



Income Tax Act 2007

2007 CHAPTER 3

PART 14

INCOME TAX LIABILITY: MISCELLANEOUS RULES

CHAPTER 1

LIMITS ON LIABILITY TO INCOME TAX OF NON-UK RESIDENTS

The independent investment manager conditions

818 The independent investment manager conditions

- (1) The independent investment manager conditions are met in relation to an investment transaction carried out on behalf of a non-UK resident by an investment manager in the United Kingdom [^{F1}if conditions A to E are met.]
- (2) Condition A is that at the time of the transaction the investment manager is carrying on a business of providing investment management services.
- (3) Condition B is that the transaction is carried out in the ordinary course of that business.
- (4) Condition C is that, when the investment manager acts on behalf of the non-UK resident in relation to the transaction, the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.
- (5) Condition D is that the requirements of the 20% rule are met (see section 819).
- (6) Condition E is that the remuneration which the investment manager receives in respect of the transaction for the provision of investment management services to the non-UK resident is not less than is customary for that class of business.

^{F2}(7)

Status: Point in time view as at 21/07/2009.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,
 Cross Heading: The independent investment manager conditions. (See end of Document for details)*

F3(8)

Textual Amendments

- F1** Words in s. 818(1) substituted (21.7.2008 with effect in accordance with Sch. 16 para. 11(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 16 para. 10\(2\)](#)
- F2** S. 818(7) omitted (21.7.2008 with effect in accordance with Sch. 16 para. 11(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 16 para. 10\(3\)](#)
- F3** S. 818(8) omitted (21.7.2008 with effect in accordance with Sch. 16 para. 11(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 16 para. 10\(3\)](#)

819 Investment managers: the 20% rule

- (1) The requirements of the 20% rule are met if conditions A and B are met.
- (2) Condition A is that in relation to a qualifying period it has been or is the intention of the investment manager and the persons connected with the investment manager that at least 80% of the non-UK resident's relevant disregarded income should consist of amounts to which none of them has a beneficial entitlement.
- (3) Condition B is that, so far as there is a failure to fulfil that intention, that failure—
 - (a) is attributable (directly or indirectly) to matters outside the control of the investment manager and persons connected with the investment manager, and
 - (b) does not result from a failure by any of them to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.
- (4) This section needs to be read with—
 - section 820 (meaning of “qualifying period”),
 - section 821 (meaning of “relevant disregarded income”), and
 - section 822 (meaning of “beneficial entitlement”).

820 Meaning of “qualifying period”

- (1) This section applies for the purposes of this Chapter.
- (2) If section 819 applies for the purposes of section 813, a “qualifying period” means—
 - (a) the tax year in which the transaction income is chargeable to income tax, or
 - (b) a period of not more than 5 years comprising two or more tax years including that one.
- (3) If section 819 applies for the purposes of section 816, a “qualifying period” means—
 - (a) the accounting period of the non-UK resident company in which the transaction in question is carried out, or
 - (b) a period of not more than 5 years comprising two or more complete accounting periods including that one.

821 Meaning of “relevant disregarded income”

- (1) This section applies for the purposes of this Chapter.

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- (2) If section 819 applies for the purposes of section 813, the “relevant disregarded income” of the non-UK resident for the qualifying period is the total of the non-UK resident's income for the tax years comprised in the qualifying period which derives from the transactions mentioned in subsection (4).
- (3) If section 819 applies for the purposes of section 816, the “relevant disregarded income” of the non-UK resident company for the qualifying period is the total of the non-UK resident company's income for the accounting periods comprised in the qualifying period which derives from the transactions mentioned in [F4subsection (5)].
- (4) The transactions referred to in [F5subsection (2)] are investment transactions—
 - (a) carried out by the investment manager on the non-UK resident's behalf, and
 - (b) in relation to which the independent investment manager conditions are met, ignoring the requirements of the 20% rule.
- [F6(5) The transactions referred to in subsection (3) are transactions—
 - (a) carried out by the investment manager on the non-UK resident company's behalf, and
 - (b) in relation to which the investment manager does not fall to be treated as a permanent establishment of the non-UK resident company, ignoring the requirements of the 20% rule.]

Textual Amendments

- F4** Words in s. 821(3) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) Order 2009 \(S.I. 2009/23\)](#), arts. 1(1), 5(3)(a)
- F5** Words in s. 821(4) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) Order 2009 \(S.I. 2009/23\)](#), arts. 1(1), 5(3)(b)
- F6** S. 821(5) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) Order 2009 \(S.I. 2009/23\)](#), arts. 1(1), 5(3)(c)

822 Meaning of “beneficial entitlement”

- (1) This section applies for the purposes of this Chapter.
- (2) A person has a “beneficial entitlement” to relevant disregarded income if the person has or may acquire a beneficial entitlement that is, or would be, attributable to the relevant disregarded income as a result of having an interest or other rights mentioned in subsection (3).
- (3) The interests and rights referred to in subsection (2) are—
 - (a) an interest (whether or not an interest giving a right to an immediate payment of a share in the profits or gains) in property in which the whole or any part of the relevant disregarded income is represented, or
 - (b) an interest in, or other rights in relation to, the non-UK resident.

823 Treatment of transactions where requirements of 20% rule not met

- (1) This section applies in the case of an investment transaction in relation to which the independent investment manager conditions are met, except for the requirements of the 20% rule.

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- (2) This Chapter has effect as if the requirements of that rule were met in relation to the transaction but only in relation to—
- (a) so much of the transaction income of the non-UK resident as falls within subsection (3), if this section applies for the purposes of section 813, or
 - (b) so much of the income of the non-UK resident company deriving from the transaction as falls within subsection (3), if this section applies for the purposes of section 816.
- (3) Income falls within this subsection if it does not represent income—
- (a) which is relevant disregarded income of the non-UK resident, and
 - (b) to which the investment manager or a person connected with the investment manager has or has had any beneficial entitlement.

824 Application of 20% rule to collective investment schemes

- (1) This section applies if amounts arise or accrue to the non-UK resident as a participant in a collective investment scheme.
- (2) It applies for the purposes of determining whether the requirements of the 20% rule are met in relation to a transaction carried out for the purposes of the scheme.
- (3) In applying this section make the following assumptions—
- (a) that all the transactions carried out for the purposes of the scheme are carried out on behalf of a company (“the assumed company”) which is—
 - (i) constituted for the purposes of the scheme, and
 - (ii) non-UK resident, and
 - (b) that the participants do not have any rights in respect of the amounts arising or accruing in respect of those transactions, other than the rights which, if they held shares in the assumed company, would be their rights as shareholders.
- (4) If the scheme is such that the assumed company would not be regarded for tax purposes as carrying on a trade in the United Kingdom in relation to the appropriate relevant period, the requirements of the 20% rule are treated as met in relation to a transaction carried out for the purposes of the scheme.
- (5) If the scheme is such that the assumed company would be so regarded for tax purposes, sections 819 to 823 have effect in relation to a transaction carried out for the purposes of the scheme with the modifications in subsection (6).
- (6) The modifications are—
- (a) for references to the non-UK resident substitute references to the assumed company, and
 - (b) for references to the non-UK resident's relevant disregarded income for a qualifying period substitute references to the sum of the amounts that would, for relevant periods comprised in the qualifying period, be chargeable to tax on the assumed company as profits deriving from the transactions—
 - (i) carried out by the investment manager, and
 - (ii) assumed to be carried out on behalf of the company.
- (7) In this section—
- “the appropriate relevant period” is—

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- (a) the tax year in which the transaction income is chargeable to income tax, if this section applies for the purposes of section 813, or
 - (b) the accounting period in which the transaction is carried out, if this section applies for the purposes of section 816,
- “collective investment scheme” has the meaning given by section 235 of FISMA 2000,
- “participant”, in relation to a collective investment scheme, is construed in accordance with that section, and
- “relevant period” means—
- (a) a tax year, if this section applies for the purposes of section 813, or
 - (b) an accounting period, if this section applies for the purposes of section 816.

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