



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 15

#### DEDUCTION OF INCOME TAX AT SOURCE

### CHAPTER 2

#### DEDUCTION BY DEPOSIT-TAKERS AND BUILDING SOCIETIES

#### *Introduction*

#### **850 Overview of Chapter**

- (1) This Chapter deals with the deduction of sums representing income tax by deposit-takers and building societies from payments of interest on relevant investments.
- (2) Section 851 contains a general duty to deduct sums representing income tax from such payments and section 852 confers power on the Commissioners for Her Majesty's Revenue and Customs to disapply section 851 by regulations.
- (3) Sections 853 to 856 set out some basic concepts, so that—
  - (a) section 853 defines “deposit-taker” (and section 854 allows the Treasury by order to prescribe persons as deposit-takers),
  - (b) section 855 defines “investment” and “deposit”, and
  - (c) section 856 explains which investments are relevant investments.
- (4) Section 856 is subject to—
  - (a) section 857 (which sets out when investments must be treated as relevant and when they may be treated as not relevant), and
  - (b) sections 858 to 870 (which describe various kinds of investment which are not relevant investments).
- (5) Sections 871 to 873 contain supplementary provisions.

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- (6) For the purposes of this Chapter—
- (a) any reference to interest paid by a building society on a relevant investment includes a reference to a dividend paid by the society in respect of the investment,
  - (b) “dividend” includes any distribution (whether or not described as a dividend), and
  - (c) crediting interest counts as paying it.

*Duty to deduct sums representing income tax*

**851 Duty to deduct sums representing income tax**

- (1) This section applies if—
- (a) a deposit-taker or building society makes a payment of interest on an investment (see section 855(1)), and
  - (b) when the payment is made, the investment is a relevant investment (see section 856).
- (2) The deposit-taker or building society must, on making the payment, deduct from it a sum representing income tax on it at the [<sup>F1</sup>basic rate] in force for the tax year in which it is made.
- (3) For provision about the collection of income tax in respect of a payment from which a sum must be deducted under this section, see Chapter 15.

**Textual Amendments**

**F1** Words in s. 851(2) 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. 25](#)

**Modifications etc. (not altering text)**

**C1** S. 851 excluded (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Tax \(Deposit-takers and Building Societies\) \(Interest Payments\) Regulations 2008 \(S.I. 2008/2682\)](#), regs. 1(1), 4

**852 Power to make regulations disapplying section 851**

- (1) The Commissioners for Her Majesty's Revenue and Customs may make regulations which provide that section 851 does not apply in relation to a payment of interest if prescribed conditions are met.
- (2) The regulations may, in particular, include—
- (a) provision for a certificate to be supplied to the effect that the person beneficially entitled to a payment is unlikely to be liable to pay any income tax for the tax year in which it is made,
  - (b) provision for the certificate to be supplied by that person or another prescribed person,
  - (c) provision about the time when, and the manner in which, a certificate is to be supplied, and
  - (d) provision about the form and contents of a certificate.

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- (3) Any provision included in the regulations under subsection (2)(d) may allow the Commissioners to make requirements about the form and contents of a certificate.
- (4) In this section “prescribed” means prescribed in the regulations.

#### *Deposit-takers and relevant investments*

### **853 Meaning of “deposit-taker”**

- (1) In this Chapter “deposit-taker” means—
  - (a) the Bank of England, or
  - (b) a person to whom one of the following subsections or section 854 applies.
- (2) This subsection applies to a person—
  - (a) who has permission under Part 4 of FISMA 2000 to accept deposits which are relevant investments, and
  - (b) who is not—
    - (i) a building society,
    - (ii) a society registered within the meaning of the Friendly Societies Act 1974 (c. 46) or incorporated under the Friendly Societies Act 1992 (c. 40),
    - (iii) a society registered as a credit union under the Industrial and Provident Societies Act 1965 (c. 12) or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)), or
    - (iv) an insurance company within the meaning of section 275 of FA 2004.
- (3) This subsection applies to a company within the meaning of the Companies Act 1985 (c. 6)—
  - (a) in respect of which a resolution has been passed by a local authority under—
    - (i) section 48(3) of the Banking Act 1979 (c. 37), or
    - (ii) section 103(3) of the Banking Act 1987 (c. 22), and
  - (b) which is exempt from the prohibition in section 19 of FISMA 2000 on accepting deposits which are relevant investments.
- (4) This subsection applies to a local authority.
- (5) This subsection applies to an EEA firm which—
  - (a) is of the kind mentioned in paragraph 5(b) of Schedule 3 to FISMA 2000 (EEA passport rights), and
  - (b) has permission under paragraph 15 of that Schedule to accept deposits (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule).
- (6) This subsection applies to a person—
  - (a) who is authorised for the purposes of FISMA 2000, and
  - (b) whose business consists wholly or mainly of dealing in financial instruments as principal.

For the meaning of “financial instrument”, see section 984.

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#### **854 Power to prescribe persons as deposit-takers**

- (1) This section applies to a person who receives deposits in the course of carrying on business or activities and—
  - (a) is for the time being prescribed by order by the Treasury for the purposes of this section, or
  - (b) is a member of a class of persons which is for the time being so prescribed.
- (2) An order under this section may prescribe a person or class of person—
  - (a) in relation to all deposits which are relevant investments, or
  - (b) in relation to deposits which are relevant investments of a kind specified in the order.
- (3) If a person is prescribed only in relation to deposits which are relevant investments of a kind specified in the order, the reference in section 851(1)(b) to “relevant investment” is to be read as a reference only to relevant investments of the kind so specified.

#### **855 Meaning of “investment” and “deposit”**

- (1) In this Chapter “investment” means—
  - (a) a deposit with a deposit-taker,
  - (b) a deposit with a building society,
  - (c) shares in a building society, or
  - (d) a loan to a building society.
- (2) In this Chapter “deposit” means a sum of money paid on terms which mean that it will be repaid (with or without interest)—
  - (a) on demand, or
  - (b) at a time or in circumstances agreed by or on behalf of the person who pays it and the person who receives it.

#### **856 Investments which are relevant investments**

- (1) An investment is a relevant investment for the purposes of this Chapter if it meets—
  - (a) the individual interest condition (see subsection (3)),
  - (b) the Scottish partnership condition (see subsection (4)),
  - (c) the personal representative condition (see subsection (5)), or
  - (d) the settlement condition (see subsection (6)).
- (2) But an investment is not a relevant investment if any of sections 858 to 870 prevent it from being a relevant investment.
- (3) An investment meets the individual interest condition if the only persons beneficially entitled to interest on the investment are individuals.
- (4) An investment meets the Scottish partnership condition if—
  - (a) a Scottish partnership is beneficially entitled to all interest on the investment, and
  - (b) that partnership consists only of individuals.
- (5) An investment meets the personal representative condition if personal representatives are entitled to any interest on the investment and they receive it in that capacity.

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- (6) An investment meets the settlement condition if all interest on the investment is income arising to the trustees of a discretionary or accumulation settlement and they receive it in that capacity.

For the meaning of “discretionary or accumulation settlement”, see section 873(1).

### **857 Investments to be treated as being or as not being relevant investments**

- (1) A deposit-taker or building society must treat every investment with it as a relevant investment unless satisfied that the investment is not a relevant investment.
- (2) If a deposit-taker or building society is satisfied that an investment is not a relevant investment, it may continue to treat the investment as not being a relevant investment until subsection (3) applies.
- (3) This subsection applies when the deposit-taker or building society has information which can reasonably be taken to indicate that the investment is or may be a relevant investment.

*Investments which are not relevant investments: non-UK resident beneficiaries*

### **858 Declarations of non-UK residence: individuals**

- (1) This section applies to an investment with a deposit-taker or building society which meets the individual interest condition in section 856(3).
- (2) The investment is not a relevant investment if—
- (a) an appropriate person has made the declaration set out in subsection (3) to the deposit-taker or building society,
  - (b) the declaration contains the undertaking set out in subsection (4),
  - (c) the declaration contains the name and principal residential address of the individual or (as the case may be) each of the individuals entitled to the interest,
  - (d) the declaration contains such other information as the Commissioners for Her Majesty's Revenue and Customs may reasonably require, and
  - (e) the declaration is in such form as the Commissioners may prescribe or authorise.
- (3) The declaration is that, at the time when the declaration is made—
- (a) the person who is beneficially entitled to the interest is not ordinarily UK resident, or
  - (b) (as the case may be) all the persons who are so entitled are not ordinarily UK resident.
- (4) The undertaking is an undertaking by the person making it to notify the person to whom it is made if any individual in respect of whom it is made becomes ordinarily UK resident.
- (5) In this section “appropriate person” means—
- (a) a person who is beneficially entitled to interest on the investment, or
  - (b) a person to whom any such interest is payable.

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### **859 Declarations of non-UK residence: Scottish partnerships**

- (1) This section applies to an investment with a deposit-taker or building society which meets the Scottish partnership condition in section 856(4).
- (2) The investment is not a relevant investment if—
  - (a) an appropriate person has made the declaration set out in subsection (3) to the deposit-taker or building society,
  - (b) the declaration contains the undertaking set out in subsection (4),
  - (c) the declaration contains the name and principal residential address of each of the partners,
  - (d) the declaration contains such other information as the Commissioners for Her Majesty's Revenue and Customs may reasonably require, and
  - (e) the declaration is in such form as the Commissioners may prescribe or authorise.
- (3) The declaration is that, at the time when the declaration is made, all of the partners of the partnership are not ordinarily UK resident.
- (4) The undertaking is an undertaking by the person making it to notify the person to whom it is made if any partner in respect of whom it is made becomes ordinarily UK resident.
- (5) In this section “appropriate person” means—
  - (a) the partnership that is beneficially entitled to the interest on the investment, or
  - (b) a person to whom any such interest is payable.

### **860 Declarations of non-UK residence: personal representatives**

- (1) This section applies to an investment with a deposit-taker or building society which meets the personal representative condition in section 856(5).
- (2) The investment is not a relevant investment if—
  - (a) an appropriate person has made the declaration set out in subsection (3) to the deposit-taker or building society,
  - (b) the declaration contains such information as the Commissioners for Her Majesty's Revenue and Customs may reasonably require, and
  - (c) the declaration is in such form as the Commissioners may prescribe or authorise.
- (3) The declaration is that the deceased was not ordinarily UK resident immediately before the deceased's death.
- (4) In this section “appropriate person” means—
  - (a) any of the personal representatives who are entitled to receive interest on the investment, or
  - (b) a person to whom any such interest is payable.

### **861 Declarations of non-UK residence: settlements**

- (1) This section applies to an investment with a deposit-taker or building society which meets the settlement condition in section 856(6).

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- (2) The investment is not a relevant investment if—
- (a) an appropriate person has made the declaration set out in subsection (3) to the deposit-taker or building society,
  - (b) the declaration contains the undertaking set out in subsection (4),
  - (c) the declaration contains such information as the Commissioners for Her Majesty's Revenue and Customs may reasonably require, and
  - (d) the declaration is in such form as the Commissioners may prescribe or authorise.
- (3) The declaration is that, at the time when the declaration is made—
- (a) the trustees who are entitled to the interest are non-UK resident (see section 475), and
  - (b) no person who is a trustee has reasonable grounds for believing that any beneficiary under the settlement is—
    - (i) an individual who is ordinarily UK resident,
    - (ii) a company which is UK resident, or
    - (iii) a Scottish partnership any of the partners of which is an individual who is ordinarily UK resident or a company which is UK resident.
- (4) The undertaking is an undertaking by the person making it to notify the person to whom it is made if—
- (a) the trustees become UK resident,
  - (b) an individual in respect of whom it is made becomes ordinarily UK resident,
  - (c) a company in respect of which it is made becomes UK resident,
  - (d) an individual partner in any Scottish partnership in respect of which it is made becomes ordinarily UK resident,
  - (e) a company partner in any Scottish partnership in respect of which it is made becomes UK resident,
  - (f) a partner who is an ordinarily UK resident individual or a UK resident company joins any Scottish partnership in respect of which it is made, or
  - (g) a person within any of sub-paragraphs (i) to (iii) of subsection (3)(b) becomes or is found to be a beneficiary under the settlement to which the declaration relates.
- (5) In this section “appropriate person” means—
- (a) any person who is a trustee entitled to receive interest on the investment, or
  - (b) a person to whom any such interest is payable.
- (6) References in this section to a beneficiary under the settlement are to be construed in accordance with section 873(3) (meaning of “beneficiary under a discretionary or accumulation settlement”).

## **862 Inspection of declarations**

- (1) This section applies if an officer of Revenue and Customs by notice requires a deposit-taker or building society to make available for inspection the declarations made to it under sections 858 to 861 which are referred to in the notice.
- (2) The deposit-taker or building society must make the declarations available for inspection—

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- (a) by an officer of Revenue and Customs who is named in the notice, and
  - (b) within such time as the notice may specify.
- (3) An officer of Revenue and Customs to whom the declarations must be made available may take copies or extracts from them.

*Other investments which are not relevant investments*

**863 General client account deposits**

- (1) An investment is not a relevant investment if it is a general client account deposit.
- (2) An investment is a general client account deposit for the purposes of this section if—
  - (a) it is a deposit held by a deposit-taker or building society in a client account, and
  - (b) provision made under any enactment requires the person whose account it is to make payments representing interest to some or all of the clients for whom, or on whose account, that person received the sums deposited in the account.
- (3) But an investment is not a general client account deposit if the account in which it is held is identified by the deposit-taker or building society as one in which sums are held only for one or more particular clients of the person whose account it is.

**864 Qualifying uncertificated eligible debt security units**

An investment is not a relevant investment if it is a deposit in respect of which a deposit-taker or building society has issued a qualifying uncertificated eligible debt security unit (see section 986).

**865 Qualifying certificates of deposit**

An investment is not a relevant investment if it is a deposit in respect of which a deposit-taker or building society has issued a qualifying certificate of deposit (see section 985).

**866 Qualifying time deposits**

- (1) An investment is not a relevant investment if it is a qualifying time deposit.
- (2) An investment is a qualifying time deposit for the purposes of this section if—
  - (a) it is a deposit consisting of a loan of at least £50,000,
  - (b) the terms of the deposit require its repayment at a specified time within 5 years beginning with the date on which it is made,
  - (c) those terms do not make provision for the transfer of the right to repayment, and
  - (d) those terms prevent partial withdrawals of, or additions to, the deposit.
- (3) If a deposit is denominated in a foreign currency, subsection (2)(a) has effect as if it referred to an amount which is at least the equivalent in that currency of £50,000 at the time the deposit is made.



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### **867 Lloyd's premium trust funds**

- (1) An investment is not a relevant investment if it forms part of a premium trust fund of an underwriting or former underwriting member of Lloyd's.
- (2) In this section “premium trust fund” has the meaning given in section 184 of FA 1993.

### **868 Investments held outside the United Kingdom**

- (1) An investment with a deposit-taker is not a relevant investment if—
  - (a) the deposit-taker is UK resident for income tax purposes or corporation tax purposes, and
  - (b) the investment is held at a branch of the deposit-taker situated outside the United Kingdom.
- (2) An investment with a deposit-taker is not a relevant investment if—
  - (a) the deposit-taker is non-UK resident for income tax purposes or corporation tax purposes, and
  - (b) the investment is not held at a branch of the deposit-taker situated in the United Kingdom.
- (3) An investment with a building society is not a relevant investment if it is held at a branch of the building society situated outside the United Kingdom.
- (4) For the purposes of this section an investment is held at a branch of a deposit-taker or building society if the investment is recorded in its books as a liability of that branch.

### **869 Sale and repurchase of securities**

- (1) An investment is not a relevant investment if it is a loan which is treated as made to a building society by virtue of section 607 (treatment of price differences under repos).
- (2) An investment is not a relevant investment if it is an amount of cash which is—
  - (a) received by a building society in connection with a repo in circumstances where section 607 applies, and
  - (b) required as a result of a variation in the value of the securities in respect of which the repo is made as security for performance by the parties to the repo of their obligations under it.
- (3) In this section “repo” has the same meaning as in Part 11 (see section 569).

### **870 Other investments**

- (1) An investment with a deposit-taker is not a relevant investment if—
  - (a) it is a loan made by a deposit-taker in the ordinary course of its business or activities,
  - (b) it is a debt on a security which is listed on a recognised stock exchange, or
  - (c) it is a debt on a debenture issued by the deposit-taker (see section 1022).
- (2) An investment with a building society is not a relevant investment if—
  - (a) it is a loan made by a bank (as defined in section 991), or
  - (b) it is a security (including a share) issued by a building society which is listed, or capable of being listed, on a recognised stock exchange.

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### *Supplementary*

#### **871 Power to make regulations to give effect to Chapter**

- (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision—
  - (a) about the giving of information by deposit-takers, building societies and appropriate persons,
  - (b) about the inspection of deposit-takers' and building societies' books, documents and other records by officers of Revenue and Customs, and
  - (c) generally for giving effect to this Chapter.
- (2) Regulations under this section may contain incidental, supplemental, consequential and transitional provision and savings.
- (3) In this section “appropriate person” means a person who, in relation to an investment, falls within any of the following—
  - (a) section 858(5),
  - (b) section 859(5),
  - (c) section 860(4), or
  - (d) section 861(5).

#### **872 Power to make orders amending Chapter**

- (1) The Treasury may by order amend this Chapter for the purposes of providing that investments of a kind specified in the order are, or are not, relevant investments.
- (2) An order under this section which amends this Chapter in its application to deposit-takers may do so—
  - (a) in relation to all deposit-takers, or
  - (b) in relation to such deposit-takers or classes of deposit-taker as the order may specify.
- (3) An order under this section may contain incidental, supplemental, consequential and transitional provision and savings.
- (4) An order under this section may not amend section 852 (power to make regulations disapplying section 851).
- (5) An order under this section may not amend section 870(2)(b) for the purpose of providing that securities of the kind mentioned in that provision are relevant investments.

#### **873 Discretionary or accumulation settlements**

- (1) A settlement is a discretionary or accumulation settlement for the purposes of this Chapter if any income arising to the trustees would (unless treated as income of the settlor) be to any extent income within subsection (2) for the tax year in which it arises.
- (2) Income is within this subsection so far as it is—
  - (a) accumulated or discretionary income as defined in section 480 (other than income arising under a trust established for charitable purposes only or an unauthorised unit trust in relation to which section 504 applies), or

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- (b) an amount of a type set out in section 482 (unless the trust is a unit trust scheme or the amount is income arising under a trust established for charitable purposes only or is excluded by section 481(5)).
- (3) A person is a beneficiary under a discretionary or accumulation settlement for the purposes of this Chapter if—
  - (a) the person is an actual or potential beneficiary under the settlement, and
  - (b) condition A or B is met in relation to the person.
- (4) Condition A is that the person is, or will or may become, entitled under the settlement to receive some or all of any income under the settlement.
- (5) Condition B is that some or all of any income under the settlement may be paid to or used for the benefit of the person in the exercise of a discretion conferred under the settlement.
- (6) The references in subsections (4) and (5) to any income under the settlement include a reference to any capital under the settlement so far as it represents amounts originally received by the trustees as income.

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