



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 14

#### INCOME TAX LIABILITY: MISCELLANEOUS RULES

### CHAPTER 2

#### RESIDENCE

#### **829 Residence of individuals temporarily abroad**

- (1) This section applies if—
  - (a) an individual has left the United Kingdom for the purpose only of occasional residence abroad, and
  - (b) at the time of leaving the individual was both UK resident and ordinarily UK resident.
- (2) Treat the individual as UK resident for the purpose of determining the individual's liability for income tax for any tax year during the whole or a part of which the individual remains outside the United Kingdom for the purpose only of occasional residence abroad.

#### **830 Residence of individuals working abroad**

- (1) This section applies for income tax purposes if an individual works full-time in one or both of—
  - (a) a foreign trade, and
  - (b) a foreign employment.
- (2) In determining whether the individual is UK resident ignore any living accommodation available in the United Kingdom for the individual's use.
- (3) A trade is foreign if no part of it is carried on in the United Kingdom.

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- (4) An employment is foreign if all of its duties are performed outside the United Kingdom.
- (5) An employment is also foreign if in the tax year in question—
  - (a) the duties of the employment are in substance performed outside the United Kingdom, and
  - (b) the only duties of the employment performed in the United Kingdom are duties which are merely incidental to the duties of the employment performed outside the United Kingdom in the year.
- (6) In this section—
  - “employment” includes an office, and
  - “trade” includes profession and vocation.

### **831 Foreign income of individuals in the United Kingdom for temporary purpose**

- (1) Subsection (2) applies in relation to an individual if—
  - (a) the individual is in the United Kingdom for some temporary purpose only and with no view to establishing the individual’s residence in the United Kingdom, and
  - (b) in the tax year in question the individual has not actually resided in the United Kingdom at one or several times for a total period equal to 183 days (or more).

In determining whether an individual is within paragraph (a) ignore any living accommodation available in the United Kingdom for the individual’s use.

- (2) Apply the following rules in determining the individual’s liability for income tax.

#### *Rule 1*

In relation to pension or social security income arising from a source outside the United Kingdom, treat the individual as non-UK resident for the purposes of the following—

- (a) Chapter 4 of Part 9 of ITEPA 2003 (tax on foreign pensions),
- (b) Chapter 5A of that Part (tax on pensions under registered pension schemes) but only if the income is an annuity under a registered pension scheme within paragraph 1(1)(f) of Schedule 36 to FA 2004,
- (c) Chapter 10 of that Part (tax on employment-related annuities),
- (d) Chapter 15 of that Part (tax on voluntary annual payments),
- (e) section 647 of ITEPA 2003 (meaning of “foreign residence condition”) but only in its application for the purposes of section 651 of that Act (which provides an exemption for tax under Chapter 14 of Part 9 of that Act), and
- (f) Chapter 6 of Part 10 of ITEPA 2003 (taxable foreign benefits).

See sections 566 and 657 of ITEPA 2003 for the definitions of “pension income” and “social security income”.

#### *Rule 2*

In relation to income arising from a source outside the United Kingdom, treat the individual as non-UK resident for the purposes of any charge under a provision mentioned in section 830(2) of ITTOIA 2005 (which contains a list of provisions under which relevant foreign income is charged).

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In this rule “income” does not include income chargeable as a result of section 844 of ITTOIA 2005 (unremittable income: income charged on withdrawal of relief after source ceases).

- (3) Paragraph (e) of Rule 1 in subsection (2) applies only if—
- (a) the individual makes a claim as mentioned in section 647(3)(a) of ITEPA 2003, and
  - (b) the Commissioners are satisfied that subsection (2) of this section applies in relation to the individual.
- (4) Subsection (5) applies in relation to an individual if subsection (2) would have applied in relation to the individual but for subsection (1)(b).
- (5) Apply the rules set out in subsection (2) in determining the individual’s liability for income tax.

But—

- (a) instead of treating the individual as non-UK resident in relation to the income and for the purposes mentioned in those rules, treat the individual as UK resident, and
- (b) ignore subsection (3).

### **832 Employment income of individuals in the United Kingdom for temporary purpose**

- (1) Subsection (2) applies in relation to an individual if—
- (a) the individual is in the United Kingdom for some temporary purpose only and with no intention of establishing the individual’s residence in the United Kingdom, and
  - (b) during the tax year in question the individual spends (in total) less than 183 days in the United Kingdom.

In determining whether an individual is within paragraph (a) ignore any living accommodation available in the United Kingdom for the individual’s use.

- (2) Treat the individual as non-UK resident for the purposes of Chapters 4 and 5 of Part 2 of ITEPA 2003 (which set out rules for determining taxable earnings from employment).
- (3) Subsection (4) applies in relation to an individual if subsection (2) would have applied in relation to the individual but for subsection (1)(b).
- (4) Treat the individual as UK resident for the purposes of the provisions mentioned in subsection (2).

### **833 Visiting forces and staff of designated allied headquarters**

- (1) This section applies to an individual who—
- (a) is a member of a visiting force of a designated country or of a civilian component of such a force,
  - (b) is in the United Kingdom, but only because of being a member of the force or the civilian component, and

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- (c) is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.
- (2) For the purposes of subsection (1)—
- (a) members of the armed forces of a designated country who are attached to a designated allied headquarters are treated as a visiting force of that country, and
  - (b) whether an individual is a member of a civilian component of such a force is to be determined accordingly.
- (3) This section also applies to an individual who—
- (a) is of a category for the time being agreed between Her Majesty’s Government in the United Kingdom and the other members of the North Atlantic Council,
  - (b) is employed by a designated allied headquarters,
  - (c) is in the United Kingdom, but only because of being employed by the designated allied headquarters, and
  - (d) is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.
- (4) If this section applies to an individual throughout a period, the period is not treated for income tax purposes as—
- (a) a period of residence in the United Kingdom, or
  - (b) creating a change of the individual’s residence or domicile.
- (5) Subsection (4) does not affect the operation of section 56 or 460 of this Act or section 278 of ICTA (residence etc of claimants) in relation to an individual for any tax year.
- (6) Subsections (1) to (3) are to be interpreted as if—
- (a) they were in Part 1 of the Visiting Forces Act 1952 (c. 67), and
  - (b) references in that Act to a country to which a provision of that Act applies were references to a designated country.
- (7) In this section—
- “allied headquarters” means an international military headquarters established under the North Atlantic Treaty, and
  - “designated” means designated for the purpose in question by or under an Order in Council made for giving effect to an international agreement.

### **834 Residence of personal representatives**

- (1) This section applies for income tax purposes if the personal representatives of a deceased person (“D”) include one or more persons who are UK resident and one or more persons who are non-UK resident.
- (2) If the following condition is met, the person or persons who are non-UK resident are treated, in their capacity as personal representatives, as UK resident.
- (3) The condition is that when D died D was UK resident, ordinarily UK resident or domiciled in the United Kingdom.
- (4) If that condition is not met, the person or persons who are UK resident are treated, in their capacity as personal representatives, as non-UK resident.

**835 Residence rules for trustees and companies**

- (1) See sections 475 and 476 for rules about the residence of the trustees of a settlement.
- (2) See the following provisions for rules about the residence of companies—  
sections 66 and 66A of FA 1988, and  
section 249 of FA 1994.