if subsections (2), (3) and (6) apply.
- (2) A receives consideration which—
 - (a) is or represents the value of—

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- (i) assets which are available for distribution by a company by way of dividend, or
- (ii) assets which would have been so available apart from anything done by the company,
- (b) is received in respect of future receipts of a company, or
- (c) is or represents the value of trading stock of a company.
- (3) The receipt is in consequence of a transaction whereby another person (“B”)—
 - (a) subsequently receives, or has received, an abnormal amount by way of dividend (see section 692), ^{F3}...
 - ^{F3}(b)
- ^{F4}(4)
- ^{F5}(5)
- (6) The receipt of the consideration is such that A does not pay or bear income tax on it (apart from this Chapter).
- (7) The assets mentioned in subsection (2) do not include assets which are shown to represent a return of sums paid by subscribers on the issue of securities, despite the fact that under the law of the country in which the company is incorporated assets of that description are available for distribution by way of dividend.
- (8) In this section references to the receipt of consideration include references to the receipt of any money or money's worth.
- ^{F6}(9)

Textual Amendments

- F3** S. 688(3)(b) and word omitted (with effect in accordance with s. 66(5) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), s. 66\(2\)\(c\)\(i\)](#)
- F4** S. 688(4) omitted (with effect in accordance with s. 66(5) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), s. 66\(2\)\(c\)\(ii\)](#)
- F5** S. 688(5) omitted (with effect in accordance with s. 66(5) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), s. 66\(2\)\(c\)\(ii\)](#)
- F6** S. 688(9) omitted (with effect in accordance with s. 66(5) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), s. 66\(2\)\(c\)\(ii\)](#)

689 Receipt of consideration in connection with relevant company distribution (circumstance D)

- (1) This section applies in relation to a person if subsections (2) to (4) apply.
- (2) The person receives consideration in connection with—
 - (a) the distribution, transfer or realisation of assets of a relevant company (see section 691), or
 - (b) the application of such assets in discharge of liabilities.
- (3) The consideration—
 - (a) is or represents the value of—

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- (i) assets which are available for distribution by way of dividend by the company, or
 - (ii) assets which would have been so available apart from anything done by the company,
 - (b) is received in respect of future receipts of the company, or
 - (c) is or represents the value of trading stock of the company.
- (4) The person so receives the consideration that the person does not pay or bear income tax on it (apart from this Chapter).
- (5) The assets mentioned in subsection (3) do not include assets which are shown to represent a return of sums paid by subscribers on the issue of securities, despite the fact that under the law of the country in which the company is incorporated assets of that description are available for distribution by way of dividend.
- (6) In this section references to the receipt of consideration include references to the receipt of any money or money's worth.

690 Receipt of assets of relevant company (circumstance E)

- (1) This section applies in relation to a person if subsections (2) to (4) and (7) apply.
- (2) The person receives consideration in connection with—
- (a) the direct or indirect transfer of assets of a relevant company (see section 691) to another such company, or
 - (b) any transaction in securities in which two or more relevant companies are concerned.
- (3) The consideration is or represents the value of assets which—
- (a) are available for distribution by way of dividend by a relevant company,
 - (b) would have been so available apart from anything done by the company, or
 - (c) are trading stock of a relevant company.
- (4) The consideration consists of any share capital or any security issued by a relevant company.
- (5) So far as subsection (4) relates to share capital other than redeemable share capital, it applies only so far as the share capital is repaid (in a winding up or otherwise).
- (6) The reference in subsection (5) to the repayment of share capital includes a reference to any distribution made in respect of any shares in a winding up or dissolution of the company.
- (7) The person does not pay or bear income tax on the consideration (apart from this Chapter).
- (8) In this section—
- (a) references to the receipt of consideration include references to the receipt of any money or money's worth,
 - (b) “security” has the meaning given in section 254(1) of ICTA (interpretation of Part 6 of ICTA: company distributions, tax credits etc), and
 - (c) “share” includes stock and any other interest of a member in a company.

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691 Meaning of “relevant company” in sections 689 and 690

- (1) A company is a relevant company for the purposes of sections 689 and 690 if it is—
 - (a) a company under the control of not more than 5 persons (but see subsection (2)), or
 - (b) any other company none of whose shares or stocks is—
 - [^{F7}(i) included in the official UK list, and]
 - [^{F7}(ii) dealt in on a recognised stock exchange in the United Kingdom regularly or from time to time.]
- (2) A company is not a relevant company for those purposes if it is under the control of one or more companies which are not relevant companies for those purposes.
- (3) The reference in subsection (1)(b) to shares or stocks does not include debenture stock, preferred shares or preferred stock.
- (4) In this section “control” has the meaning given by section 416(2) to (6) of ICTA (close companies: meaning of “associated company” and “control”).

Textual Amendments

F7 S. 691(1)(b)(i)(ii) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(11\)](#)

692 Abnormal dividends: general

- (1) An amount received by way of dividend is treated as abnormal for the purposes of this Chapter if the appropriate authority is satisfied—
 - (a) in any case that the excessive return condition is met (see section 693), or
 - (b) in the case of a dividend at a fixed rate, that the excessive accrual condition is met (see section 694).
- (2) In subsection (1) “the appropriate authority” means whichever of the following is determining the question whether the amount is abnormal for the purposes of this Chapter—
 - (a) an officer of Revenue and Customs,
 - (b) the Commissioners for Her Majesty's Revenue and Customs, [^{F8}or]
 - [^{F9}(c) the tribunal.]

Textual Amendments

F8 Word in s. 692(2)(b) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 455\(2\)](#)

F9 S. 692(2)(c) substituted for s. 692(2)(c)(d) (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 455\(3\)](#)

693 Abnormal dividends: the excessive return condition

- (1) The excessive return condition is that the dividend substantially exceeds a normal return on the consideration provided by the recipient for the relevant securities.
- (2) In this section “the relevant securities” means—

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- (a) the securities in respect of which the dividend was received, and
 - (b) if those securities are derived from securities previously acquired by the recipient, the securities which were previously acquired.
- (3) In determining whether an amount received by way of dividend exceeds a normal return, regard must be had—
- (a) to the length of time before its receipt that the recipient first acquired any of the relevant securities, and
 - (b) to any dividends paid and other distributions made in respect of them during that time.
- (4) If—
- (a) the consideration provided by the recipient for any of the relevant securities exceeded their market value at the time the recipient acquired them, or
 - (b) no consideration was so provided,
- for the purposes of subsection (1) consideration equal to that market value is taken to have been so provided.

694 Abnormal dividends: the excessive accrual condition

- (1) The excessive accrual condition is that the dividend substantially exceeds the amount which the recipient would have received if—
- (a) the dividend had accrued from day to day, and
 - (b) the recipient had been entitled to only so much of the dividend as accrued while the recipient held the securities.
- (2) But the excessive accrual condition is treated as not being met if during the period of 6 months beginning with the purchase of the securities the recipient does not—
- (a) sell or otherwise dispose of any of the securities or any securities similar to them, or
 - (b) acquire an option to sell any of the securities or any securities similar to them.
- (3) For the purposes of subsection (2) securities are taken to be similar if they entitle their holders—
- (a) to the same rights against the same persons as to capital and interest, and
 - (b) to the same remedies for the enforcement of those rights.
- (4) For the purposes of subsection (3) rights guaranteed by the Treasury are treated as rights against the Treasury.
- (5) Subsection (3) applies despite any differences—
- (a) in the total nominal amounts of the respective securities,
 - (b) in the form in which they are held, or
 - (c) in the manner in which they can be transferred.

Procedure for counteraction of income tax advantages

695 Preliminary notification that section 684 may apply

- (1) An officer of Revenue and Customs must notify a person if the officer has reason to believe that—

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- (a) section 684 (person liable to counteraction of income tax advantage) may apply to the person in respect of a transaction or transactions, and
- (b) a counteraction notice ought to be served on the person under section 698 about the transaction or transactions.

- (2) The notification must specify the transaction or transactions.
- (3) See section 698 for the serving of counteraction notices, and sections 696 and 697 for cases where the person on whom the notice under this section is served disagrees that section 684 applies.

696 Opposed notifications: statutory declarations

- (1) If a person on whom a notification is served under section 695 is of the opinion that section 684 (person liable to counteraction of income tax advantage) does not apply to the person in respect of the transaction or transactions specified in the notification, the person may—
 - (a) make a statutory declaration to that effect, stating the facts and circumstances on which the opinion is based, and
 - (b) send it to the officer of Revenue and Customs.
- (2) Such a declaration must be sent within 30 days of the issue of the notification.
- (3) If the person sends that declaration to the officer and the officer sees no reason to take further action—
 - (a) section 684 does not so apply, and
 - (b) accordingly no counteraction notice may be served on the person under section 698 about the transaction or transactions.

697 Opposed notifications: determinations by tribunal

- (1) This section applies if the officer of Revenue and Customs receiving a statutory declaration under section 696(1) sees reason to take further action about the transaction or transactions in question.
- (2) The officer must send the tribunal ^{F10}... a certificate to that effect, together with the statutory declaration.
- (3) The officer may also send the tribunal a counter-statement with the certificate.
- (4) The tribunal must—
 - (a) consider the declaration and certificate and any counter-statement, and
 - (b) determine whether there is a prima facie case for the officer to take further action on the basis that section 684 (person liable to counteraction of income tax advantage) applies to the person by whom the declaration was made in respect of the transaction or transactions in question.
- (5) If the tribunal determines that there is no such case—
 - (a) section 684 does not so apply, and
 - (b) accordingly no counteraction notice may be served on the person under section 698 about the transaction or transactions.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (6) But such a determination does not affect the application of sections 684 and 698 in respect of transactions including not only the ones to which the determination relates but also others.

Textual Amendments

F10 Words in s. 697(2) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 456](#)

698 Counteraction notices

- (1) If—
- (a) a person on whom a notification is served under section 695 does not send a statutory declaration to an officer of Revenue and Customs under section 696 within 30 days of the issue of the notification, or
 - (b) the tribunal [^{F11}having been sent such a declaration] under section 697 determines that there is a prima facie case for serving a notice on a person under this section,
- the income tax advantage in question is to be counteracted by adjustments.
- (2) The adjustments required to be made to counteract the income tax advantage and the basis on which they are to be made are to be specified in a notice served on the person by an officer of Revenue and Customs.
- (3) In this Chapter such a notice is referred to as a “counteraction notice”.
- (4) Any of the following adjustments may be specified—
- (a) an assessment,
 - (b) the nullifying of a right to repayment,
 - (c) the requiring of the return of a repayment already made, or
 - (d) the calculation or recalculation of profits or gains or liability to income tax.
- (5) Nothing in this section authorises the making of an assessment later than 6 years after the tax year to which the income tax advantage relates.
- (6) This section is subject to—
- section 699 (limit on amount assessed in section 689 and 690 cases),
 - section 700 (timing of assessments in section 690 cases), and
 - section 702(2) (effect of clearance notification under section 701).
- (7) But no other provision in the Income Tax Acts is to be read as limiting the powers conferred by this section.

Textual Amendments

F11 Words in s. 698(1)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 457](#)

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

699 Limit on amount assessed in section 689 and 690 cases

- (1) This section applies if a counteraction notice is served in a case where the income tax advantage—
 - (a) consists of the avoidance of a charge to income tax, and
 - (b) is obtained by a person in circumstances falling within—
 - section 689 (receipt of consideration in connection with relevant company distribution (circumstance D)), or
 - section 690 (receipt of assets of relevant company (circumstance E)).
- (2) The amount of income tax which may be specified in an assessment made in accordance with the notice must not exceed the qualifying distribution equivalent.
- (3) The qualifying distribution equivalent is the amount of income tax for which the person would be liable if—
 - (a) the person received a qualifying distribution on the date on which the consideration mentioned in section 689 or, as the case may be, section 690 is received, and
 - (b) that distribution were of an amount equal to the amount or value of that consideration.

700 Timing of assessments in section 690 cases

- (1) This section applies if section 684 (person liable to counteraction of income tax advantage) applies to a person because the person is in a position to obtain or has obtained an income tax advantage by falling within the circumstances mentioned in section 690 (receipt of relevant company assets (circumstance E)) when share capital is repaid.
- (2) An assessment to income tax made in accordance with a counteraction notice must be an assessment for the tax year in which the repayment occurs.
- (3) The references in this section to the repayment of share capital include references to any distribution made in respect of any shares in a winding up or dissolution of the company.
- (4) In subsection (3) “shares” includes stock and any other interest of a member in a company.

Clearance procedure^{F12} ...

Textual Amendments

F12 Words in s. 701 heading omitted (retrospective to 1.4.2009) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 12 paras. 6, 15\(2\)](#)

701 Application for clearance of transactions

- (1) A person may provide the Commissioners for Her Majesty's Revenue and Customs with particulars of a transaction or transactions effected or to be effected by the person in order to obtain a notification about them under this section.

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- (2) If the Commissioners consider that the particulars, or any further information provided under this subsection, are insufficient for the purposes of this section, they must notify the person what further information they require for those purposes within 30 days of receiving the particulars or further information.
- (3) If any such further information is not provided within 30 days from the notification, or such further time as the Commissioners allow, they need not proceed further under this section.
- (4) The Commissioners must notify the person whether they are satisfied that the transaction or transactions, as described in the particulars, were or will be such that no counteraction notice ought to be served about the transaction or transactions.
- (5) The notification must be given within 30 days of receipt of the particulars, or, if subsection (2) applies, of all further information required.

702 Effect of clearance notification under section 701

- (1) This section applies if the Commissioners for Her Majesty's Revenue and Customs notify a person under section 701 that they are satisfied that a transaction or transactions, as described in the particulars provided under that section, were or will be such that no counteraction notice ought to be served about the transaction or transactions.
- (2) No such notice may be served on the person in respect of the transaction or transactions.
- (3) But the notification does not prevent such a notice being served on the person in respect of transactions including not only the ones to which the notification relates but also others.
- (4) The notification is void if the particulars and any further information given under section 701 about the transaction or transactions do not fully and accurately disclose all facts and considerations which are material for the purposes of that section.

703 Power to obtain information

- (1) This section applies if it appears to an officer of Revenue and Customs that a person may be a person to whom section 684 (person liable to counteraction of income tax advantage) applies in respect of one or more transactions.
- (2) The officer may serve a notice on the person requiring the person to give the officer information in the person's possession about the transaction or, if there are two or more, about any of them.
- (3) That information must be information about matters which are relevant to the question whether a counteraction notice should be served on the person.
- (4) Those matters must be specified in the notice under subsection (2).
- (5) That notice must require the information to be given within such period as is specified in it.
- (6) That period must be at least 30 days.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

F13 ...

Textual Amendments

F13 S. 704 and cross-heading omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 458**

^{F13}704 The tribunal

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Appeals

705 Appeals against counteraction notices

- (1) A person on whom a counteraction notice has been served may appeal ^{F14}... on the grounds that—
 - (a) section 684 (person liable to counteraction of income tax advantage) does not apply to the person in respect of the transaction or transactions in question, or
 - (b) the adjustments directed to be made are inappropriate.
- (2) Such an appeal may be made only by giving notice to the Commissioners for Her Majesty's Revenue and Customs within 30 days of the service of the counteraction notice.
- (3) On an appeal under this section [^{F15}that is notified to the tribunal, the tribunal] may—
 - (a) affirm, vary or cancel the counteraction notice, or
 - (b) affirm, vary or quash an assessment made in accordance with the notice.
- (4) But the bringing of an appeal under this section ^{F16}... does not affect—
 - (a) the validity of the counteraction notice, or
 - (b) the validity of any other thing done under or in accordance with section 698 (counteraction notices),
 pending the determination of the proceedings.

Textual Amendments

F14 Words in s. 705(1) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 459(2)**

F15 Words in s. 705(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 459(3)**

F16 Words in s. 705(4) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 459(4)**

^{F17}706 Rehearing by tribunal of appeal against counteraction notice

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Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

Textual Amendments

F17 Ss. 706-711 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 460**

^{F17}707 Statement of case by tribunal for opinion of High Court or Court of Session

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Textual Amendments

F17 Ss. 706-711 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 460**

^{F17}708 Cases before High Court or Court of Session

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Textual Amendments

F17 Ss. 706-711 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 460**

^{F17}709 Effect of appeals against tribunal's determination under section 706

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Textual Amendments

F17 Ss. 706-711 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 460**

^{F17}710 Appeals from High Court or Court of Session

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Textual Amendments

F17 Ss. 706-711 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 460**

^{F17}711 Proceedings in Northern Ireland

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Status: Point in time view as at 21/07/2009.

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Textual Amendments

- F17** Ss. 706-711 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 460**

Supplementary

712 Application of Chapter where individual within section 684 dies

- (1) This section applies if an individual to whom section 684 (person liable to counteraction of income tax advantage) applies (or may apply) has died.
- (2) Any notice or notification to the individual under this Chapter may be given to the individual's personal representatives.
- (3) The provisions of this Chapter relating to any such notice or notification, to the making of a statutory declaration, to rights of appeal and to the giving of information must be read accordingly.

713 Interpretation of Chapter

In this Chapter—

“company” includes any body corporate,

“dividends” includes references to other qualifying distributions and to interest,

“securities”—

- (a) includes shares and stock, and
- (b) in relation to a company not limited by shares (whether or not it has a share capital) also includes a reference to the interest of a member of the company as such, whatever the form of that interest,

“trading stock” has the meaning given by section 174 of ITTOIA 2005, and

“transaction in securities” means transactions, of whatever description, relating to securities, and in particular—

- (a) the purchase, sale or exchange of securities,
- (b) issuing or securing the issue of new securities,
- (c) applying or subscribing for new securities, and
- (d) altering or securing the alteration of the rights attached to securities.

CHAPTER 2

TRANSFER OF ASSETS ABROAD

Modifications etc. (not altering text)

- C1** Pt. 13 Ch. 2 applied by 1988 c. 1, s. 762ZA (as inserted (21.7.2008 with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 94**)

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

Introduction

714 Overview of Chapter

- (1) This Chapter imposes a charge to income tax on—
 - (a) individuals to whom income is treated as arising under section 721 (individuals with power to enjoy income as a result of relevant transactions),
 - (b) individuals to whom income is treated as arising under section 728 (individuals receiving capital sums as a result of relevant transactions), and
 - (c) individuals to whom income is treated as arising under section 732 (non-transferors receiving a benefit as a result of relevant transactions).
- (2) The charges apply only if a relevant transfer occurs, and they operate by reference to income of a person abroad that is connected with the transfer or another relevant transaction.
- (3) For the meaning of “relevant transaction”, “relevant transfer” and “person abroad”, see sections 715, 716 and 718 respectively.
- (4) In this Chapter references to individuals include their spouses or civil partners.

715 Meaning of “relevant transaction”

- (1) A transaction is a relevant transaction for the purposes of this Chapter if it is—
 - (a) a relevant transfer, or
 - (b) an associated operation.
- (2) For the meaning of “relevant transfer” and “associated operation”, see sections 716 and 719 respectively.

716 Meaning of “relevant transfer” and “transfer”

- (1) A transfer is a relevant transfer for the purposes of this Chapter if—
 - (a) it is a transfer of assets, and
 - (b) as a result of—
 - (i) the transfer,
 - (ii) one or more associated operations, or
 - (iii) the transfer and one or more associated operations,income becomes payable to a person abroad.
- (2) In this Chapter “transfer”, in relation to rights, includes the creation of the rights.
- (3) For the meaning of “assets”, see section 717.

717 Meaning of “assets” etc

In this Chapter—

- (a) “assets” includes property or rights of any kind, and
- (b) references to assets representing any assets, income or accumulations of income include references to—
 - (i) shares in or obligations of any company to which the assets, income or accumulations are or have been transferred, or

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- (ii) obligations of any other person to whom the assets, income or accumulations are or have been transferred.

718 Meaning of “person abroad” etc

- (1) In this Chapter “person abroad” means a person who is resident or domiciled outside the United Kingdom.
- (2) For the purposes of this Chapter, the following persons are treated as resident outside the United Kingdom—
 - (a) a UK resident body corporate that is incorporated outside the United Kingdom,
 - (b) the person treated as neither UK resident nor ordinarily UK resident under section 475(3) (trustees of settlements), and
 - (c) persons treated as non-UK resident under section 834(4) (personal representatives).

719 Meaning of “associated operation”

- (1) In this Chapter “associated operation”, in relation to a transfer of assets, means an operation of any kind effected by any person in relation to—
 - (a) any of the assets transferred,
 - (b) any assets directly or indirectly representing any of the assets transferred,
 - (c) the income arising from any assets within paragraph (a) or (b), or
 - (d) any assets directly or indirectly representing the accumulations of income arising from any assets within paragraph (a) or (b).
- (2) It does not matter whether the operation is effected before, after or at the same time as the transfer.

Charge where power to enjoy income

720 Charge to tax on income treated as arising under section 721

- (1) The charge under this section applies for the purpose of preventing the avoiding of liability to income tax by individuals who are ordinarily UK resident by means of relevant transfers.
- (2) Income tax is charged on income treated as arising to such an individual under section 721 (individuals with power to enjoy income as a result of relevant transactions).
- (3) Tax is charged under this section on the amount of income treated as arising in the tax year.
- (4) But see section 724 (special rules where benefit provided out of income of person abroad) [^{F18}and section 726 (non-UK domiciled individuals to whom remittance basis applies)].
- (5) The person liable for any tax charged under this section is the individual to whom the income is treated as arising.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (6) For rules about the reduction in the amount charged in some circumstances and the availability of deductions and reliefs, see—
 - section 725 (reduction in amount charged where controlled foreign company involved), and
 - section 746 (deductions and reliefs where individual charged under this section or section 727).
- (7) For exemptions from the charge under this section, see sections 736 to 742 (exemptions where no tax avoidance purpose or genuine commercial transaction).

Textual Amendments

F18 Words in s. 720(4) inserted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 164](#)

721 Individuals with power to enjoy income as a result of relevant transactions

- (1) Income is treated as arising to such an individual as is mentioned in section 720(1) in a tax year for income tax purposes if conditions A and B are met.
- (2) Condition A is that the individual has power in the tax year to enjoy income of a person abroad as a result of—
 - (a) a relevant transfer,
 - (b) one or more associated operations, or
 - (c) a relevant transfer and one or more associated operations.
- (3) Condition B is that the income would be chargeable to income tax if it were the individual's and received by the individual in the United Kingdom.
- (4) For the purposes of subsection (2), it does not matter whether the income may be enjoyed immediately or only later.
- (5) It does not matter for the purposes of this section—
 - (a) whether the income would be chargeable to income tax apart from section 720,
 - (b) whether the individual is ordinarily UK resident at the time when the relevant transfer is made, or
 - (c) whether the avoiding of liability to income tax is a purpose for which the transfer is effected.
- (6) For the circumstances in which an individual is treated as having the power to enjoy income for the purposes of this section, see section 722.

722 When an individual has power to enjoy income of person abroad

- (1) For the purposes of section 721, an individual is treated as having power to enjoy income of a person abroad if any of the enjoyment conditions are met.
- (2) In subsection (1) “the enjoyment conditions” means conditions A to E as specified in section 723.

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (3) In determining whether an individual has power to enjoy income for the purposes of section 721, regard must be had to the substantial result and effect of all the relevant transactions.
- (4) In making that determination all benefits which may at any time accrue to the individual as a result of the transfer and any associated operations must be taken into account, irrespective of—
 - (a) the nature or form of the benefits, or
 - (b) whether the individual has legal or equitable rights in respect of the benefits.

723 The enjoyment conditions

- (1) Condition A is that the income is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of the individual, whether in the form of income or not.
- (2) Condition B is that the receipt or accrual of the income operates to increase the value to the individual—
 - (a) of any assets the individual holds, or
 - (b) of any assets held for the individual's benefit.
- (3) Condition C is that the individual receives or is entitled to receive at any time any benefit provided or to be provided out of the income or related money.
- (4) In subsection (3) “related money” means money which is or will be available for the purpose of providing the benefit as a result of the effect or successive effects—
 - (a) on the income, and
 - (b) on any assets which directly or indirectly represent the income, of the associated operations referred to in section 721(2).
- (5) Condition D is that the individual may become entitled to the beneficial enjoyment of the income if one or more powers are exercised or successively exercised.
- (6) For the purposes of subsection (5) it does not matter—
 - (a) who may exercise the powers, or
 - (b) whether they are exercisable with or without the consent of another person.
- (7) Condition E is that the individual is able in any manner to control directly or indirectly the application of the income.

724 Special rules where benefit provided out of income of person abroad

- (1) This section applies if an individual has power to enjoy income of a person abroad for the purposes of section 721 because of receiving any such benefit as is referred to in section 723(3) (benefit provided out of income of person abroad).
- (2) Despite anything in section 720, the individual is liable to income tax under that section for the tax year in which the benefit is received on the whole of the amount or value of that benefit.
- (3) But subsection (2) does not apply so far as it is shown that the benefit derives directly or indirectly from income on which the individual has already been charged to income tax for that tax year or a previous tax year.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

725 Reduction in amount charged where controlled foreign company involved

- (1) This section applies if—
- (a) an amount of the chargeable profits for an accounting period of a company (“the controlled foreign company”) is apportioned to one or more UK resident companies under section 747(3) of ICTA (imputation of chargeable profits and creditable tax of controlled foreign companies),
 - (b) as a result of section 747(4) of that Act those companies are chargeable in respect of the amount (“the chargeable amount”) of the chargeable profits so apportioned to them, and
 - (c) apart from this section, the amount of income treated as arising to an individual under section 721 for a tax year would be or include a sum forming part of the controlled foreign company's chargeable profits for that accounting period.
- (2) The amount of income so treated is reduced by—

$$S \times \frac{CA}{CP}$$

where—

S is the sum forming part of the controlled foreign company's chargeable profits for that accounting period,

CA is the chargeable amount, and

CP is the controlled foreign company's chargeable profits for that accounting period.

- (3) The following provisions of ICTA apply for the purposes of this section as they apply for the purposes of Chapter 4 of Part 17 of that Act—
- section 747(6) (interpretation, in relation to a non-UK resident company, of references to chargeable profits for an accounting period and profits), and
 - section 751(1) to (5A) (accounting periods).

[^{F19}726 Non-UK domiciled individuals to whom remittance basis applies

- (1) This section applies in relation to income treated under section 721 as arising to an individual in a tax year (“the deemed income”) if—
- (a) section 809B, 809D or 809E (remittance basis) applies to the individual for the year, and
 - (b) the individual is not domiciled in the United Kingdom in the year.
- (2) For the purposes of this section the deemed income is “foreign” if (and to the extent that) the income mentioned in section 721(2) would be relevant foreign income if it were the individual's.
- (3) Treat the foreign deemed income as relevant foreign income of the individual.
- (4) For the purposes of Chapter A1 of Part 14 (remittance basis) treat so much of the income within section 721(2) as would be relevant foreign income if it were the individual's as deriving from the foreign deemed income.]

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

Textual Amendments

F19 S. 726 substituted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 165**

Charge where capital sums received

727 Charge to tax on income treated as arising under section 728

- (1) The charge under this section applies for the purpose of preventing the avoiding of liability to income tax by individuals who are ordinarily UK resident by means of relevant transfers.
 - (2) Income tax is charged on income treated as arising to such an individual under section 728 (individuals receiving capital sums as a result of relevant transactions).
 - (3) Tax is charged under this section on the amount of income treated as arising in the tax year.
- [^{F20}(3A) But see section 730 (non-UK domiciled individuals to whom remittance basis applies).]
- (4) The person liable for any tax charged under this section is the individual to whom the income is treated as arising.
 - (5) For exemptions from the charge under this section, see sections 736 to 742 (exemptions where no tax avoidance purpose or genuine commercial transaction).
 - (6) For rules about the availability of deductions and reliefs where income is charged under this section, see section 746 (deductions and reliefs where individual charged under section 720 or this section).

Textual Amendments

F20 S. 727(3A) inserted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 166**

728 Individuals receiving capital sums as a result of relevant transactions

- (1) Income is treated as arising to such an individual as is referred to in section 727(1) in a tax year for income tax purposes if—
 - (a) income has become the income of a person abroad as a result of—
 - (i) a relevant transfer,
 - (ii) one or more associated operations, or
 - (iii) a relevant transfer and one or more associated operations, and
 - (b) the capital receipt conditions are met in respect of the individual in the tax year (see section 729).
- (2) Section 725 (reduction in amount charged where controlled foreign company involved) applies for determining the amount of income treated as arising under subsection (1) as it applies for determining the amount so treated under section 721(1).

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (3) It does not matter for the purposes of this section—
- (a) whether the income would be chargeable to income tax apart from section 727,
 - (b) whether the individual is ordinarily UK resident at the time when the relevant transfer abroad is made, or
 - (c) whether the avoiding of liability to income tax is a purpose for which that transfer is effected.

729 The capital receipt conditions

- (1) For the purposes of section 728(1), the capital receipt conditions are met in respect of the individual in a tax year (“the relevant year”) if—
- (a) either—
 - (i) in the relevant year the individual receives or is entitled to receive any capital sum, whether before or after the relevant transfer, or
 - (ii) in any earlier tax year the individual has received any capital sum, whether before or after the relevant transfer, and
 - (b) the payment of that sum is (or, in the case of an entitlement, would be) in any way connected with any relevant transaction.
- (2) But subsection (1)(a)(ii) does not apply merely because of the receipt of a sum by way of loan if the loan is wholly repaid before the relevant year begins.
- (3) In subsection (1) “capital sum” means—
- (a) any sum paid or payable by way of loan or repayment of a loan, and
 - (b) any other sum paid or payable—
 - (i) otherwise than as income, and
 - (ii) not for full consideration in money or money's worth.
- (4) For the purposes of subsection (1), a sum is treated as a capital sum which the individual (“A”) receives or is entitled to receive if another person receives or is entitled to receive it—
- (a) at A's direction, or
 - (b) as a result of the assignment by A of A's right to receive it.

[^{F21}730 Non-UK domiciled individuals to whom remittance basis applies

- (1) This section applies in relation to income treated under section 728 as arising to an individual in a tax year (“the deemed income”) if—
- (a) section 809B, 809D or 809E (remittance basis) applies to the individual for the year, and
 - (b) the individual is not domiciled in the United Kingdom in the year.
- (2) For the purposes of this section the deemed income is “foreign” if (and to the extent that) the income mentioned in section 728(1)(a) would be relevant foreign income if it were the individual's.
- (3) Treat the foreign deemed income as relevant foreign income of the individual.
- (4) For the purposes of Chapter A1 of Part 14 (remittance basis) treat so much of the income within section 728(1)(a) as would be relevant foreign income if it were the individual's as deriving from the foreign deemed income.]

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

Textual Amendments

F21 S. 730 substituted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 167**

Charge where benefit received

731 Charge to tax on income treated as arising under section 732

- (1) Income tax is charged on income treated as arising to an individual under section 732 (non-transferors receiving a benefit as a result of relevant transactions).
- (2) Tax is charged under this section on the amount of income treated as arising for the tax year.
- [^{F22}(2A) But see section 735 (non-UK domiciled individuals to whom remittance basis applies).]
- (3) The person liable for any tax charged under this section is the individual to whom the income is treated as arising.
- (4) For exemptions from the charge under this section, see sections 736 to 742 (exemptions where no tax avoidance purpose or genuine commercial transaction).

Textual Amendments

F22 S. 731(2A) inserted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 168**

732 Non-transferors receiving a benefit as a result of relevant transactions

- (1) This section applies if—
 - (a) a relevant transfer occurs,
 - (b) an individual who is ordinarily UK resident receives a benefit,
 - (c) the benefit is provided out of assets which are available for the purpose as a result of—
 - (i) the transfer, or
 - (ii) one or more associated operations,
 - (d) the individual is not liable to income tax under section 720 or 727 by reference to the transfer and would not be so liable if the effect of sections 726 and 730 were ignored, and
 - (e) the individual is not liable to income tax on the amount or value of the benefit (apart from section 731).
- (2) Income is treated as arising to the individual for income tax purposes for any tax year for which section 733 provides that income arises.
- (3) Also see that section for the amount of income treated as arising for any such tax year.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

733 Income charged under section 731

- (1) To find the amount (if any) of the income treated as arising under section 732(2) for any tax year in respect of benefits provided as mentioned in section 732(1)(c) take the following steps.

Step 1

Identify the amount or value of such benefits received by the individual in the tax year and in any earlier tax years in which section 732 has applied.

The sum of those amounts and values is “the total benefits”.

Step 2

Deduct from the total benefits the total amount of income treated as arising to the individual under section 732(2) for earlier tax years as a result of the relevant transfer or associated operations.

The result is “the total untaxed benefits”.

Step 3

Identify the amount of any income which—

- (a) arises in the tax year to a person abroad, and
- (b) as a result of the relevant transfer or associated operations can be used directly or indirectly for providing a benefit for the individual.

That amount is “the relevant income of the tax year” in relation to the individual and the tax year.

Step 4

Add together the relevant income of the tax year and the relevant income of earlier tax years in relation to the individual (identified as mentioned in Step 3).

The sum of those amounts is “total relevant income”.

Step 5

Deduct from total relevant income—

- (a) the amount deducted at Step 2, and
- (b) any other amount which may not be taken into account because of section 743(1) and (2) (no duplication of charges).

The result is “the available relevant income”.

Step 6

Compare the total untaxed benefits and the available relevant income.

The amount of the income treated as arising under section 732(2) for any tax year is the total untaxed benefits unless the available relevant income is lower.

If the available relevant income is lower, it is the amount of income treated as so arising.

- (2) Subsection (1) is subject to section 734 (reduction in amount charged: previous capital gains tax charge).

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (3) See also section 740(5) to (7) (which makes provision about relevant income and benefits where relevant transactions include both transactions before 5 December 2005 and transactions after 4 December 2005 and exemptions under this Chapter cease to apply).

734 Reduction in amount charged: previous capital gains tax charge

- (1) This section applies if—
- (a) benefits provided as mentioned in section 732(1)(c) are received in a tax year,
 - (b) for that tax year the whole or part of any benefits so provided is a capital payment to which section 87 or 89(2) of, or paragraph 8 of Schedule 4C to, TCGA 1992 applies (chargeable gains: gains attributed to beneficiaries),
 - (c) it is such a payment because the total untaxed benefits exceed the available relevant income (see Step 6 in section 733(1)) and so it is not treated as income arising to the individual under section 732(2), and
 - (d) because of that capital payment chargeable gains are treated as accruing to the individual in that or a subsequent tax year under any of the provisions referred to in paragraph (b).
- (2) For any tax year after one in which such chargeable gains are so treated, the amount of income treated as arising to the individual under section 732(2) in respect of benefits provided as mentioned in section 732(1)(c) as a result of the transfer or operations in question is calculated as follows.
- (3) The amount is calculated under section 733(1) as if the total untaxed benefits were reduced by the amount of those gains.
- (4) In this section “the total untaxed benefits” and “the available relevant income” have the same meaning as in section 733(1) (see Steps 2 and 5).
- [^{F23}(5) References in this section to chargeable gains treated as accruing to an individual include offshore income gains treated as arising to the individual (see section 762 of ICTA).]

Textual Amendments

F23 S. 734(5) inserted (21.7.2008 with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 97](#)

[^{F24}735 Non-UK domiciled individuals to whom remittance basis applies

- (1) This section applies if—
- (a) income is treated under section 732 as arising to an individual in a tax year (“the deemed income”),
 - (b) section 809B, 809D or 809E (remittance basis) applies to the individual for the year, and
 - (c) the individual is not domiciled in the United Kingdom in the year.
- (2) For the purposes of this section the deemed income is “foreign” if (and to the extent that) the relevant income to which it relates would be relevant foreign income if it were the individual's.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (3) Treat the foreign deemed income as relevant foreign income of the individual.
- (4) For the purposes of Chapter A1 of Part 14 (remittance basis) treat relevant income, or a benefit, that relates to any part of the foreign deemed income as deriving from that part of the foreign deemed income.

Textual Amendments

F24 Ss. 735, 735A substituted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) for s. 735 by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 169](#)

735A Section 735: relevant income and benefits relating to foreign deemed income

- (1) For the purposes of section 735—
 - (a) place the benefits mentioned in Step 1 in the order in which they were received by the individual (starting with the earliest benefit received),
 - (b) deduct from those benefits so much of any benefit within section 734(1)(b) as gives rise as mentioned in section 734(1)(d) to chargeable gains or offshore income gains,
 - (c) place the income mentioned in Step 3 for the tax years mentioned in Step 4 (“the relevant income”) in the order determined under subsection (3),
 - (d) deduct from that income any income that may not be taken into account because of section 743(1) or (2) (no duplication of charges),
 - (e) place the income treated under section 732(2) as arising to the individual in respect of the benefits in the order in which it is treated as arising (starting with the earliest income treated as having arisen), and
 - (f) treat the income mentioned in paragraph (e) as related to—
 - (i) the benefits, and
 - (ii) the relevant income,by matching that income with the benefits and the relevant income (in the orders mentioned in paragraphs (a), (c) and (e)).
- (2) In subsection (1) references to a step are to a step in section 733(1).
- (3) The order referred to in subsection (1)(c) is arrived at by taking the following steps.

Step 1

Find the relevant income for the earliest tax year (of the tax years referred to in subsection (1)(c)).

Step 2

Place so much of that income as is not foreign in the order in which it arose (starting with the earliest income to arise).

Step 3

After that, place so much of that income as is foreign in the order in which it arose (starting with the earliest income to arise).

Step 4

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Repeat Steps 1 to 3.

For this purpose, read references to the relevant income for the earliest tax year as references to the relevant income for the first tax year after the last tax year in relation to which those Steps have been undertaken.

- (4) For the purposes of subsection (3) relevant income is “foreign” where it would be relevant foreign income if it were the individual's.
- (5) For those purposes treat income for a period as arising immediately before the end of the period.
- (6) Subsection (1)(d) does not apply if the income may not be taken into account because the individual has been charged to income tax under section 731 by reason of the income.]

Textual Amendments

F24 Ss. 735, 735A substituted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) for s. 735 by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 169](#)

Exemptions: no tax avoidance purpose or genuine commercial transaction

736 Exemptions: introduction

- (1) Sections 737 to 742 deal with exemptions from liability under this Chapter.
- (2) Some exemptions apply according to whether the relevant transactions are all pre-5 December 2005 transactions or all post-4 December 2005 transactions or include both (see sections 737, 739 and 740).
- (3) In this section and sections 737 to 742—
 - “post-4 December 2005 transaction” means a relevant transaction effected on or after 5 December 2005, and
 - “pre-5 December 2005 transaction” means a relevant transaction effected before 5 December 2005.

737 Exemption: all relevant transactions post-4 December 2005 transactions

- (1) This section applies if all the relevant transactions are post-4 December 2005 transactions.
- (2) An individual is not liable to income tax under this Chapter for the tax year by reference to the relevant transactions if the individual satisfies an officer of Revenue and Customs—
 - (a) that Condition A is met, or
 - (b) in a case where Condition A is not met, that Condition B is met.
- (3) Condition A is that it would not be reasonable to draw the conclusion, from all the circumstances of the case, that the purpose of avoiding liability to taxation was the purpose, or one of the purposes, for which the relevant transactions or any of them were effected.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (4) Condition B is that—
- (a) all the relevant transactions were genuine commercial transactions (see section 738), and
 - (b) it would not be reasonable to draw the conclusion, from all the circumstances of the case, that any one or more of those transactions was more than incidentally designed for the purpose of avoiding liability to taxation.
- (5) In determining the purposes for which the relevant transactions or any of them were effected, the intentions and purposes of any person within subsection (6) are to be taken into account.
- (6) A person is within this subsection if, whether or not for consideration, the person—
- (a) designs or effects, or
 - (b) provides advice in relation to,
- the relevant transactions or any of them.
- (7) In this section—
- “revenue” includes taxes, duties and national insurance contributions,
 - “taxation” includes any revenue for whose collection and management the Commissioners for Her Majesty’s Revenue and Customs are responsible.
- (8) If—
- (a) apart from this subsection, an associated operation would not be taken into account for the purposes of this section, and
 - (b) the conditions in subsections (2) to (4) are not met if it is taken into account, because of—
 - (i) the associated operation, or
 - (ii) the associated operation taken together with any other relevant transactions,
- it must be taken into account for those purposes.

738 Meaning of “commercial transaction”

- (1) For the purposes of section 737, a relevant transaction is a commercial transaction only if it meets the conditions in subsections (2) and (3).
- (2) It must be effected—
- (a) in the course of a trade or business and for its purposes, or
 - (b) with a view to setting up and commencing a trade or business and for its purposes.
- (3) It must not—
- (a) be on terms other than those that would have been made between persons not connected with each other dealing at arm's length, or
 - (b) be a transaction that would not have been entered into between such persons so dealing.
- (4) For the purposes of subsection (2), making investments, managing them or making and managing them is a trade or business only so far as—
- (a) the person by whom it is done, and
 - (b) the person for whom it is done,

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are persons not connected with each other and are dealing at arm's length.

739 Exemption: all relevant transactions pre-5 December 2005 transactions

- (1) This section applies if all the relevant transactions are pre-5 December 2005 transactions.
- (2) An individual is not liable for income tax under this Chapter for the tax year by reference to the relevant transactions if the individual satisfies an officer of Revenue and Customs that condition A or B is met.
- (3) Condition A is that the purpose of avoiding liability to taxation was not the purpose, or one of the purposes, for which the relevant transactions or any of them were effected.
- (4) Condition B is that the transfer and any associated operations—
 - (a) were genuine commercial transactions, and
 - (b) were not designed for the purpose of avoiding liability to taxation.

740 Exemption: relevant transactions include both pre-5 December 2005 and post-4 December 2005 transactions

- (1) This section applies if the relevant transactions include both pre-5 December transactions and post-4 December transactions.
- (2) An individual is not liable to tax under this Chapter for the tax year by reference to the relevant transactions if—
 - (a) the condition in section 737(2) (exemption where all relevant transactions are post-4 December 2005 transactions) is met by reference to the post-4 December 2005 transactions, and
 - (b) the condition in section 739(2) (exemption where all relevant transactions are pre-5 December 2005 transactions) is met by reference to the pre-5 December transactions.
- (3) If subsection (2)(b) applies but subsection (2)(a) does not, this Chapter applies with the modifications in subsections (4) to (6).
- (4) For the purposes of sections 720 to 730, any income arising before 5 December 2005 must not be brought into account as income of the person abroad.
- (5) In determining the relevant income of an earlier tax year for the purposes of section 733(1) (see Step 4), it does not matter whether that year was a year for which the individual was not liable under section 731 because of section 739 or this section.
- (6) For the purposes of Step 1 in section 733(1), a benefit received by the individual in or before the tax year 2005-06 is to be left out of account.
- (7) But, in the case of a benefit received in the tax year 2005-06, subsection (6) applies only so far as, on a time apportionment basis, the benefit fell to be enjoyed in any part of the year that fell before 5 December 2005.

741 Application of section 742 (partial exemption)

- (1) Section 742 (partial exemption where later associated operations fail conditions) applies if—

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- (a) an individual is liable to tax because of section 720 or 727 for a tax year (the “taxable year”) because condition B in section 737(4) (genuine commercial transaction: post-4 December 2005 transactions) is not met, and
 - (b) subsections (2) and (3) apply.
- (2) This subsection applies if—
- (a) since the relevant transfer there has been at least one tax year for which the individual was not so liable by reference to the relevant transactions effected before the end of the year, and
 - (b) the individual was not so liable for that year because—
 - (i) condition B in section 737(4) was met, or
 - (ii) condition B in section 739(4) (genuine commercial transaction: pre-5 December 2005 transactions) was met.
- (3) This subsection applies if the income by reference to which the individual is liable to tax for the taxable year is attributable—
- (a) partly to relevant transactions by reference to which one of those conditions was met for the last exempt tax year, and
 - (b) partly to associated operations not falling within paragraph (a).
- (4) For the purposes of this section a tax year is exempt if—
- (a) it is one of the tax years mentioned in subsection (2), and
 - (b) there is no earlier tax year for which the individual was liable to tax because of section 720 or 727 by reference to the relevant transactions or any of them.
- (5) References in this section to a person being liable to tax for a tax year because of section 720 or 727 include references to the individual being so liable had any income been treated as arising to the individual for that year under section 721 or 728.

742 Partial exemption where later associated operations fail conditions

- (1) If this section applies, the individual is liable to tax under this Chapter only in respect of part of the income for which the individual would otherwise be liable.
- (2) That part is so much of the income as appears to an officer of Revenue and Customs to be justly and reasonably attributable to the operations mentioned in section 741(3) (b) in all the circumstances of the case.
- (3) Those circumstances include how far those operations or any of them directly or indirectly affect—
 - (a) the nature or amount of any person's income, or
 - (b) any person's power to enjoy any income.

General

743 No duplication of charges

- (1) No amount of income may be taken into account more than once in charging income tax under this Chapter.

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (2) If there is a choice about the persons in relation to whom any amount of income may be taken into account in charging income tax under this Chapter, it is to be taken into account—
 - (a) in relation to such one or more of them as appears to an officer of Revenue and Customs to be just and reasonable, and
 - (b) if more than one, in such respective proportions as appears to the officer to be just and reasonable.
- (3) For the meaning of references in subsections (1) and (2) to an amount of income taken into account in charging tax, see section 744.
- (4) If income treated as arising to an individual is charged to income tax under section 720 or 727 and the individual subsequently receives that income, it is treated as not being the individual's income again for income tax purposes.

744 Meaning of taking income into account in charging income tax for section 743

- (1) References in section 743(1) and (2) (no duplication of charges) to an amount of income taken into account in charging income tax are to be read as follows.
- (2) In the case of tax charged on income under section 720 (charge where income enjoyed as a result of relevant transactions)—
 - (a) if section 724(1) (benefit provided out of income of person abroad) applies, they are references to an amount of the income out of which the benefit is provided equal to the amount or value of the benefit charged, and
 - (b) otherwise they are references to the amount of income charged.
- (3) In the case of tax charged on income under section 727 (charge where capital sums received as a result of relevant transactions), they are references to the amount of that income.
- (4) In the case of tax charged under section 731 (charge to tax on income treated as arising to non-transferors where benefit received as a result of relevant transfers), they are references to the amount of relevant income taken into account under section 733 (income charged under section 731) in calculating the amount to be charged in respect of the benefit for the tax year in question.

745 Rates of tax applicable to income charged under sections 720 and 727 etc

- (1) Income tax at the basic rate, the [^{F25}starting rate for savings] or the dividend ordinary rate is not charged under section 720 or 727 in respect of any income so far as it has borne tax at that rate by deduction or otherwise.
- (2) Subsection (1) does not affect the tax charged if section 724(2) applies (benefit provided out of income of person abroad charged in year of receipt).
- (3) Subsection (4) applies to any income that—
 - (a) is treated as arising to an individual under section 721 or 728, and
 - (b) apart from this Chapter is dividend income,
 so far as subsection (1) does not apply to the income.

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (4) The charge to income tax under section 720 or, as the case may be, section 727 operates by treating the income as if it were income within section 19(2) (meaning of “dividend income”).

Textual Amendments

- F25** Words in s. 745(1) substituted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 24](#)

746 Deductions and reliefs where individual charged under section 720 or 727

- (1) This section applies for the purpose of calculating the liability to income tax of an individual charged under section 720 or 727.
- (2) The same deductions and reliefs are allowed as would have been allowed if the income treated as arising to the individual under section 721 or 728 had actually been received by the individual.

747 Amounts corresponding to accrued income profits and related interest

- (1) This subsection applies if a person—
- (a) would have been treated as—
 - (i) making qualifying accrued income profits, or
 - (ii) making qualifying accrued income profits of a greater amount, in an interest period, but
 - (b) is not so treated because of being resident or domiciled outside the United Kingdom throughout any tax year in which the interest period (or part of it) falls.
- (2) If subsection (1) applies, this Chapter applies as if the amount which the person would be treated as making or, as the case may be, the additional amount were income becoming payable to the person.
- (3) Accordingly, any reference in this Chapter to income of (or payable or arising to) a person abroad must be read as including a reference to such an amount.
- (4) This subsection applies if income consisting of interest which falls due at the end of an interest period—
- (a) would have been income as respects which a person is entitled to an exemption, or an exemption of a greater amount, from liability to income tax under section 679 (interest on securities involving accrued income losses: general), but
 - (b) is not such income because it is income of a person who is resident or domiciled outside the United Kingdom throughout any tax year in which the interest period (or part of it) falls.
- (5) If subsection (4) applies, for the purposes of this Chapter the interest is treated as reduced by the amount of the exemption or, as the case may be, the additional exemption.
- (6) In this section—

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- (a) expressions which are also used in Chapter 2 of Part 12 (accrued income profits) have the same meaning as in that Chapter (but see subsection (7)), and
 - (b) “qualifying accrued income profits” means accrued income profits which are treated as made—
 - (i) under section 628(5), or
 - (ii) under section 630(2) in respect of a transfer of variable rate securities.
- (7) In the case of qualifying accrued income profits within sub-paragraph (ii) of the definition of that expression in subsection (6)(b)—
- (a) references in subsection (1)(a) to making qualifying accrued income profits in an interest period are to be read as making them in the tax year in which the settlement day falls, and
 - (b) the reference in subsection (1)(b) to the interest period is to the period—
 - (i) beginning with the day after the last day of the only or last interest period of the securities, and
 - (ii) ending with the settlement day.

Supplementary

748 Power to obtain information

- (1) An officer of Revenue and Customs may by notice require any person to provide the officer with such particulars as the officer may reasonably require for the purposes of this Chapter.
- (2) The officer may direct the time within which the particulars must be provided and that time must be at least 30 days.
- (3) The particulars which a person must provide under this section, if required to do so by a notice under subsection (1), include particulars about—
 - (a) transactions with respect to which the person is or was acting on behalf of others,
 - (b) transactions which in the opinion of the officer should properly be investigated for the purposes of this Chapter even though in the person's opinion no liability to income tax arises under this Chapter, and
 - (c) whether the person has taken or is taking any part and, if so, what part in transactions of a description specified in the notice.
- (4) A solicitor is not treated as having taken part in a transaction for the purposes of subsection (3)(c) merely because of giving professional advice to a client about it.
- (5) This section is subject to—
 - section 749 (restrictions on particulars to be provided by solicitors), and
 - section 750 (restrictions on particulars to be provided by banks).

749 Restrictions on particulars to be provided by solicitors

- (1) In relation to anything done by a solicitor on behalf of a client who does not consent to the information otherwise required from the solicitor under section 748 being provided, the solicitor may not be compelled under that section to do more than—
 - (a) state that the solicitor is or was acting on behalf of a client, and

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (b) give the name and address of the client and any relevant person.
- (2) In the case of anything done by the solicitor in connection with the transfer of any asset by or to an individual who is ordinarily UK resident to or by a body corporate to which subsection (6) applies, the transferor and the transferee are relevant persons.
- (3) In the case of anything done by the solicitor in connection with any associated operation in relation to any such transfer, the persons concerned in the associated operations are relevant persons.
- (4) In the case of anything done by the solicitor in connection with the formation or management of a body corporate to which subsection (6) applies, the body corporate is a relevant person.
- (5) In the case of anything done by the solicitor in connection with—
 - (a) the creation of any settlement as a result of which income becomes payable to a person abroad, or
 - (b) the execution of the trusts of any such settlement,the settlor and that person are relevant persons.
- (6) This subsection applies to bodies corporate resident or incorporated outside the United Kingdom which—
 - (a) are, or if UK resident would be, close companies, and
 - (b) are not companies whose business consists wholly or mainly of the carrying on of a trade or trades.
- (7) In this section “settlement” and “settlor” have the meanings given by section 620 of ITTOIA 2005.
- (8) In the application of this section to Scotland, any reference to the trusts of a settlement is a reference to the purposes of the settlement.

750 Restrictions on particulars to be provided by banks

- (1) Section 748 does not oblige a bank to provide any particulars of any ordinary banking transactions between the bank and a customer carried out in the ordinary course of banking business, unless subsection (2) or (3) applies.
- (2) This subsection applies if the bank has acted or is acting on behalf of the customer in connection with—
 - (a) the creation of any settlement as a result of which income becomes payable to a person abroad, or
 - (b) the execution of the trusts of any such settlement.
- (3) This subsection applies if the bank has acted or is acting on behalf of the customer in connection with the formation or management of a body corporate to which section 749(6) applies.
- (4) In this section—
 - “bank” has the meaning given by section 991, and
 - “settlement” has the meaning given by section 620 of ITTOIA 2005.
- (5) In the application of this section to Scotland, any reference to the trusts of a settlement is a reference to the purposes of the settlement.

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

751 ^[F26]The tribunal's] jurisdiction on appeals

^[F27]On any appeal that is notified to the tribunal, the jurisdiction of the tribunal] includes jurisdiction to affirm or replace any decision taken by an officer of Revenue and Customs in exercise of the officer's functions under—

- (a) section 737 (exemption: all relevant transactions post-4 December 2005 transactions),
- (b) section 738 (meaning of “commercial transaction”),
- (c) section 739 (exemption: all relevant transactions pre-5 December 2005 transactions),
- (d) section 742 (partial exemption where later associated operations fail conditions),
- (e) section 743(2) (no duplication of charges: choice of persons in relation to whom income is taken into account).

Textual Amendments

- F26** Words in s. 751 heading substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 461(2)**
- F27** Words in s. 751 substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 461(3)**

CHAPTER 3

TRANSACTIONS IN LAND

Introduction

752 Overview of Chapter

- (1) This Chapter has effect for the purpose of preventing the avoidance of income tax by persons concerned with land or the development of land.
- (2) This Chapter imposes a charge to income tax in some circumstances where gains of a capital nature are obtained from disposing of land.

753 Meaning of disposing of land

- (1) For the purposes of this Chapter land is disposed of if the property in the land or control over the land is effectively disposed of—
 - (a) by one or more transactions, or
 - (b) by any arrangement or scheme.
- (2) It does not matter for the purposes of subsection (1) if the transactions, arrangement or scheme concern—
 - (a) the land, or
 - (b) property deriving its value from the land (see section 772(2)).
- (3) See also—

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section 761 (transactions, arrangements, sales and realisations relevant for this Chapter), and
section 762 (tracing value).

754 Priority of other income tax provisions

This Chapter has effect subject to—

- (a) Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor), and
- (b) any other provision of the Tax Acts treating income as belonging to a particular person.

Charge on gains from transactions in land

755 Charge to tax on gains from transactions in land

- (1) Income tax is charged on income treated as arising under section 756 (income treated as arising when gains obtained from some land disposals).
- (2) For exemptions from the charge, see—
 - section 765 (exemption: gain attributable to period before intention to develop formed),
 - section 766 (exemption: disposals of shares in companies holding land as trading stock), and
 - section 767 (exemption: private residences).

756 Income treated as arising when gains obtained from some land disposals

- (1) This section applies if—
 - (a) any of the conditions specified in subsection (3) is met as respects land,
 - (b) a gain of a capital nature is obtained from the disposal of all or part of the land,
 - (c) all or part of the land is situated in the United Kingdom, and
 - (d) a person within section 757(1)(a), (b) or (c) obtains the gain.
- (2) The gain is treated for income tax purposes as income arising when the gain is realised.
- (3) The conditions are that—
 - (a) the land is acquired with the sole or main object of realising a gain from disposing of all or part of the land,
 - (b) any property deriving its value from the land is acquired with the sole or main object of realising a gain from disposing of all or part of the land,
 - (c) the land is held as trading stock, and
 - (d) the land is developed with the sole or main object of realising a gain from disposing of all or part of the land when developed.
- (4) It does not matter for the purposes of this section whether the person within section 757(1)(a), (b) or (c) obtains the gain for that person or another person.
- (5) For the purposes of this section, if, for example by a premature sale, a person (“A”) directly or indirectly transmits the opportunity of realising a gain to another person (“B”), A obtains B’s gain for B.

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

(6) For the meaning of “another person”, see section 763.

757 Person obtaining gain

- (1) The persons referred to in section 756(1)(d) are—
 - (a) the person acquiring, holding or developing the land,
 - (b) a person connected with a person within paragraph (a), and
 - (c) a person who is a party to, or concerned in, an arrangement or scheme within subsection (2).
- (2) An arrangement or scheme is within this subsection if—
 - (a) it is effected as respects all or part of the land, and
 - (b) it enables a gain to be realised—
 - (i) by any indirect method, or
 - (ii) by any series of transactions.
- (3) For the purposes of this section any number of transactions may be regarded as constituting a single arrangement or scheme if—
 - (a) a common purpose can be discerned in them, or
 - (b) there is other sufficient evidence of a common purpose.

758 Income charged

- (1) Tax is charged under this Chapter on the full amount of income treated as arising in the tax year.
- (2) See section 760 (method of calculating gain) for how to calculate the amount of income charged.

759 Person liable

- (1) The person liable for any tax charged under this Chapter on income is the person whose income it is.
- (2) The general rule is that that person is the person who realises the gain.
- (3) But that rule is subject to subsections (4) and (6).
- (4) If all or any part of the gain accruing to a person (“A”) is derived from value provided directly or indirectly by another person (“B”), the income is B's.
- (5) Subsection (4) applies whether or not the value is put at the disposal of A.
- (6) If all or any part of the gain accruing to a person is derived from an opportunity of realising a gain provided directly or indirectly by another person, the income is the other person's.
- (7) For the meaning of “another person”, see section 763.
- (8) In applying section 1015 (territorial scope of charges including the charge under this Chapter) for the purposes of this Chapter, an amount treated as arising to a non-UK resident under section 756 is treated as being from a source in the United Kingdom so far (and only so far) as the land to which the disposal relates is in the United Kingdom.

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760 Method of calculating gain

- (1) Subsections (3) to (5) apply for calculating a gain for the purposes of this Chapter.
- (2) But, except so far as those subsections make provision, such method is to be used for those purposes as is just and reasonable in the circumstances.
- (3) The method must—
 - (a) take into account the value of what is obtained for disposing of the land, and
 - (b) allow only such expenses as are attributable to the land disposed of.
- (4) If a freehold is acquired and on disposal the reversion is retained, account may be taken of the way in which trading profits are calculated in such a case.
- (5) Account may be taken of the adjustments to be made in calculating trading profits under section 158 of ITTOIA 2005 (lease premiums etc: reduction of receipts).
- (6) In this section “trading profits” means the profits under Part 2 of ITTOIA 2005 (trading profits) of a person dealing in land.
- (7) In the application of this section in Scotland—
 - “freehold” means the interest of the owner, and
 - “reversion” means the interest of the landlord in property subject to a lease.
- (8) See also section 764 (valuations and apportionments).

Further provisions relevant to the charge

761 Transactions, arrangements, sales and realisations relevant for Chapter

- (1) For the purposes of this Chapter, account is to be taken of any method, however indirect, by which—
 - (a) any property or right is transferred or transmitted, or
 - (b) the value of any property or right is enhanced or diminished.
- (2) Accordingly—
 - (a) the occasion of the transfer or transmission of any property or right however indirect, and
 - (b) the occasion when the value of any property or right is enhanced, may be an occasion when tax is charged under this Chapter.
- (3) Subsections (1) and (2) apply in particular—
 - (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
 - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning—
 - (i) share capital or other rights in a company,
 - (ii) rights in a partnership, or
 - (iii) an interest in settled property,
 - (c) to the creation of an option affecting the disposition of any property or right and the giving of consideration for granting it,
 - (d) to the creation of a requirement for consent affecting such a disposition and the giving of consideration for granting it,

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- (e) to the creation of an embargo affecting such a disposition and the giving of consideration for releasing it, and
- (f) to the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

762 Tracing value

- (1) This section applies if it is necessary to determine the extent to which the value of any property or right is derived from any other property or right for the purposes of this Chapter.
- (2) Value may be traced through any number of companies, partnerships and trusts.
- (3) The property held by a company, partnership or trust must be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.

763 Meaning of “another person”

- (1) For the purposes of this Chapter references to other persons are to be read in accordance with subsections (2) to (4).
- (2) A partnership or partners in a partnership may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.
- (3) The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being the trustees.
- (4) Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.

764 Valuations and apportionments

- (1) All such valuations are to be made as are appropriate to give effect to this Chapter.
- (2) For the purposes of this Chapter, any expenditure, receipt, consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances.

Exemptions

765 Exemption: gain attributable to period before intention to develop formed

- (1) This section applies if—
 - (a) income is treated as arising because the condition mentioned in section 756(3)(d) is met (land developed with sole or main object of realising a gain from its disposal when developed), and
 - (b) part of the income is fairly attributable to a period before the intention to develop was formed.
- (2) No liability to income tax arises under this Chapter in respect of that part of the income.
- (3) In applying this section account must be taken of the treatment under Part 2 of ITTOIA 2005 (trading profits) of a person who appropriates land as trading stock.

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

766 Exemption: disposals of shares in companies holding land as trading stock

- (1) No liability to income tax arises under this Chapter in respect of a gain on property deriving value from land if—
 - (a) the gain is obtained by the holder of shares,
 - (b) the gain arises as a result of the holder of shares falling within section 757(1) (a) or (b) (persons acquiring, holding or developing land and connected persons), and
 - (c) the circumstances are such as are mentioned in subsections (2) and (3).
- (2) The gain arises on a disposal of shares in—
 - (a) a company which holds that land as trading stock, or
 - (b) a company which directly or indirectly owns at least 90% of the ordinary share capital of another company which itself holds that land as trading stock.
- (3) All the land so held is disposed of—
 - (a) in the normal course of its trade by the company which holds it, and
 - (b) so as to procure that all opportunity of profit in respect of the land arises to that company.
- (4) This section does not affect any liability as a result of any person falling within section 757(1)(c) (parties to arrangements and schemes, etc).

767 Exemption: private residences

No liability to income tax arises under this Chapter in respect of a gain accruing to an individual if—

- (a) the gain is exempt from capital gains tax as a result of sections 222 to 226 of TCGA 1992 (private residences), or
- (b) it would be so exempt but for section 224(3) of that Act (residences acquired partly with a view to making a gain).

Recovery of tax

768 Recovery of tax where consideration receivable by person not assessed

- (1) This section applies if a person (“A”) is assessed to tax under this Chapter in respect of consideration receivable by another person (“B”).
- (2) Consideration is not regarded as having become receivable by B for this purpose until B can effectively enjoy or dispose of it.
- (3) A is entitled to recover from B any part of the tax which A has paid.
- (4) If any part of the tax remains unpaid at the end of the period of 6 months beginning with the date when it became due and payable, it is recoverable from B as if B were the person assessed.
- (5) Subsection (4) does not affect the right to recover the tax from A.
- (6) For the purposes of this section, any income which an individual is treated as having as a result of this Chapter (the “land income”) is treated as the highest part of the individual's total income.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (7) But if in the tax year—
- (a) more than one gain is treated as the individual's land income, or
 - (b) the individual is also treated as having income as a result of Chapter 4 (sales of occupation income),
- only a just and reasonable proportion of each gain treated as land income is to be treated as the highest part of the individual's total income.
- (8) See section 1012 for the relationship between—
- (a) the rules in subsections (6) and (7), and
 - (b) other rules requiring particular income to be treated as the highest part of a person's total income.

769 Recovery of tax: certificates of tax paid etc

- (1) For the purposes of section 768(3), an officer of Revenue and Customs must, if required to do so, produce a certificate specifying—
 - (a) the amount of income in respect of which tax has been paid, and
 - (b) the amount of tax paid.
- (2) The certificate is conclusive evidence of any facts stated in it.
- (3) See also section 944 (under which directions may be given for payments within this Chapter to non-UK residents to be made under deduction of tax).

Clearances and power to obtain information

770 Clearance procedure

- (1) This section applies if a person considers that the condition mentioned in section 756(3)(a), (b) or (d) may be met as respects a gain of a capital nature which that person—
 - (a) has obtained from the disposal of land, or
 - (b) would obtain from a proposed disposal of land.
- (2) The person may provide the Commissioners for Her Majesty's Revenue and Customs with written particulars showing how the gain has arisen or would arise.
- (3) The Commissioners must notify the person whether or not they are satisfied that, in the circumstances described in the particulars, the person will not, or would not, be liable to tax on the gain under this Chapter.
- (4) The notification must be given before the end of the period of 30 days beginning with the day after that on which the particulars are received.
- (5) A person notified by the Commissioners under this section that they are so satisfied is not liable to income tax on the gain under this Chapter.
- (6) A notification under this section about the Commissioners' decision concerning a gain is void if the particulars given under this section about the gain do not make a full and accurate disclosure of all facts and considerations relating to it which are material to the decision.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

771 Power to obtain information

- (1) An officer of Revenue and Customs may by notice require any person to provide the officer within such period as the officer may direct with such particulars as the officer may reasonably require for the purposes of this Chapter.
- (2) That period must be at least 30 days.
- (3) The particulars which a person must provide under this section, if required to do so by such a notice, include particulars about—
 - (a) transactions or arrangements with respect to which the person is or was acting on behalf of others,
 - (b) transactions or arrangements which in the opinion of the officer should properly be investigated for the purposes of this Chapter, although in the person's opinion no liability to tax arises under this Chapter, and
 - (c) whether the person has taken or is taking any part and, if so, what part in transactions or arrangements of a description specified in the notice.
- (4) Subsection (3) is subject to subsection (5).
- (5) In relation to anything done by a solicitor on behalf of a client who does not consent to the provision of information required to be provided by a notice under subsection (1), the solicitor may not be compelled under this section to do more than—
 - (a) state that the solicitor was acting on behalf of a client, and
 - (b) give the name and address of the client.
- (6) A solicitor is not treated as having taken part in a transaction or arrangement for the purposes of subsection (3)(c) merely because of giving professional advice to a client about it.

Interpretation

772 Interpretation of Chapter

- (1) In this Chapter “capital”, in relation to a gain, means that the gain does not fall to be included in any calculation of income for [^{F28} purposes of the Tax Acts otherwise than as a result of section 776 of ICTA or] this Chapter.
- (2) In this Chapter references to property deriving its value from land include—
 - (a) any shareholding in a company deriving its value directly or indirectly from land,
 - (b) any partnership interest deriving its value directly or indirectly from land,
 - (c) any interest in settled property deriving its value directly or indirectly from land, and
 - (d) any option, consent or embargo affecting the disposition of land.
- (3) In this Chapter—

“company” includes any body corporate, and
“share” includes stock.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

Textual Amendments

F28 Words in s. 772(1) substituted (retrospective with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) \(No. 2\) Order 2009 \(S.I. 2009/2859\)](#), **art. 4(4)**

CHAPTER 4

SALES OF OCCUPATION INCOME

Introduction

773 Overview of Chapter

- (1) This Chapter imposes a charge to income tax—
 - (a) on individuals to whom income is treated as arising under section 778 (income arising where capital amount other than derivative property or right obtained), and
 - (b) on individuals to whom income is treated as arising under section 779 (income arising where derivative property or right obtained).
- (2) Income is treated as arising under those sections only if—
 - (a) transactions are effected or arrangements made to exploit the earning capacity of an individual in an occupation, and
 - (b) the main object or one of the main objects of the transactions or arrangements is the avoidance or reduction of liability to income tax.

774 Meaning of “occupation”

In this Chapter references to an occupation, in relation to an individual, are references to any activities of a kind undertaken in a profession or vocation, regardless of whether the individual—

- (a) is carrying on a profession or vocation on the individual's own account, or
- (b) is an employee or office-holder.

775 Priority of other tax provisions

This Chapter has effect subject to—

- (a) Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor), and
- (b) any other provision of the Tax Acts treating income as belonging to a particular person.

Charge on sale of occupation income

776 Charge to tax on sale of occupation income

- (1) Income tax is charged on income treated as arising under—

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (a) section 778 (income arising where capital amount other than derivative property or right obtained), or
 - (b) section 779 (income arising where derivative property or right obtained).
- (2) Tax is charged under this section on the full amount of income treated as arising in the tax year.
- (3) The person liable for any tax charged under this section is the individual to whom the income is treated as arising.
- (4) This section is subject to section 784 (exemption for sales of going concerns).

777 Conditions for sections 778 and 779 to apply

- (1) Sections 778 and 779 apply only if conditions A to C are met in respect of an individual.
- (2) Condition A is that the individual carries on an occupation wholly or partly in the United Kingdom.
- (3) Condition B is that transactions are effected or arrangements made to exploit the individual's earning capacity in the occupation by putting another person (see section 782) in a position to enjoy—
- (a) all or part of the income or receipts derived from the individual's activities in the occupation, or
 - (b) anything derived directly or indirectly from such income or receipts.
- (4) The reference in subsection (3) to income or receipts derived from the individual's activities includes a reference to payments for any description of copyright or licence or franchise or other right deriving its value from the individual's activities (including past activities).
- (5) Condition C is that as part of, or in connection with, or in consequence of, the transactions or arrangements a capital amount is obtained by the individual for the individual or another person.
- (6) For the purposes of subsection (5), the cases where an individual (“A”) obtains a capital amount for another person (“B”) include cases where A has put B in a position to receive the capital amount by providing B with something of value derived, directly or indirectly, from A's activities in the occupation.
- (7) In this Chapter “capital amount” means an amount in money or money's worth which does not fall to be included in a calculation of income for [F29] purposes of the Tax Acts otherwise than as a result of] this Chapter.

Textual Amendments

- F29** Words in s. 777(7) substituted (retrospective with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) \(No. 2\) Order 2009 \(S.I. 2009/2859\)](#), [art. 4\(5\)](#)

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

778 Income arising where capital amount other than derivative property or right obtained

- (1) This section applies if the capital amount obtained as mentioned in section 777(5) does not consist of—
 - (a) property which derives substantially the whole of its value from the individual's activities, or
 - (b) a right which does so.
- (2) The capital amount is treated for income tax purposes as income arising to the individual.
- (3) The income is treated as arising in the tax year in which the capital amount is receivable.
- (4) A capital amount is not regarded as having become receivable by a person for the purposes of this section until the person can effectively enjoy or dispose of it.

779 Income arising where derivative property or right obtained

- (1) This section applies if—
 - (a) the capital amount obtained as mentioned in section 777(5) consists of—
 - (i) property which derives substantially the whole of its value from the activities of an individual, or
 - (ii) a right which does so, and
 - (b) the property or right is sold or otherwise realised.
- (2) For the purposes of subsection (1), it does not matter whether the capital amount is obtained on one occasion or on two or more occasions (for example, because the individual acquires a stock option and subsequently exercises it).
- (3) Income of an amount equal to the proceeds of sale or the realised value is treated for income tax purposes as income arising to the individual.
- (4) The income is treated as arising in the tax year in which the property or right is sold or otherwise realised.

Further provisions relevant to the charge

780 Transactions, arrangements, sales and realisations relevant for Chapter

- (1) For the purposes of this Chapter, account is to be taken of any method, however indirect, by which—
 - (a) any property or right is transferred or transmitted, or
 - (b) the value of any property or right is enhanced or diminished.
- (2) Accordingly—
 - (a) the occasion of the transfer or transmission of any property or right however indirect, and
 - (b) the occasion when the value of any property or right is enhanced, may be an occasion when tax is charged under this Chapter.
- (3) Subsections (1) and (2) apply in particular—

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
- (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning—
 - (i) share capital or other rights in a company,
 - (ii) rights in a partnership, or
 - (iii) an interest in settled property,
- (c) to the creation of an option and the giving of consideration for granting it,
- (d) to the creation of a requirement for consent and the giving of consideration for granting it,
- (e) to the creation of an embargo affecting the disposition of any property or right and the giving of consideration for releasing it, and
- (f) to the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

781 Tracing value

- (1) This section applies if it is necessary to determine the extent to which the value of any property or right is derived from any other property or right for the purposes of this Chapter.
- (2) Value may be traced through any number of companies, partnerships and trusts.
- (3) The property held by a company, partnership or trust must be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.

782 Meaning of “other person”

- (1) For the purposes of this Chapter references to other persons are to be read in accordance with subsections (2) to (4).
- (2) A partnership or partners in a partnership may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.
- (3) The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being trustees.
- (4) Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.

783 Valuations and apportionments

- (1) All such valuations are to be made as are appropriate to give effect to this Chapter.
- (2) For the purposes of this Chapter, any expenditure, receipt, consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances.

Status: Point in time view as at 21/07/2009.

*Changes to legislation: There are currently no known outstanding effects
for the Income Tax Act 2007, Part 13. (See end of Document for details)*

Exemption for sales of going concerns

784 Exemption for sales of going concerns

- (1) This section applies if a capital amount is obtained from the disposal—
 - (a) of assets (including any goodwill) of a profession or vocation,
 - (b) of a share in a partnership which is carrying on a profession or vocation, or
 - (c) of shares in a company.
- (2) An individual is not liable to income tax under this Chapter in respect of the capital amount so far as the going concern condition is met (see subsections (4) and (5)).
- (3) Subsection (2) is subject to section 785 (restriction on exemption: sales of future earnings).
- (4) In the case of a disposal within subsection (1)(a) or (b), the going concern condition is that the value of what is disposed of at the time of disposal is attributable to the value of the profession or vocation as a going concern.
- (5) In the case of a disposal within subsection (1)(c), the going concern condition is that the value of what is disposed of at the time of disposal is attributable to the value of the company's business as a going concern.
- (6) In subsection (5) the reference to the company's business includes a reference to the business of any other company in which it holds shares directly or indirectly.

785 Restriction on exemption: sales of future earnings

- (1) This section applies if the value as a going concern mentioned in section 784(4) or (5) is derived to a material extent from prospective income or receipts derived directly or indirectly from the individual's activities in the occupation.
- (2) The exemption under section 784 applies to the value so derived only if the future earnings condition is met.
- (3) The future earnings condition is met if, ignoring all capital amounts, the individual will receive full consideration for the prospective income or receipts, whether as a partner in a partnership or as an employee or otherwise.
- (4) The references in subsections (1) and (3) to income or receipts include references to payments for any description of copyright, licence, franchise or other right deriving its value from the individual's activities (including past activities).

Recovery of tax

786 Recovery of tax where consideration receivable by person not assessed

- (1) This section applies if a person (“A”) is assessed to tax under this Chapter in respect of consideration receivable by another person (“B”).
- (2) Consideration is not regarded as having become receivable by B for this purpose until B can effectively enjoy or dispose of it.
- (3) A is entitled to recover from B any part of the tax which A has paid.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (4) If any part of the tax remains unpaid at the end of the period of 6 months beginning with the date when it became due and payable, it is recoverable from B as if B were the person assessed.
- (5) Subsection (4) does not affect the right to recover the tax from A.
- (6) For the purposes of this section, any income which an individual is treated as having as a result of this Chapter (the “occupation income”) is treated as the highest part of the individual's total income.
- (7) But if in the tax year—
 - (a) more than one capital amount is treated as the individual's occupation income, or
 - (b) the individual is also treated as having income as a result of Chapter 3 (transactions in land),only a just and reasonable proportion of each capital amount treated as occupation income is to be treated as the highest part of the individual's total income.
- (8) See section 1012 for the relationship between—
 - (a) the rules in subsections (6) and (7), and
 - (b) other rules requiring particular income to be treated as the highest part of a person's total income.

787 Recovery of tax: certificates of tax paid etc

- (1) For the purposes of section 786(3), an officer of Revenue and Customs must, if requested to do so, produce a certificate specifying—
 - (a) the amount of income in respect of which tax has been paid, and
 - (b) the amount of tax paid.
- (2) The certificate is conclusive evidence of any facts stated in it.
- (3) See also section 944 (under which directions may be given for payments within this Chapter to non-UK residents to be subject to a duty to deduct income tax).

Power to obtain information

788 Power to obtain information

- (1) An officer of Revenue and Customs may by notice require any person to provide the officer within such period as the officer may direct with such particulars as the officer may reasonably require for the purposes of this Chapter.
- (2) That period must be at least 30 days.
- (3) The particulars which a person must provide under this section, if required to do so by such a notice, include particulars about—
 - (a) transactions or arrangements with respect to which the person is or was acting on behalf of others,
 - (b) transactions or arrangements which in the opinion of the officer should properly be investigated for the purposes of this Chapter, although in the person's opinion no liability to tax arises under this Chapter, and

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (c) whether the person has taken or is taking any part and, if so, what part in transactions or arrangements of a description specified in the notice.
- (4) Subsection (3) is subject to subsection (5).
- (5) In relation to anything done by a solicitor on behalf of a client who does not consent to the provision of information required to be provided by a notice under subsection (1), the solicitor may not be compelled under this section to do more than—
 - (a) state that the solicitor was acting on behalf of a client, and
 - (b) give the name and address of the client.
- (6) A solicitor is not treated as having taken part in a transaction or arrangement for the purposes of subsection (3)(c) merely because of giving professional advice to a client about it.

Interpretation

789 Minor definitions

In this Chapter—

- “company” includes any body corporate, and
- “share” includes stock.

CHAPTER 5

AVOIDANCE INVOLVING TRADING LOSSES

Introduction

790 Overview of Chapter

- (1) This Chapter imposes charges to income tax on—
 - (a) individuals who are treated as receiving income under section 792 (individuals in partnership claiming excess relief),
 - (b) individuals who are treated as receiving income under section 797 (individuals claiming relief for film-related trading losses), and
 - (c) individuals who are treated as receiving income under section 805 (individuals in partnership claiming relief for licence-related trading losses).
- (2) The charges apply if (among other things) the individual makes a loss in a trade for which the individual claims sideways relief or capital gains relief.
- (3) For the purposes of this Chapter sideways relief is—
 - (a) trade loss relief against general income (see sections 64 to 70), or
 - (b) early trade losses relief (see sections 72 to 74).
- (4) For the purposes of this Chapter—
 - (a) capital gains relief is, in relation to a loss, the treatment of the loss as an allowable loss by virtue of section 261B of TCGA 1992 (use of trading loss as a CGT loss), and

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

(b) capital gains relief is claimed for a loss when a claim under that section is made in relation to the loss.

(5) References in this Chapter to a firm are to be read in the same way as references to a firm in Part 9 of ITTOIA 2005 (which contains special provision about partnerships).

Individuals in partnership: recovery of excess relief

791 Charge to tax on income treated as received under section 792

- (1) Income tax is charged on income treated as received by an individual under section 792.
- (2) Tax is charged under this section on the amount of the income treated as received in the tax year.
- (3) The person liable for any tax charged under this section is the individual treated as receiving the income.

792 Partners claiming excess sideways or capital gains relief

- (1) This section applies if—
 - (a) an individual carrying on a trade (“the relevant trade”) as a partner in a firm makes post-1 December 2004 losses in the relevant trade for which the individual claims relief within subsection (2),
 - (b) any of sections 104, 107 and 110 applies in relation to the relief (whether or not any of those sections restricts the amount of the relief), and
 - (c) after the individual makes the claim or claims, a chargeable event occurs.
- (2) The relief within this subsection is—
 - (a) sideways relief but only if the whole or part of the relief is claimed against income of the individual apart from profits of the relevant trade, and
 - (b) capital gains relief.
- (3) A chargeable event occurs whenever—
 - (a) the amount of the individual's contribution to the firm is reduced as a result of the application of regulations made under section 114, and
 - (b) that reduction in the individual's contribution to the firm immediately results in—
 - (i) the total amount of trade losses claimed (less any reclaimed relief) becoming greater than the contribution, or
 - (ii) an increase in the amount by which the total amount of trade losses claimed (less any reclaimed relief) exceeds the contribution.
- (4) The individual is treated as receiving an amount of income every time a chargeable event occurs.

The income is treated as arising otherwise than as profits of a trade.

(5) The amount of the income is calculated in accordance with section 793.

(6) If—

- (a) the firm is carrying on, or has carried on, more than one trade, and

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

(b) subsection (1)(a) and (b) applies in relation to losses made by the individual in one or more of those trades as a partner in the firm,

the firm's trades are taken together for the purpose of determining whether a chargeable event occurs at any time after a claim in relation to any of those losses has been made and, if one does occur, the amount of income treated as received by the individual at that time.

See section 794(6) for modifications giving effect to this.

- (7) References in this section to an individual being a partner in a firm include a reference to an individual being a limited partner within the meaning of section [F30]103A] as a result of subsection (1)(c) of that section.
- (8) And, accordingly, in the case of an individual who is such a limited partner, in this section and in sections 793 to 795 references to the individual's firm are references to the relationship between the individual and the other persons mentioned in section [F31]103A(3)(a)].

Textual Amendments

- F30** Word in s. 792(7) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 4 paras. 17\(a\), 21](#)
- F31** Word in s. 792(8) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 4 paras. 17\(b\), 21](#)

793 Calculating the amount of income treated as received

- (1) The amount of income treated as received by the individual under section 792 when the chargeable event occurs is the lowest of amounts A to C.
- (2) Amount A is the amount by which the individual's contribution to the firm is reduced as a result of the application of regulations made under section 114.
- (3) Amount B is the amount given by—
- (a) taking, at the time immediately after the chargeable event occurs, the total amount of trade losses claimed that are post-1 December 2004 losses, and
 - (b) reducing that amount (but not below nil) by any reclaimed relief.
- (4) Amount C is the amount given by—
- (a) taking the amount by which, at the time immediately after the chargeable event occurs, the total amount of trade losses claimed exceeds the individual's contribution to the firm, and
 - (b) reducing that amount (but not below nil) by any reclaimed relief.

794 Meaning of “the total amount of trade losses claimed” etc

- (1) In sections 792 and 793 “the total amount of trade losses claimed” means the total amount of losses within subsection (2) for which the individual has claimed sideways relief or capital gains relief.
- (2) The losses within this subsection are losses made by the individual in the relevant trade—

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (a) in a tax year at a time during which the individual carries on the relevant trade as a limited partner or as a member of an LLP, or
- (b) in an early tax year during which the individual carries on the relevant trade as a non-active partner.

Expressions used in this subsection are to be read as if contained in Chapter 3 of Part 4.

- (3) In sections 792 and 793 “reclaimed relief” means the total amount of income treated as received by the individual under section 792 as a result of that section being previously applied in relation to claims for relief for losses made by the individual in the relevant trade.
- (4) In sections 792 and 793 “the individual's contribution to the firm” at any time means the individual's contribution to the firm or the LLP (as the case may be) at that time as calculated for the purposes of the relevant restriction provision.
- (5) The “relevant restriction provision” means—
 - (a) whichever of sections 104, 107 and 110 applied as mentioned in section 792(1)(b), or
 - (b) if more than one of those sections applied as mentioned in section 792(1)(b), the section which so applied to the amount of relief which could be given for the loss most recently made by the individual in the relevant trade.
- (6) In a case to which section 792(6) applies, for the purpose of determining the total amount of trade losses claimed, the amount of the reclaimed relief and the relevant restriction provision—
 - (a) apply subsections (1) and (2) in relation to each of the trades that the firm is carrying on, or has carried on, and then add the results together, and
 - (b) apply subsections (3) and (5)(b) as if references to the relevant trade were references to any of the trades that the firm is carrying on, or has carried on.

But if a trade is of the kind mentioned in section 110(8), do not apply subsection (2)(b) in relation to it.

795 Meaning of “post-1 December 2004 loss”

- (1) For the purposes of sections 792 and 793 a “post-1 December 2004 loss” means—
 - (a) any loss made by an individual in a trade in a tax year the basis period for which begins on or after 2 December 2004, or
 - (b) the post-1 December 2004 part of any loss made by an individual in a trade in a tax year the basis period for which includes 2 December 2004 (but begins before that date).
- (2) The “post-1 December 2004 part” of any loss made by an individual in a trade means the individual's share of any losses made by the relevant firm in the trade in the period—
 - (a) beginning with 2 December 2004, and
 - (b) ending with the end of the basis period for the tax year concerned.
- (3) For this purpose “the relevant firm” means the firm in which the individual carried on the trade, and—

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (a) the losses of that firm are calculated as if that period were one for which profits and losses had to be calculated for the purposes of section 849 of ITTOIA 2005 (calculation of firm's profits or losses), and
 - (b) the individual's share of the losses is determined in accordance with the individual's interest in the firm during that period.
- (4) In this section “basis period”, in relation to an individual with a notional trade, means the basis period for the notional trade (within the meaning of Part 9 of ITTOIA 2005).

Individuals claiming relief for film-related trading losses

796 Charge to tax on income treated as received under section 797

- (1) Income tax is charged on income treated as received by an individual under section 797.
- (2) Tax is charged under this section on the amount of the income treated as received in the tax year.
- (3) The person liable for any tax charged under this section is the individual treated as receiving the income.

797 Individuals claiming sideways or capital gains relief for film-related losses

- (1) This section applies if—
 - (a) an individual makes a film-related loss (see section 800) in a trade for which the individual claims sideways relief or capital gains relief (a “relevant claim”),
 - (b) there is a disposal of a right of the individual to profits arising from the trade (a “relevant disposal”) (see section 799), and
 - (c) an exit event occurs.
- (2) An exit event occurs whenever—
 - (a) the individual receives any non-taxable consideration (see section 798) for a relevant disposal, or
 - (b) an increase in the individual's claimed film-related losses (see section 800) or a decrease in the individual's capital contribution (see section 801) results in—
 - (i) those losses becoming greater than that contribution, or
 - (ii) an increase in the amount by which those losses exceed that contribution.
- (3) The individual is treated as receiving an amount of income every time a chargeable event occurs.

The income is treated as arising otherwise than as profits of the trade.

- (4) A chargeable event occurs whenever—
 - (a) the individual makes a relevant claim (if by that time a relevant disposal and an exit event have occurred),
 - (b) a relevant disposal occurs (if by that time an exit event has occurred and the individual has made a relevant claim), or

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (c) an exit event occurs (if by that time a relevant disposal has occurred and the individual has made a relevant claim).
- (5) The amount of income treated as received when a chargeable event occurs is equal to the sum of—
- (a) the total amount or value of all non-taxable consideration received by the individual for relevant disposals, and
 - (b) the amount (if any) by which the individual's claimed film-related losses exceed the individual's capital contribution.

The calculation in this subsection is made immediately after the chargeable event occurs and is subject to section 803.

- (6) For the purposes of this section it does not matter—
- (a) if the individual (or anyone else) is still carrying on the trade when a chargeable event occurs, or
 - (b) if the individual receives both non-taxable and taxable consideration for a relevant disposal.

798 Meaning of “non-taxable consideration” etc

- (1) This section applies for the purposes of section 797.
- (2) Consideration is non-taxable if (apart from section 796) it is not chargeable to income tax.
- (3) Non-taxable consideration from which a deduction within subsection (4) is made is treated as received free of the deduction.
- (4) A deduction is within this subsection if it is in consideration of any person's agreeing to, or facilitating, any relevant disposal or exit event.

799 Meaning of “disposal of a right of the individual to profits” etc

- (1) For the purposes of section 797 any reference to a disposal of a right of an individual to profits arising from a trade includes, in particular, any of events A to D.
- (2) Event A is the disposal, giving up or loss by—
 - (a) the individual, or
 - (b) a firm in which the individual is a partner,of a right arising from the trade to income (or any part of any income).

It does not matter if the right is disposed of, given up or lost as part of a larger disposal, giving up or loss.

- (3) Event B is the disposal, giving up or loss of the individual's interest in a firm that carries on the trade (including the dissolution of the firm).
- (4) Event C is a default in the payment of income to which—
 - (a) the individual, or
 - (b) a firm in which the individual is a partner,has a right arising from the trade.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (5) Event D is a change in the individual's entitlement to any profits or losses arising from the trade the effect of which is that—
 - (a) the individual's share of any profits is reduced (including to nil), or
 - (b) the individual becomes entitled to a share, or a greater share, of any losses without becoming entitled to a corresponding share of profits.
- (6) The changes covered by event D include cases where there is an agreement under which the individual is entitled—
 - (a) to a particular share of any profits or losses arising from the trade in a period (including a nil share), and
 - (b) to a different share of any such profits or losses in a succeeding period (including a nil share).
- (7) In such cases the change in the individual's entitlement is treated for the purposes of section 797 as occurring at the beginning of the succeeding period.

800 Meaning of “film-related losses” etc

- (1) This section applies for the purposes of sections 797, 801 and 802.
- (2) A loss is a “film-related loss” if the calculation of profits or losses that it results from is made in accordance with any provision of Chapter 9 of Part 2 of ITTOIA 2005.
- (3) “The individual's claimed film-related losses” means—
 - (a) the total amount of film-related losses made by the individual in the trade so far as they are losses for which the individual has made a relevant claim, less
 - (b) the amount of any relevant recovered relief.
- (4) “The amount of any relevant recovered relief” means—
 - (a) amount A, or
 - (b) if less, amount B.
- (5) Amount A is the total amount of income treated as received by the individual under section 792 (recovery of excess relief) as a result of the application of that section in relation to claims for relief for losses made by the individual in the trade.
- (6) Amount B is the total amount of film-related losses within subsection (7) for which the individual has made a relevant claim.
- (7) A loss is within this subsection if it is made by the individual in the trade—
 - (a) in a tax year at a time during which the individual carries on the trade as a member of an LLP or as a limited partner, or
 - (b) in an early tax year during which the individual carries on the trade as a non-active partner.
- (8) Expressions used in subsection (7) are to be read as if contained in Chapter 3 of Part 4.
- (9) Subsection (10) applies if—
 - (a) the individual has made a relevant claim for a film-related loss made in the trade as a partner in a firm, and
 - (b) the firm is carrying on, or has carried on, more than one trade.
- (10) For the purpose of determining the individual's claimed film-related losses—

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- (a) apply subsection (3)(a) in relation to each of the trades and then add the results together,
- (b) apply subsection (5) as if the reference to the trade were a reference to any of the trades, and
- (c) apply subsections (6) and (7) in relation to each of the trades and then add the results together.

801 Meaning of “capital contribution”

- (1) This section applies for the purposes of section 797.
- (2) The individual's capital contribution is the amount which the individual has contributed to the trade as capital less so much of that amount (if any) as is within subsection (6).

This is subject to subsection (3).

- (3) If the individual has made a relevant claim for a film-related loss made in the trade as a partner in a firm, the individual's capital contribution is the amount which the individual has contributed to the firm as capital less so much of that amount (if any) as is within subsection (6).
- (4) In particular, the individual's share of any profits of the firm is to be included for the purposes of subsection (3) in the amount which the individual has contributed to the firm as capital so far as that share has been added to the firm's capital.
- (5) In subsection (4) the reference to profits are to profits calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits for income tax purposes).
- (6) An amount of capital is within this subsection if it is an amount which—
 - (a) the individual has previously drawn out or received back,
 - (b) the individual is entitled to draw out or receive back,
 - (c) another person has reimbursed to the individual, or
 - (d) the individual is entitled to require another person to reimburse to the individual.
- (7) But if a chargeable event occurs, anything treated for the purposes of section 797(5)(a) as consideration received by the individual for a relevant disposal is not to be treated as capital within subsection (6) in calculating the individual's capital contribution for the purposes of section 797(5)(b).

- (8) In this section—
 - (a) any reference to drawing out, receiving back or reimbursing an amount is to doing so directly or indirectly,
 - (b) any reference to drawing out or receiving back an amount does not include drawing out or receiving back an amount which, because of its being drawn out or received back, is chargeable to income tax as profits of a trade, and
 - (c) any reference to reimbursing an amount includes discharging or assuming all or part of a liability of the individual,

but the express provision made by paragraph (c) does not affect what counts as the receipt back or reimbursement of an amount.

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- (9) This section needs to be read with any regulations made under section 802 (specified amounts to be excluded in calculating a partner's capital contribution for the purposes of section 797).

802 Exclusion of amounts in calculating capital contribution by a partner

- (1) This section applies if an individual makes a relevant claim for a film-related loss made by the individual in a trade as a partner in a firm.
- (2) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that any amount of a specified description is to be excluded in calculating the individual's capital contribution for the purposes of section 797.
- (3) "Specified" means specified in the regulations.
- (4) The regulations may—
- (a) make provision having retrospective effect,
 - (b) contain incidental, supplemental, consequential and transitional provision and savings, and
 - (c) make different provision for different cases or purposes.
- (5) The provision which may be made as a result of subsection (4)(b) includes provision amending or repealing any provision of an Act passed before FA 2005.
- (6) No regulations may be made under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

803 Prohibition against double counting

- (1) Subsections (2) and (3) apply for the purpose of calculating the amount of income received under section 797 on a chargeable event in respect of the individual and the trade.
- (2) If chargeable events have previously occurred in respect of the individual and the trade, any consideration taken into account in calculating the amount of income received on an earlier chargeable event is left out of account.
- (3) If chargeable events have previously occurred in respect of the individual and the trade, the amount of income received as a result of section 797(5)(b) is reduced (but not below nil) by the total amount of income received on earlier chargeable events as a result of that provision.
- (4) In a case to which section 800(10) (cases in which firm is carrying on, or has carried on, more than one trade) applies—
- (a) subsections (2) and (3) of this section have effect as if references to the trade were references to any of the firm's trades, and
 - (b) if chargeable events in respect of the individual and any of the firm's trades occur at the same time, to find the total amount of income received under section 797 at that time on those chargeable events—
 - (i) calculate separately the income received on each chargeable event ignoring the other chargeable events,
 - (ii) add the results from sub-paragraph (i) together, and

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (iii) reduce the total amount of income resulting from sub-paragraph (ii) so far as necessary to ensure that no amount is included more than once in that total.

Individuals in partnership claiming relief for licence-related trading losses

804 Charge to tax on income treated as received under section 805

- (1) Income tax is charged on income treated as received by an individual under section 805.
- (2) Tax is charged under this section on the amount of the income treated as received in the tax year.
- (3) The person liable for any tax charged under this section is the individual treated as receiving the income.

805 Partners claiming relief for licence-related trading losses

- (1) This section applies if—
 - (a) an individual carries on a trade as a non-active partner during an early tax year,
 - (b) the individual makes a loss in the trade in that tax year for which the individual claims sideways relief or capital gains relief (a “relevant claim”),
 - (c) the loss derives to any extent from expenditure incurred in the trade in exploiting a licence acquired in carrying on the trade, and
 - (d) there is a relevant disposal of the licence.
- (2) For the purposes of this section and section 806 there is a relevant disposal of the licence whenever the individual receives non-taxable consideration for—
 - (a) a disposal of the licence, or
 - (b) a disposal of a right to income under an agreement related to or containing the licence.
- (3) If one or more chargeable events occur in any tax year, the individual is treated as receiving an amount of income in the tax year.

The income is treated as arising otherwise than as profits of the trade.

- (4) For the purposes of this section and section 806 a chargeable event occurs whenever—
 - (a) there is a relevant disposal of the licence (if by that time the individual has made a relevant claim), or
 - (b) the individual makes a relevant claim (if by that time there has been a relevant disposal of the licence).
- (5) For the purposes of this section and section 806 consideration is non-taxable if—
 - (a) (apart from section 804) it is not chargeable to income tax, and
 - (b) its receipt is not an exit event for the purposes of section 797.
- (6) For the purposes of this section and section 806 it does not matter—
 - (a) if the individual (or anyone else) is still carrying on the trade when a chargeable event occurs,

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (b) if the individual receives both non-taxable and taxable consideration for a relevant disposal of the licence, or
- (c) if a relevant disposal of the licence is part of a larger disposal.

806 Calculation of amount of income treated as received by the individual

The amount of income treated under section 805 as received by the individual in the tax year is calculated by taking the following steps. *Step 1*

Calculate, at the end of the tax year, the total amount of the claimed losses (so far as relating to the licence) made by the individual in the trade in any early tax year during which the individual carried on the trade as a non-active partner.

Step 2

Calculate, at the end of the tax year, the total amount of the profits (so far as relating to the licence) made by the individual in the trade in any tax year.

Step 3

Deduct the total calculated at Step 2 from the total calculated at Step 1.

The result is “the net licence-related loss”.

If the net licence-related loss is nil or a negative figure—

- (a) the income treated as received in the tax year is nil, and
- (b) ignore Steps 4 and 5.

Step 4

Calculate, at the end of the tax year, the total amount or value of all non-taxable consideration received by the individual for relevant disposals (including consideration received in previous tax years).

Step 5

Deduct from—

- (a) the net licence-related loss, or
- (b) if less, the total calculated at Step 4,

the total amount of all income treated under section 805 as received by the individual in previous tax years as a result of chargeable events.

The result is the amount of the income treated as received in the tax year.

(If the result is a negative figure, the income is nil.)

807 Supplementary provision relating to calculation in section 806

- (1) This section applies for the purposes of section 806.
- (2) For the purposes of Step 1, the amount of a loss made in a tax year that relates to the licence is so much of the loss in the tax year as derives from expenditure incurred in the trade in exploiting the licence.
- (3) The amount of the loss that derives from such expenditure is determined on a just and reasonable basis.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (4) For the purposes of Step 1, a loss is a claimed loss if the individual has claimed sideways relief or capital gains relief for the loss.
- (5) For the purposes of Step 2, the amount of profits made in a tax year that relates to the licence is so much of the individual's profits from the trade in the tax year as derives from income arising from an agreement related to or containing the licence.
- (6) The amount of the profits that derives from such income is determined on a just and reasonable basis.

808 Meaning of “disposal of the licence” etc

- (1) For the purposes of section 805 any reference to—
 - (a) a disposal of a licence acquired in carrying on a trade, or
 - (b) a disposal of a right to income under an agreement related to or containing a licence acquired in carrying on a trade (“a licence-related agreement”),includes, in particular, any of events A to E.
- (2) Event A is the revocation of the licence.
- (3) Event B is the disposal, giving up or loss of—
 - (a) a right under the licence, or
 - (b) a right to income (or any part of any income) under a licence-related agreement,by the individual or by a firm in which the individual is a partner.

It does not matter if the right is disposed of, given up or lost as part of a larger disposal, giving up or loss.
- (4) Event C is the disposal, giving up or loss of the individual's interest in a firm that has the licence or a right to income under a licence-related agreement (including the dissolution of the firm).
- (5) Event D is a default in the payment of income to which—
 - (a) the individual, or
 - (b) a firm in which the individual is a partner,has a right under a licence-related agreement.
- (6) Event E is a change in the individual's entitlement to any profits or losses relating to the licence the effect of which is that—
 - (a) the individual's share of any profits is reduced (including to nil), or
 - (b) the individual becomes entitled to a share, or a greater share, of any losses without becoming entitled to a corresponding share of profits.
- (7) The changes covered by event E include cases where there is an agreement under which the individual is entitled—
 - (a) to a particular share of any profits or losses relating to the licence in a period (including a nil share), and
 - (b) to a different share of any such profits or losses in a succeeding period (including a nil share).
- (8) In such cases the change in the individual's entitlement is treated for the purposes of section 805 as occurring at the beginning of the succeeding period.

Status: Point in time view as at 21/07/2009.

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- (9) For the purposes of this section—
- (a) references to any profits relating to the licence are to any profits deriving to any extent from income to which the individual has a right under a licence-related agreement, and
 - (b) references to any losses relating to the licence are to losses deriving to any extent from expenditure incurred in exploiting the licence.

809 Other definitions

- (1) References in sections 805 and 806 to an individual carrying on a trade as a non-active partner in an early tax year are to be read as if those sections were contained in Chapter 3 of Part 4 (see, in particular, section [F³²103B]).
- (2) But for that purpose, section [F³³103B(1)(b)] (which contains a requirement that the individual does not carry on the trade as a limited partner at any time during the tax year) is treated as if it were omitted.
- (3) For the purposes of sections 805 to 808 an agreement is related to a licence if the agreement and licence are entered into under the same arrangement (regardless of when the agreement or licence is entered into).
- (4) For the purposes of sections 805 to 808 an agreement, or part of an agreement, is not prevented from being a licence merely because it imposes an obligation to do a thing (rather than merely gives authority to do it).

References to exploiting a licence are to be read in that light.

Textual Amendments

- F32** Word in s. 809(1) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 4 paras. 18\(a\), 21](#)
- F33** Word in s. 809(2) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 4 paras. 18\(b\), 21](#)

[F³⁴CHAPTER 5A

TRANSFERS OF INCOME STREAMS

Textual Amendments

- F34** Pt. 13 Ch. 5A inserted (with effect in accordance with Sch. 25 para. 10 of the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 25 para. 7](#)

809AZA Application of Chapter

- (1) This Chapter applies where—
- (a) a person within the charge to income tax (“the transferor”) makes a transfer to another person (“the transferee”) of a right to relevant receipts (see subsection (2)), and

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- (b) (subject to subsection (3)) the transfer of the right is not a consequence of the transfer to the transferee of an asset from which the right to relevant receipts arises.
- (2) “Relevant receipts” means any income—
 - (a) which (but for the transfer) would be charged to income tax as income of the transferor, or
 - (b) which (but for the transfer) would be brought into account in calculating profits of the transferor for the purposes of income tax.
- (3) Despite paragraph (b) of subsection (1), this Chapter applies if the transfer of the right is a consequence of the transfer to the transferee of all rights under an agreement for annual payments; and for the purposes of that paragraph the transfer of an asset under a sale and repurchase agreement is not to be regarded as a transfer of the asset.
- (4) Section 809AZB makes provision as to the consequences of this Chapter applying.
- (5) For exclusions from this Chapter, see—
 - (a) section 809AZC (amount otherwise taxed),
 - (b) section 809AZD (certain annuities), and
 - (c) section 809AZE (transfer by way of security).
- (6) Section 809AZF makes special provision about transfers of partnership shares.
- (7) Section 809AZG contains supplementary provisions.

809AZB Value of transferred income stream treated as income

- (1) The relevant amount (see subsection (2)) is to be treated as income of the transferor chargeable to income tax in the same way and to the same extent as that in which the relevant receipts—
 - (a) would have been chargeable to income tax, or
 - (b) would have been brought into account in calculating any profits for the purposes of income tax,but for the transfer of the right to relevant receipts.
- (2) The relevant amount is—
 - (a) (except where paragraph (b) applies) the amount of the consideration for the transfer of the right, or
 - (b) where the amount of any such consideration is substantially less than the market value of the right at the time when the transfer takes place (or where there is no consideration for the transfer of the right), the market value of the right at that time.
- (3) The income under subsection (1) is to be treated as arising in the chargeable period of the transferor in which the transfer takes place.
- (4) But subsection (5) applies if (apart from the transfer) any of the relevant receipts—
 - (a) would have been brought into account in accordance with Part 2 or 3 of ITTOIA 2005 (trading income and property income) in calculating any profits for the purposes of income tax, and

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- (b) in accordance with generally accepted accounting practice, would have been recognised otherwise than wholly in the chargeable period in which the transfer takes place.
- (5) If this subsection applies, the income under subsection (1) is to be treated as arising—
- (a) to the extent that it does not exceed the amount of the consideration for the transfer of the right, in the chargeable period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer is recognised for accounting purposes in a profit and loss account or income statement of the transferor, and
 - (b) otherwise, in the chargeable period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer would be so recognised if it were of an amount equal to the market value of the right at the time when the transfer takes place.
- (6) But if in a case where the transferor is a company it at any time becomes reasonable to assume that the income (to any extent) is not, or would not be, treated by subsection (5) as arising in an accounting period of the transferor, the income is to that extent to be treated as arising immediately before that time.

809AZCException: amount otherwise taxed

This Chapter does not apply if and to the extent that the income under section 809AZB(1) is (apart from this Chapter)—

- (a) charged to tax as income of the transferor,
- (b) brought into account in calculating the profits of the transferor, or
- (c) brought into account under CAA 2001.

809AZDException: certain annuities

This Chapter does not apply to a transfer of a right to—

- (a) annual payments under a life annuity as defined in section 473(2) of ITTOIA 2005, or
- (b) annual payments under an annuity which is pension income within the meaning of Part 9 of ITEPA 2003 (see section 566(2) of that Act).

809AZEException: transfer by way of security

This Chapter does not apply if the consideration for the transfer is the advance under an arrangement that is a structured finance arrangement for the purposes of section 774A or 774C of ICTA in relation to the transferor or a partnership in which the transferor is a partner.

809AZFPartnership shares

- (1) For the purposes of this Chapter a transfer of a right to relevant receipts consisting of the reduction in a transferor's share in the profits or losses of a partnership is to be regarded as a consequence of a transfer of an asset from which the right arose (that is, the partnership property) if condition A or B is met.

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- (2) Condition A is that there is a reduction of the transferor's share in the partnership property and the reduction in the transferor's share in the profits or losses is proportionate to that reduction.
- (3) Condition B is that it is not the main purpose, or one of the main purposes, of the transfer to secure that the relevant receipts are not charged to income tax or corporation tax as income of any partner or brought into account as income of any partner for the purpose of either of those taxes.

809AZG Interpretation

- (1) For the purposes of this Chapter—
 - (a) the grant or surrender of a lease of land is to be regarded as a transfer of the land, and
 - (b) the disposal of an interest in an oil licence (within the meaning of section 809 of CTA 2009) is to be regarded as a transfer of the oil licence.
- (2) The Treasury may by order make other provision for securing that other transactions are to be regarded as transfers of assets for those purposes.
- (3) In this Chapter—
 - (a) references to a transfer include sale, exchange, gift and assignment (or assignation) and any other arrangement which equates in substance to a transfer, and
 - (b) references to a transfer taking place are, in the case of an arrangement other than a sale, exchange, gift or assignment (or assignation), to the making of the arrangement.
- (4) A transfer to or by any partnership of which the transferor or transferee is a member, and a transfer to the trustees of any trust of which the transferor is a beneficiary, counts as a transfer in relation to which this Chapter applies.]

[^{F35}CHAPTER 6

AVOIDANCE INVOLVING LEASES OF PLANT AND MACHINERY

Textual Amendments

F35 Pt. 13 Ch. 6 inserted (21.7.2008 with effect in accordance with Sch. 20 para. 2(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 2\(1\)](#) (with [Sch. 20 para. 2\(3\)](#))

809ZA Plant and machinery leases: capital receipts to be treated as income

- (1) This section applies if—
 - (a) there is an unconditional obligation, under a lease of plant or machinery or a relevant arrangement, to make a relevant capital payment (at any time), or
 - (b) a relevant capital payment is made under such a lease or arrangement otherwise than in pursuance of such an obligation.
- (2) The lessor is treated for income tax purposes as receiving income attributable to the lease of an amount equal to the amount of the capital payment.

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (3) The income is treated—
- (a) if subsection (1)(a) applies, as income for the period of account in which there is first an obligation of the kind mentioned there, and
 - (b) if subsection (1)(b) applies, as income for the period of account in which the payment is made.

809ZB Section 809ZA: interpretation

- (1) The expressions used in section 809ZA and this section are to be interpreted as follows.
- (2) “Capital payment” means any payment except one which, if made to the lessor—
- (a) would fall to be included in a calculation of the lessor's income for income tax purposes, or
 - (b) would fall to be included in such a calculation but for section 148A of ITTOIA 2005 (rental earnings under long funding finance lease).
- (3) “Lease” includes—
- (a) a licence, and
 - (b) the letting of a ship or aircraft on charter or the letting of any other asset on hire,
- and “lessor” and “lessee” are to be read accordingly.
- (4) “Lease of plant or machinery” includes a lease of plant or machinery and other property but does not include—
- (a) a lease where the income attributable to the lease received by the lessor (if any) would be chargeable to tax under Part 3 of ITTOIA 2005 (property income), or
 - (b) a lease of plant or machinery where the lessor has incurred what would (but for section 34A of CAA 2001) be qualifying expenditure (within the meaning of Part 2 of that Act) on the plant or machinery.
- (5) “Relevant arrangement” means any agreement or arrangement relating to a lease of plant or machinery, including one made before the lease is entered into or after it has ended (and, accordingly, “lessor” and “lessee” include prospective and former lessors and lessees).
- (6) A capital payment, in relation to a lease or relevant arrangement, is “relevant” if condition A or B is met (but this is subject to ^{F36}subsections (9) and (9A)).
- (7) Condition A is that the capital payment is payable (or paid), directly or indirectly, by (or on behalf of) the lessee to (or on behalf of) the lessor in connection with—
- (a) the grant, assignment, novation or termination of the lease, or
 - (b) any provision of the lease or relevant arrangement (including the variation or waiver of any such provision).
- (8) Condition B is that rentals payable under the lease are less than (or payable later than) they might reasonably be expected to be if there were no obligation to make the capital payment (and the capital payment were not made).
- (9) A capital payment is not “relevant” if or to the extent that—
- (a) the capital payment reduces (or would but for section 536 of CAA 2001 reduce) the amount of expenditure incurred by the lessor for the purposes of CAA 2001 in respect of the plant or machinery in question, ^{F37}or

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

(b) the capital payment is compensation for loss resulting from damage to, or damage caused by, the plant or machinery in question,^{F38}...

^{F38}(c)

[Where—

^{F39}(9A) (a) a capital payment is an initial payment under a long-funding lease, and
(b) under section 61 of CAA 2001 (disposal events and disposal values), the commencement of the term of the lease is an event that requires the lessor to bring a disposal value into account,

the capital payment is only “relevant” to the extent that it exceeds the disposal value.”

(9B) “Commencement”, “disposal value”, “initial payment”, “long funding lease” and “the term” have the same meaning as in Part 2 of CAA 2001.]

(10) References to payment include the provision of value by any means other than the making of a payment, and accordingly—

(a) references to the making of a payment include the passing of value (by any other means), and

(b) references to the amount of the payment include the value passed.

Textual Amendments

F36 Words in s. 809ZB(6) substituted (with effect in accordance with Sch. 32 para. 11 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 32 para. 10\(2\)](#)

F37 Word in s. 809ZB(9)(a) inserted (with effect in accordance with Sch. 32 para. 11 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 32 para. 10\(3\)\(a\)](#)

F38 S. 809ZB(9)(c) and preceding word omitted (with effect in accordance with Sch. 32 para. 11 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 32 para. 10\(3\)\(b\)](#)

F39 S. 809ZB(9A)(9B) inserted (with effect in accordance with Sch. 32 para. 11 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 32 para. 10\(4\)](#)

809ZC Section 809ZA: lease of plant and machinery and other property

(1) This section applies if section 809ZA applies in relation to a lease of plant or machinery and other property (see section 809ZB(4)).

(2) The relevant capital payment is to be apportioned, on a just and reasonable basis, between—

(a) the plant and machinery, and

(b) the other property.

(3) If the income (if any) received by the lessor that is attributable to any of the plant or machinery is chargeable to tax under Part 3 of ITTOIA 2005 (property income), treat that plant or machinery as falling within subsection (2)(b) (and not subsection (2)(a)).

(4) Section 809ZA(2) has effect as if the reference to the amount of the capital payment were to such amount as is apportioned under subsection (2) in respect of the plant or machinery within subsection (2)(a).

809ZD Section 809ZA: expectation that relevant capital payment will not be paid

(1) This section applies for income tax purposes if—

Status: Point in time view as at 21/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (a) section 809ZA applies by virtue of subsection (1)(a) of that section, and
 - (b) at any time, the lessor reasonably expects that the relevant capital payment will not be paid (or will not be paid in full).
- (2) For the purposes of calculating the profits of the lessor, a deduction is allowed for the period of account which includes that time.
- (3) The amount of the deduction is equal to the amount reasonably expected not to be paid.
- (4) No other deduction is allowed in respect of the matters mentioned in subsection (1).]

Status:

Point in time view as at 21/07/2009.

Changes to legislation:

There are currently no known outstanding effects for the Income Tax Act 2007, Part 13.