

SCHEDULES

SCHEDULE 8

Section 29

DEEMED DOMICILE: INCOME TAX AND CAPITAL GAINS TAX

PART 1

APPLICATION OF DEEMED DOMICILE RULE

ICTA

- 1 (1) In section 266A of ICTA (life assurance premiums paid by employer), after subsection (8) insert—
- “(8A) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (6)(b).”
- (2) The amendment made by this paragraph has effect in relation to the tax year 2017-18 and subsequent tax years.

TCGA 1992

- 2 TCGA 1992 is amended as follows.
- 3 (1) Section 16ZA (losses: non-UK domiciled individuals) is amended as follows.
- (2) For subsections (1) to (3) substitute—
- “(1) An individual may make an election under this section in respect of—
- (a) the first tax year in which section 809B of ITA 2007 (claim for remittance basis) applies to the individual, or
- (b) the first tax year in which that section applies to the individual following a period in which the individual has been domiciled in the United Kingdom.
- (2) Where an individual makes an election under this section in respect of a tax year, the election has effect in relation to the individual for—
- (a) that tax year, and
- (b) all subsequent tax years.
- (2A) But if after making an election under this section an individual becomes domiciled in the United Kingdom at any time in a tax year, the election does not have effect in relation to the individual for—
- (a) that tax year, or
- (b) any subsequent tax year.
- (2B) Where an election made by an individual under this section in respect of a tax year ceases to have effect by virtue of subsection (2A), the fact that it has

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ceased to have effect does not prevent the individual from making another election under this section in respect of a later tax year.

(3) If an individual does not make an election under this section in respect of a year referred to in subsection (1)(a) or (b), foreign losses accruing to the individual in—

- (a) that tax year, or
- (b) any subsequent tax year except one in which the individual is domiciled in the United Kingdom,

are not allowable losses.”

(3) After subsection (6) insert—

“(7) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of this section.”

(4) The amendments made by this paragraph have effect in relation to the tax year 2017-18 and subsequent tax years.

(5) Where—

- (a) an individual makes an election under section 16ZA of TCGA 1992 as originally enacted for a tax year before the tax year 2017-18, but
- (b) after making the election the individual becomes domiciled in the United Kingdom at any time in a tax year,

sections 16ZB and 16ZC of that Act do not have effect in relation to the individual by virtue of that election for that tax year or any subsequent tax year.

(6) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subparagraph (5).

4 (1) In section 16ZB (election under section 16ZA: foreign chargeable gains remitted in the tax year after that in which they accrue), in subsection (1), for paragraphs (a) and (b) substitute—

- “(a) the individual has made an election under section 16ZA in respect of a tax year before the applicable year,
- (aa) the election has effect in relation to the individual for the applicable year,
- (b) foreign chargeable gains accrued to the individual in or after the tax year in respect of which the election was made but before the applicable year, and”.

(2) The amendment made by this paragraph has effect in relation to the tax year 2017-18 and subsequent tax years.

5 (1) In section 16ZC (election under section 16ZA by individual to whom remittance basis applies), in subsection (1), for paragraphs (a) to (c) substitute—

- “(a) the individual has made an election under section 16ZA in respect of the tax year or any earlier tax year,
- (b) the election has effect in relation to the individual for the tax year, and
- (c) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the tax year.”

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- (2) The amendment made by this paragraph has effect in relation to the tax year 2017-18 and subsequent tax years.
- 6 (1) In section 69 (trustees of settlements), after subsection (2E) insert—
- “(2F) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (2B)(c).”
- (2) The amendment made by this paragraph has effect in relation to a settlement—
- (a) in a case where the settlement arose on the settlor’s death (whether by will, intestacy or otherwise), where the settlor died on or after 6 April 2017;
- (b) in any other case, where the settlor made the settlement (or was treated for the purposes of TCGA 1992 as making the settlement) on or after 6 April 2017.
- 7 (1) In section 86 (attribution of gains to settlors with interest in non-resident or dual resident settlements), after subsection (3) insert—
- “(3A) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (1)(c).”
- (2) The amendment made by this paragraph has effect in relation to the tax year 2017-18 and subsequent tax years.
- 8 (1) In section 275 (location of assets), after subsection (3) insert—
- “(3A) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (1)(i)(iii).”
- (2) The amendment made by this paragraph has effect for the purposes of determining for the purposes of TCGA 1992 the situation of any asset, or whether the situation of any asset is in the United Kingdom, at any time on or after 6 April 2017 (irrespective of when the asset was acquired by the person holding it).
- 9 (1) In Schedule 5A (settlements with foreign element: information), in paragraph 3, after sub-paragraph (3) insert—
- “(3A) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of sub-paragraph (3).”
- (2) The amendment made by this paragraph has effect in relation to settlements created on or after 6 April 2017.

ITEPA 2003

- 10 (1) ITEPA 2003 is amended as follows.
- (2) In section 355 (deductions for corresponding payments by non-domiciled employees with foreign employers), in subsection (2), at the end insert “(and section 835BA of ITA 2007 (deemed domicile) applies for the purposes of this subsection)”.
- (3) In section 373 (non-domiciled employee’s travel costs and expenses where duties performed in UK), at the end insert—
- “(7) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (1).”

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- (4) In section 374 (non-domiciled employee's spouse's etc travel costs and expenses where duties performed in UK), at the end insert —
- “(10) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (1).”
- (5) In section 376 (foreign accommodation and subsistence costs and expenses (overseas employment)), at the end insert —
- “(6) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (1)(c).”
- (6) The amendments made by this paragraph have effect in relation to the tax year 2017-18 and subsequent tax years.

ITA 2007

- 11 ITA 2007 is amended as follows.
- 12 (1) In section 476 (how to work out whether settlor meets condition C in section 475), after subsection (3) insert—
- “(3A) Section 835BA (deemed domicile) applies for the purposes of subsections (2)(b) and (3)(b).”
- (2) The amendment made by this paragraph has effect—
- (a) so far as relating to section 476(2)(b) of ITA 2007, in relation to a settlor who dies on or after 6 April 2017;
 - (b) so far as relating to section 476(3)(b) of ITA 2007, in relation to a settlement made on or after 6 April 2017.
- 13 (1) In section 718 (meaning of “person abroad” etc), after subsection (2) insert—
- “(3) Section 835BA (deemed domicile) applies for the purposes of subsection (1)(b).”
- (2) The amendment made by this paragraph has effect in relation to the tax year 2017-18 and subsequent tax years.
- 14 (1) Chapter A1 of Part 14 (remittance basis) is amended as follows.
- (2) In section 809B (claim for remittance basis to apply), after subsection (1) insert—
- “(1A) Section 835BA (deemed domicile) applies for the purposes of subsection (1)(b).”
- (3) In section 809C (claim for remittance basis by long-term UK resident: nomination) omit the following—
- (a) in subsection (1)(b), “the 17-year residence test,”;
 - (b) subsection (1ZA);
 - (c) subsection (1A)(a);
 - (d) in subsection (1B)(a), “the 17-year residence test or”;
 - (e) subsection (4)(za).
- (4) In section 809E (application of remittance basis without claim: other cases), after subsection (1) insert—

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“(1A) Section 835BA (deemed domicile) applies for the purposes of subsection (1)(b).”

- (5) In section 809H (claim for remittance basis by long-term UK resident: charge) omit the following—
- (a) in subsection (1)(c), “the 17-year residence test,”;
 - (b) in subsection (1A)—
 - (i) “(1ZA)”;
 - (ii) “the 17-year residence test,”;
 - (c) subsection (5B)(za).

- (6) The amendments made by this paragraph have effect in relation to the tax year 2017-18 and subsequent tax years.

This is subject to paragraphs 15 and 16.

- 15 (1) This paragraph applies in a case where—
- (a) section 10A of TCGA 1992 (temporary non-residents) as originally enacted applies in relation to an individual, and
 - (b) the year of return is 2017-18.
- (2) For the purposes of capital gains tax in respect of foreign chargeable gains accruing to the individual during an intervening year, the amendment made by paragraph 14(2) does not have effect in relation to the year of return.
- (3) Where by virtue of sub-paragraph (2) an individual makes a claim under section 809B of ITA 2007 for the tax year 2017-18, sections 809C, 809G and 809H of ITA 2007 do not apply to the individual for that tax year.
- (4) In this paragraph—
- “intervening year” and “year of return” have the same meanings as in section 10A of TCGA 1992 as originally enacted;
 - “foreign chargeable gain” has the meaning given by section 12(4) of TCGA 1992.
- 16 (1) This paragraph applies in a case where section 10A of TCGA 1992 as substituted by paragraph 119 of Schedule 45 to FA 2013 applies in relation to an individual.
- (2) For the purposes of capital gains tax in respect of foreign chargeable gains accruing to the individual during a temporary period of non-residence beginning before 8 July 2015, the amendment made by paragraph 14(2) does not have effect in relation to the tax year which consists of or includes the period of return.
- (3) Where by virtue of sub-paragraph (2) an individual makes a claim under section 809B of ITA 2007 for any of the tax years 2017-18 to 2020-21 inclusive, sections 809C, 809G and 809H of ITA 2007 do not apply to the individual for that tax year.
- (4) In this paragraph, “foreign chargeable gain” has the meaning given by section 12(4) of TCGA 1992.
- (5) Part 4 of Schedule 45 to FA 2013 explains what “temporary period of non-residence” and “period of return” mean.
- 17 (1) In section 834 (residence of personal representatives), at the end insert—

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“(5) Section 835BA (deemed domicile) applies for the purposes of subsection (3).”

- (2) The amendment made by this paragraph has effect in relation to the tax year 2017-18 and subsequent tax years.

PART 2

PROTECTION OF OVERSEAS TRUSTS

TCGA 1992

- 18 In Schedule 5 to TCGA 1992 (provisions supplementing section 86 of TCGA 1992), after paragraph 5 insert—

- “5A (1) Section 86 does not apply in relation to a year (“the particular year”) if Conditions A to D are met.
- (2) Condition A is that the particular year is—
- (a) the tax year 2017-18, or
 - (b) a later tax year.
- (3) Condition B is that when the settlement is created the settlor—
- (a) is not domiciled in the United Kingdom, and
 - (b) if the settlement is created on or after 6 April 2017, is not deemed domiciled in the United Kingdom.
- (4) Condition C is that there is no time in the particular year when the settlor is—
- (a) domiciled in the United Kingdom, or
 - (b) deemed domiciled in the United Kingdom by virtue of Condition A in section 835BA of ITA 2007.
- (5) Condition D is that no property or income is provided directly or indirectly for the purposes of the settlement by the settlor, or by the trustees of another settlement of which the settlor is the settlor or a beneficiary, at a time in the relevant period when the settlor is—
- (a) domiciled in the United Kingdom, or
 - (b) deemed domiciled in the United Kingdom.
- (6) In sub-paragraph (5) “relevant period” means the period—
- (a) beginning with the start of 6 April 2017 or, if later, the creation of the settlement, and
 - (b) ending with the end of the particular year.
- (7) For the purposes of Condition D, the addition of value to property comprised in the settlement is to be treated as the direct provision of property for the purposes of the settlement.
- (8) Paragraph 5B contains further provision for the purposes of Condition D.

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- (9) In this paragraph “deemed domiciled” means regarded for the purposes of section 86(1)(c) as domiciled in the United Kingdom as a result of section 835BA of ITA 2007 having effect.
- 5B (1) This paragraph applies for the purposes of Condition D in paragraph 5A.
- (2) Ignore—
- (a) property or income provided under a transaction, other than a loan, where the transaction is entered into on arm’s length terms,
 - (b) property or income provided, otherwise than under a loan, without any intention by the person providing it to confer a gratuitous benefit on any person,
 - (c) the principal of a loan which is made to the trustees of the settlement on arm’s length terms,
 - (d) the payment of interest to the trustees of the settlement under a loan made by them on arm’s length terms,
 - (e) repayment to the trustees of the settlement of the principal of a loan made by them,
 - (f) property or income provided in pursuance of a liability incurred by any person before 6 April 2017, and
 - (g) where the settlement’s expenses relating to taxation and administration for a tax year exceed its income for that year, property or income provided towards meeting that excess if the value of any such property and income is not greater than the amount of—
 - (i) the excess, or
 - (ii) if greater, the amount by which such expenses exceed the amount of such expenses which may be paid out of the settlement’s income.
- (3) Where—
- (a) a loan is made to the trustees of the settlement by the settlor or the trustees of a settlement connected with the settlor, and
 - (b) the loan is on arm’s length terms, but
 - (c) a relevant event occurs,
- the principal of the loan is to be regarded as having been provided to the trustees at the time of that event (despite sub-paragraph (2)).
- (4) In sub-paragraph (3) “relevant event” means—
- (a) capitalisation of interest payable under the loan,
 - (b) any other failure to pay interest in accordance with the terms of the loan, or
 - (c) variation of the terms of the loan such that they cease to be arm’s length terms.
- (5) Sub-paragraph (6) applies (subject to sub-paragraph (7)) where—
- (a) the settlor becomes deemed domiciled in the United Kingdom on or after 6 April 2017,
 - (b) before the date on which the settlor becomes deemed domiciled in the United Kingdom (“the deemed domicile date”), a loan has been made to the trustees of the settlement by—

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- (i) the settlor, or
 - (ii) the trustees of a settlement connected with the settlor,
 - (c) the loan is not entered into on arm's length terms, and
 - (d) any amount that is outstanding under the loan on the deemed domicile date ("the outstanding amount") is payable or repayable on demand on or after that date.
- (6) Where this sub-paragraph applies, the outstanding amount is to be regarded as property directly provided on the deemed domicile date by the lender for the purposes of the settlement (despite sub-paragraph (2)).
- (7) But if the deemed domicile date is 6 April 2017, sub-paragraph (6) does not apply if—
- (a) the principal of the loan is repaid, and all interest payable under the loan is paid, before 6 April 2018, or
 - (b) the loan becomes a loan on arm's length terms before 6 April 2018 and—
 - (i) before that date interest is paid to the lender in respect of the period beginning with 6 April 2017 and ending with 5 April 2018 as if those arm's length terms had been terms of the loan in relation to that period, and
 - (ii) interest continues to be payable from 6 April 2018 in accordance with those terms.
- (8) For the purposes of this paragraph a loan is on "arm's length terms"—
- (a) in the case of a loan made to the trustees of a settlement, only if interest at the official rate or more is payable at least annually under the loan;
 - (b) in the case of a loan made by the trustees of a settlement, only if any interest payable under the loan is payable at no more than the official rate.
- (9) For the purposes of this paragraph—
- a settlement is "connected" with a person if the person is the settlor or a beneficiary of it;
 - "deemed domiciled" has the same meaning as in paragraph 5A;
 - "official rate", in relation to interest, means the rate of interest applicable from time to time under section 178 of the Finance Act 1989 for the purposes of Chapter 7 of Part 3 of ITEPA 2003."

FA 2004

- 19 In paragraph 8 of Schedule 15 to FA 2004 (income tax on benefits received by former owner of property: intangible property comprised in settlement where settlor retains an interest), after sub-paragraph (3) insert—

“(4) For the purpose of deciding whether the condition in sub-paragraph (1) (a) is met, ignore section 628A of ITTOIA 2005 (which provides for section 624 of that Act not to apply to certain foreign income arising under a settlement).”

ITTOIA 2005

- 20 Chapter 5 of Part 5 of ITTOIA 2005 (settlements) is amended as follows.
- 21 In section 624 (income under a settlement where settlor retains an interest), in subsection (3) (which lists provisions containing exceptions)—
- (a) omit the “and” at the end of the entry for section 627, and
 - (b) after the entry for section 628 insert “, and section 628A (exception for protected foreign-source income).”
- 22 After section 628 insert—

“628A Exception for protected foreign-source income

- (1) The rule in section 624(1) does not apply to income which arises under a settlement if it is protected foreign-source income for a tax year.
- (2) For this purpose, income arising under a settlement in a tax year is “protected foreign-source income” for the tax year if Conditions A to F are met.
- (3) Condition A is that the income would be relevant foreign income if it were income of a UK resident individual.
- (4) Condition B is that the income is from property originating from the settlor (see section 645).
- (5) Condition C is that when the settlement is created the settlor—
 - (a) is not domiciled in the United Kingdom, and
 - (b) if the settlement is created on or after 6 April 2017, is not deemed domiciled in the United Kingdom.
- (6) Condition D is that there is no time in the tax year when the settlor is—
 - (a) domiciled in the United Kingdom, or
 - (b) deemed domiciled in the United Kingdom by virtue of Condition A in section 835BA of ITA 2007.
- (7) Condition E is that the trustees of the settlement are not UK resident for the tax year.
- (8) Condition F is that no property or income is provided directly or indirectly for the purposes of the settlement by the settlor, or by the trustees of any other settlement of which the settlor is a beneficiary or settlor, at a time in the relevant period when the settlor is—
 - (a) domiciled in the United Kingdom, or
 - (b) deemed domiciled in the United Kingdom.
- (9) In subsection (8) “relevant period” means the period—
 - (a) beginning with the start of 6 April 2017 or, if later, the creation of the settlement, and
 - (b) ending with the end of the tax year.
- (10) For the purposes of Condition F, the addition of value to property comprised in the settlement is to be treated as the direct provision of property for the purposes of the settlement.

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- (11) Section 628B (tainting) contains further provision for the purposes of Condition F.
- (12) In this section “deemed domiciled” means regarded for the purposes of section 809(1)(b) of ITA 2007 as domiciled in the United Kingdom as a result of section 835BA of ITA 2007 having effect.
- (13) Section 648(3) to (5) (relevant foreign income treated as arising under settlement only if and when remitted) do not apply for the purposes of this section.

628B Section 628A: tainting

- (1) This section applies for the purposes of Condition F in section 628A.
- (2) Ignore—
 - (a) property or income provided under a transaction, other than a loan, where the transaction is entered into on arm’s length terms,
 - (b) property or income provided, otherwise than under a loan, without any intention by the person providing it to confer a gratuitous benefit on any person,
 - (c) the principal of a loan which is made to the trustees of the settlement on arm’s length terms,
 - (d) the payment of interest to the trustees of the settlement under a loan made by them on arm’s length terms,
 - (e) repayment to the trustees of the settlement of the principal of a loan made by them,
 - (f) property or income provided in pursuance of a liability incurred by any person before 6 April 2017, and
 - (g) where the settlement’s expenses relating to taxation and administration for a tax year exceed its income for that year, property or income provided towards meeting that excess if the value of any such property and income is not greater than the amount of—
 - (i) the excess, or
 - (ii) if greater, the amount by which such expenses exceed the amount of such expenses which may be paid out of the settlement’s income.
- (3) Where—
 - (a) a loan is made to the trustees of the settlement by the settlor or the trustees of a settlement connected with the settlor, and
 - (b) the loan is on arm’s length terms, but
 - (c) a relevant event occurs,
 the principal of the loan is to be regarded as having been provided to the trustees at the time of that event (despite subsection (2)).
- (4) In subsection (3) “relevant event” means—
 - (a) capitalisation of interest payable under the loan,
 - (b) any other failure to pay interest in accordance with the terms of the loan, or

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- (c) variation of the terms of the loan such that they cease to be arm's length terms.
- (5) Subsection (6) applies (subject to subsection (7)) where—
- (a) the settlor becomes deemed domiciled in the United Kingdom on or after 6 April 2017,
 - (b) before the date on which the settlor becomes deemed domiciled in the United Kingdom (“the deemed domicile date”), a loan has been made to the trustees of the settlement by—
 - (i) the settlor, or
 - (ii) the trustees of a settlement connected with the settlor,
 - (c) the loan is not entered into on arm's length terms, and
 - (d) any amount that is outstanding under the loan on the deemed domicile date (“the outstanding amount”) is payable or repayable on demand on or after that date.
- (6) Where this subsection applies, the outstanding amount is to be regarded as property directly provided on the deemed domicile date by the lender for the purposes of the settlement (despite subsection (2)).
- (7) But if the deemed domicile date is 6 April 2017, subsection (6) does not apply if—
- (a) the principal of the loan is repaid, and all interest payable under the loan is paid, before 6 April 2018, or
 - (b) the loan becomes a loan on arm's length terms before 6 April 2018 and—
 - (i) before that date interest is paid to the lender in respect of the period beginning with 6 April 2017 and ending with 5 April 2018 as if those arm's length terms had been terms of the loan in relation to that period, and
 - (ii) interest continues to be payable from 6 April 2018 in accordance with those terms.
- (8) For the purposes of this section, a loan is on “arm's length terms”—
- (a) in the case of a loan made to the trustees of a settlement, only if interest at the official rate or more is payable at least annually under the loan;
 - (b) in the case of a loan made by the trustees of a settlement, only if any interest payable under the loan is payable at no more than the official rate.
- (9) For the purposes of this section—
- a settlement is “connected” with a person if the person is the settlor or a beneficiary of it;
 - “deemed domiciled” has the same meaning as in section 628A;
 - “official rate”, in relation to interest, means the rate of interest applicable from time to time under section 178 of FA 1989 for the purposes of Chapter 7 of Part 3 of ITEPA 2003.

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628C Foreign income arising before, but remitted on or after, 6 April 2017

(1) For the purposes of applying section 809L of ITA 2007 (meaning of remitted to the UK) in relation to transitional trust income, “relevant person” in that section does not include the trustees of the settlement concerned.

(2) “Transitional trust income” means income—

- (a) that arises under a settlement in the period beginning with the tax year 2008-09 and ending with the tax year 2016-17 (“the protection period”),
- (b) that would be protected foreign-source income for the purposes of section 628A(1) if section 628A(2)—
 - (i) had effect for the protection period, and
 - (ii) so had effect with a reference to conditions A to E (instead of A to F),
- (c) that prior to 6 April 2017 has neither been distributed by the trustees of the settlement nor treated under section 624(1) as income of the settlor, and
- (d) that would for the tax year in which it arose under the settlement have been treated under section 624(1) as income of the settlor if the settlor had been domiciled in the United Kingdom for that year.

(3) Section 648(3) to (5) (relevant foreign income treated as arising under settlement only if and when remitted), and corresponding earlier enactments, do not apply for the purposes of subsection (2)(a) and (d).”

23 (1) In section 629(5) (list of exceptions), at the end insert “or section 630A (exception for protected foreign-source income).

(2) After section 630 insert—

“630A Exception for protected foreign-source income

(1) The rule in section 629(1) does not apply to income which arises under a settlement if it is protected foreign-source income for a tax year.

(2) Sections 628A(2) to (12) and 628B (meaning of “protected foreign-source income”) have effect also for this purpose.

(3) Section 648(3) to (5) (relevant foreign income treated as arising under settlement only if and when remitted) do not apply for the purposes of this section.”

24 (1) Section 635 (capital sums treated under section 633 as income: meaning of “available income”) is amended as follows.

(2) In subsection (2), before “income” insert “unprotected”.

(3) After subsection (4) insert—

“(5) In subsection (2) “unprotected income” means income which is not protected foreign-source income, and sections 628A(2) to (13) and 628B (meaning of “protected foreign-source income”) have effect also for this purpose.”

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- 25 In section 636(1) (meaning in section 635 of “undistributed”), before “income”, in both places it occurs, insert “unprotected”.
- 26 In section 645(1) (meaning of property originating from the settlor), for “section” substitute “sections 628A and”.

ITA 2007

- 27 Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad) is amended as follows.
- 28 In section 721 (income of a person abroad that is treated as arising to a UK resident individual), for subsection (3B) (amount treated as arising) substitute—

“(3B) The amount of the income treated as arising under subsection (1) is (subject to sections 724 and 725) given by the following rules—

Rule 1

The amount is equal to the amount of the income of the person abroad if the individual—

- (a) is domiciled in the United Kingdom at any time in the tax year, or
- (b) is at any time in the tax year regarded for the purposes of section 718(1)(b) as domiciled in the United Kingdom as a result of section 835BA having effect because of Condition A in that section being met.

Rule 2

In any other case, the amount is equal to so much of the income of the person abroad as is not protected foreign-source income (see section 721A).

(3BA) In a case in which rule 2 of subsection (3B) applies, so much of the income of the person abroad as is protected foreign-source income for the purposes of that rule counts as “protected income” for the purposes of section 733A(1)(b)(i).”

- 29 After section 721 insert—

“721A Meaning of “protected foreign-source income” in section 721

- (1) This section has effect for the purposes of rule 2 of section 721(3B) (cases where the individual is not UK domiciled and is not deemed domiciled by virtue of Condition A in section 835BA).
- (2) The income of the person abroad is “protected foreign-source income” so far as it is within subsection (3) or (4).
- (3) Income is within this subsection if—
 - (a) it would be relevant foreign income if it were the individual’s,
 - (b) the person abroad is the trustees of a settlement,
 - (c) the trustees are non-UK resident for the tax year,
 - (d) when the settlement is created, the individual is—
 - (i) not domiciled in the United Kingdom, and
 - (ii) if the settlement is created on or after 6 April 2017, not deemed domiciled in the United Kingdom, and

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- (e) no property or income is provided directly or indirectly for the purposes of the settlement by the individual, or by the trustees of any other settlement of which the individual is a beneficiary or settlor, at a time in the period—
 - (i) beginning with the start of 6 April 2017 or, if later, the creation of the settlement, and
 - (ii) ending with the end of the tax year,
 when the individual is domiciled or deemed domiciled in the United Kingdom.

- (4) Income is within this subsection if—
 - (a) it would be relevant foreign income if it were the individual's,
 - (b) the person abroad is a company,
 - (c) the trustees of a settlement—
 - (i) are participators in the person abroad, or
 - (ii) are participators in the first in a chain of two or more companies where the last company in the chain is the person abroad and where each company in the chain (except the last) is a participator in the next company in the chain,
 - (d) the individual's power to enjoy the income results from the trustees being participators as mentioned in paragraph (c)(i) or (ii),
 - (e) the trustees are not UK resident for the tax year,
 - (f) when the settlement is created, the individual is—
 - (i) not domiciled in the United Kingdom, and
 - (ii) if the settlement is created on or after 6 April 2017, not deemed domiciled in the United Kingdom, and
 - (g) no property or income is provided directly or indirectly for the purposes of the settlement by the individual, or by the trustees of any other settlement of which the individual is a beneficiary or settlor, at a time in the period—
 - (i) beginning with the start of 6 April 2017 or, if later, the creation of the settlement, and
 - (ii) ending with the end of the tax year,
 when the individual is domiciled or deemed domiciled in the United Kingdom.

- (5) For the purposes of subsections (3)(e) and (4)(g), the addition of value to property comprised in the settlement is to be treated as the direct provision of property for the purposes of the settlement.

- (6) Section 721B (tainting) contains further provision for the purposes of subsections (3)(e) and (4)(g).

- (7) In this section—
 - “participator”, in relation to a company, has the meaning given by section 454 of CTA 2010;
 - “deemed domiciled” means regarded for the purposes of section 718(1)(b) as domiciled in the United Kingdom as a result of section 835BA of ITA 2007 having effect.

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721B Section 721A: tainting

- (1) This section applies for the purposes of subsections (3)(e) and (4)(g) of section 721A.
- (2) Ignore—
 - (a) property or income provided under a transaction, other than a loan, where the transaction is entered into on arm's length terms,
 - (b) property or income provided, otherwise than under a loan, without any intention by the person providing it to confer a gratuitous benefit on any person,
 - (c) the principal of a loan which is made to the trustees of the settlement on arm's length terms,
 - (d) the payment of interest to the trustees of the settlement under a loan made by them on arm's length terms,
 - (e) repayment to the trustees of the settlement of the principal of a loan made by them,
 - (f) property or income provided in pursuance of a liability incurred by any person before 6 April 2017, and
 - (g) where the settlement's expenses relating to taxation and administration for a tax year exceed its income for that year, property or income provided towards meeting that excess if the value of any such property and income is not greater than the amount of—
 - (i) the excess, or
 - (ii) if greater, the amount by which such expenses exceed the amount of such expenses which may be paid out of the settlement's income.
- (3) Where—
 - (a) a loan is made to the trustees of the settlement by the settlor or the trustees of a settlement connected with the settlor, and
 - (b) the loan is on arm's length terms, but
 - (c) a relevant event occurs,the principal of the loan is to be regarded as having been provided to the trustees at the time of that event (despite subsection (2)).
- (4) In subsection (3) “relevant event” means—
 - (a) capitalisation of interest payable under the loan,
 - (b) any other failure to pay interest in accordance with the terms of the loan, or
 - (c) variation of the terms of the loan such that they cease to be arm's length terms.
- (5) Subsection (6) applies (subject to subsection (7)) where—
 - (a) the settlor becomes deemed domiciled in the United Kingdom on or after 6 April 2017,
 - (b) before the date on which the settlor becomes deemed domiciled in the United Kingdom (“the deemed domicile date”), a loan has been made to the trustees of the settlement by—
 - (i) the settlor, or

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- (ii) the trustees of a settlement connected with the settlor,
 - (c) the loan is not entered into on arm's length terms, and
 - (d) any amount that is outstanding under the loan on the deemed domicile date ("the outstanding amount") is payable or repayable on demand on or after that date.
- (6) Where this subsection applies, the outstanding amount is to be regarded as property directly provided on the deemed domicile date by the lender for the purposes of the settlement (despite subsection (2)).
- (7) But if the deemed domicile date is 6 April 2017, subsection (6) does not apply if—
- (a) the principal of the loan is repaid, and all interest payable under the loan is paid, before 6 April 2018, or
 - (b) the loan becomes a loan on arm's length terms before 6 April 2018 and—
 - (i) before that date interest is paid to the lender in respect of the period beginning with 6 April 2017 and ending with 5 April 2018 as if those arm's length terms had been terms of the loan in relation to that period, and
 - (ii) interest continues to be payable from 6 April 2018 in accordance with those terms.
- (8) For the purposes of this section, a loan is on "arm's length terms"—
- (a) in the case of a loan made to the trustees of a settlement, only if interest at the official rate or more is payable at least annually under the loan;
 - (b) in the case of a loan made by the trustees of a settlement, only if any interest payable under the loan is payable at no more than the official rate.
- (9) For the purposes of this section—
- a settlement is "connected" with a person if the person is the settlor or a beneficiary of it;
 - "deemed domiciled" has the same meaning as in section 721A;
 - "official rate", in relation to interest, means the rate of interest applicable from time to time under section 178 of FA 1989 for the purposes of Chapter 7 of Part 3 of ITEPA 2003."
- 30 In section 726 (individuals to whom remittance basis applies), after subsection (5) insert—
- “(6) In addition, where the tax year in which any foreign deemed income arises is earlier than the tax year 2017-18, section 832 of ITTOIA 2005 does not apply to the foreign deemed income so far as it—
- (a) is remitted to the United Kingdom in the tax year 2017-18 or a later tax year, and
 - (b) is transitionally protected income.
- (7) In subsection (6)—
- "remitted to the United Kingdom" is to be read in accordance with Chapter A1 of Part 14, and

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“transitionally protected income” means any foreign deemed income where the income mentioned in section 721(2)—

- (a) arises in a tax year earlier than the tax year 2017-18,
- (b) would be protected foreign-source income as defined by section 721A if section 721A—
 - (i) had effect for tax years earlier than the tax year 2017-18, and
 - (ii) so had effect with the omission of its subsections (3) (e), (4)(g), (5) and (6), and
- (c) has not prior to 6 April 2017 been distributed by the trustees of the settlement concerned.”

31 In section 728 (income of a person abroad that is treated as arising to a UK resident individual), for subsection (1A) (amount treated as arising) substitute—

“(1A) The amount of the income treated as arising under subsection (1) is (subject to subsection (2)) given by the following rules—

Rule 1

The amount is equal to the amount of the income of the person abroad if the individual—

- (a) is domiciled in the United Kingdom at any time in the tax year, or
- (b) is at any time in the tax year regarded for the purposes of section 718(1)(b) as domiciled in the United Kingdom as a result of section 835BA having effect because of Condition A in that section being met.

Rule 2

In any other case, the amount is equal to so much of the income of the person abroad as is not protected foreign-source income (see section 729A).

(1B) In a case in which rule 2 of subsection (1A) applies, so much of the income of the person abroad as is protected foreign-source income for the purposes of that rule counts as “protected income” for the purposes of section 733A(1)(b)(i).”

32 After section 729 insert—

“729A Meaning of “protected foreign-source income” in section 728

- (1) This section has effect for the purposes of rule 2 of section 728(1A) (cases where the individual is not UK domiciled and is not deemed domiciled by virtue of Condition A in section 835BA).
- (2) The income of the person abroad is “protected foreign-source income” so far as it is within subsection (3) or (4).
- (3) Income is within this subsection if—
 - (a) it would be relevant foreign income if it were the individual’s,
 - (b) the person abroad is the trustees of a settlement,
 - (c) the trustees are non-UK resident for the tax year,
 - (d) when the settlement is created, the individual is—

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- (i) not domiciled in the United Kingdom, and
- (ii) if the settlement is created on or after 6 April 2017, not deemed domiciled in the United Kingdom, and
- (e) no property or income is provided directly or indirectly for the purposes of the settlement by the individual, or by the trustees of any other settlement of which the individual is a beneficiary or settlor, at a time in the period—
 - (i) beginning with the start of 6 April 2017 or, if later, the creation of the settlement, and
 - (ii) ending with the end of the tax year,
 when the individual is domiciled or deemed domiciled in the United Kingdom.
- (4) Income is within this subsection if—
 - (a) it would be relevant foreign income if it were the individual's,
 - (b) the person abroad is a company,
 - (c) the trustees of a settlement—
 - (i) are participators in the person abroad, or
 - (ii) are participators in the first in a chain of two or more companies where the last company in the chain is the person abroad and where each company in the chain (except the last) is a participator in the next company in the chain,
 - (d) the condition in paragraph (c) is met as a result of a relevant transaction (whether or not it is also met otherwise than as a result of a relevant transaction),
 - (e) the income has become the income of the person abroad as a result of that relevant transaction,
 - (f) the trustees are not UK resident for the tax year,
 - (g) when the settlement is created, the individual is—
 - (i) not domiciled in the United Kingdom, and
 - (ii) if the settlement is created on or after 6 April 2017, not deemed domiciled in the United Kingdom, and
 - (h) no property or income is provided directly or indirectly for the purposes of the settlement by the individual, or by the trustees of any other settlement of which the individual is a beneficiary or settlor, at a time in the period—
 - (i) beginning with start of 6 April 2017 or, if later, the creation of the settlement, and
 - (ii) ending with the end of the tax year,
 when the individual is domiciled or deemed domiciled in the United Kingdom.
- (5) For the purposes of subsections (3)(e) and (4)(h), the addition of value to property comprised in the settlement is to be treated as the direct provision of property for the purposes of the settlement.
- (6) Section 721B (tainting) applies for the purposes of subsections (3)(e) and (4)(h) as it applies for the purposes of section 721A(3)(e) and (4)(g).
- (7) In this section—

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“participator”, in relation to a company, has the meaning given by section 454 of CTA 2010, and

“deemed domiciled” means regarded for the purposes of section 718(1)(b) as domiciled in the United Kingdom as a result of section 835BA of ITA 2007 having effect.”

33 In section 730 (individuals to whom remittance basis applies), after subsection (5) insert—

“(6) In addition, where the tax year in which any foreign deemed income arises is earlier than the tax year 2017-18, section 832 of ITTOIA 2005 does not apply to the foreign deemed income so far as it—

- (a) is remitted to the United Kingdom in the tax year 2017-18 or a later tax year, and
- (b) is transitionally protected income.

(7) In subsection (6)—

“remitted to the United Kingdom” is to be read in accordance with Chapter A1 of Part 14, and

“transitionally protected income” means any foreign deemed income where the income mentioned in section 728(1)(a)—

- (a) arises in a tax year earlier than the tax year 2017-18,
- (b) would be protected foreign-source income as defined by section 729A if section 729A—
 - (i) had effect for tax years earlier than the tax year 2017-18, and
 - (ii) so had effect with the omission of its subsections (3) (e), (4)(h), (5) and (6), and
- (c) has not prior to 6 April 2017 been distributed by the trustees of the settlement concerned.”

34 (1) Section 731 (charge to tax on income treated as arising under section 732) is amended as follows.

(2) In subsection (1), for “non-transferors” substitute “individuals”.

(3) After subsection (1) insert—

“(1A) But where the individual is non-UK resident for the tax year in which a benefit is received, there is a charge to tax under this section on any matched deemed income—

- (a) only so far as that matched deemed income would under section 735A (if it applied also for this purpose) be matched with an amount of relevant income that is protected income for the purposes of section 733A(1)(b)(i) (see sections 721(3BA) and 728(1B)), and
- (b) only if—
 - (i) the individual is the settlor of the settlement concerned, or
 - (ii) the benefit is received by the individual at a time when the individual is a close member of the family of the settlor of that settlement.

(1B) For the purposes of subsection (1A)—

- (a) “matched deemed income” means income which—

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- (i) is treated by section 732 as arising to the individual, and
- (ii) would, if section 735A applied also for this purpose, be matched under that section with the benefit, and
- (b) a person is a close member of the family of the settlor of a settlement if the person is—
 - (i) the settlor’s spouse or civil partner, or
 - (ii) a child of the settlor, or of a person within sub-paragraph (i), if the child has not reached the age of 18;
 and section 733A(7) (persons living together) applies also for the purposes of paragraph (b).”
- (4) In subsection (3) (person liable for tax is person to whom income is treated as arising), at the end insert “, but this is subject to section 733A.
- 35 (1) Section 732 (when income is treated as arising for the purposes of the charge under section 731) is amended in accordance with sub-paragraphs (2) to (4).
 - (2) In subsection (1) (cases in which tax can be charged under section 731)—
 - (a) in paragraph (b), for “who is UK resident for a tax year receives a benefit in that tax year” substitute “receives a benefit in a tax year”, and
 - (b) for paragraph (d) substitute—
 - “(d) where there is a time in the year when the individual is relevantly domiciled, the individual is not liable to income tax under section 720 or 727 by reference to the transfer, and”.
 - (3) After subsection (3) insert—
 - “(4) For the purposes of subsection (1)(d), the individual is “relevantly domiciled” at any time if at that time—
 - (a) the individual is domiciled in the United Kingdom, or
 - (b) the individual is regarded for the purposes of section 718(1)(b) as domiciled in the United Kingdom as a result of section 835BA having effect because of Condition A in that section being met.”
 - (4) In the heading, for “Non-transferors” substitute “Individuals”.
 - (5) In section 733(1) (income charged under section 731), in the first sentence of Step 2, at the end insert “except that, where any of that income is matched deemed income for the purposes of section 731(1A), that matched deemed income is to be deducted only so far as it is matched deemed income on which tax has been charged under section 731 for an earlier tax year.
- 36 After section 733 insert—

“733A Settlor liable for section 731 charge on closely-related beneficiary

- (1) Subsections (2) and (3) apply if—
 - (a) an amount of income is treated as arising to an individual under section 732 for a tax year,
 - (b) under section 735A (if it applied also for this purpose) that amount would be matched—

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- (i) with an amount of relevant income that is protected income for the purposes of this sub-paragraph (see sections 721(3BA) and 728(1B)), and
 - (ii) with a benefit received by the individual at a time when the individual was a close member (see subsection (7)) of the family of the settlor of the settlement concerned,
 - (c) there is no time in the year when the trustees of the settlement are resident in the United Kingdom,
 - (d) there is a time in the year when the settlor is resident in the United Kingdom,
 - (e) there is no time in the year when the settlor is domiciled in the United Kingdom, and
 - (f) there is no time in the year when the settlor is regarded for the purposes of section 718(1)(b) as domiciled in the United Kingdom as a result of section 835BA having effect because of Condition A in that section being met.
- (2) If—
 - (a) the individual is not resident in the United Kingdom at any time in the year, or
 - (b) section 809B, 809D or 809E (remittance basis) applies to the individual for the year and none of the amount mentioned in subsection (1)(a) of this section is remitted to the United Kingdom in the year,the settlor is liable for the tax charged under section 731 on that amount as if that amount were income arising to the settlor in the year (and the individual is not liable in any later year for income tax on that amount).
- (3) If—
 - (a) section 809B, 809D or 809E (remittance basis) applies to the individual for the year, and
 - (b) part only of the amount mentioned in subsection (1)(a) of this section is remitted to the United Kingdom in the year,the settlor is liable for the tax charged under section 731 on the remainder of that amount as if that remainder were income arising to the settlor in the year (and the individual is not liable in any later year for income tax on that remainder).
- (4) The amount mentioned in subsection (1)(a) may be the whole, or part only, of the amount treated as arising to the individual under section 732 for the year in the case of the relevant transfer and its associated operations.
- (5) Where any tax for which the settlor is liable as a result of subsection (2) or (3) is paid, the settlor is entitled to recover the amount of the tax from the individual.
- (6) For the purpose of recovering that amount, the settlor is entitled to require an officer of Revenue and Customs to give the settlor a certificate specifying—
 - (a) the amount of the income concerned, and
 - (b) the amount of tax paid,and any such certificate is conclusive evidence of the facts stated in it.

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- (7) For the purposes of subsection (1)(b)(ii), a person is a close member of the family of the settlor if the person is—
- (a) the settlor’s spouse or civil partner, or
 - (b) a child of the settlor, or of a person within paragraph (a), if the child has not reached the age of 18.
- (8) For the purposes of subsection (7)—
- (a) two people living together as if they were spouses of each other are treated as if they were spouses of each other, and
 - (b) two people of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other.
- (9) Sections 809L to 809Z6 (remittance basis: rules about when income is remitted, including rule treating pre-arising remittances of deemed income as made when the income arises) apply for the purposes of this section.”

37 In section 735A(6) (matching of income on which individual charged under section 731), after “individual” insert “, or as a result of section 733A another person,”.

38 After section 735A insert—

“735B Settlor liable under section 733A and remittance basis applies

- (1) This section applies in relation to income if—
- (a) the income is treated by section 732 as arising to an individual (“the beneficiary”) for a tax year,
 - (b) another individual (“the settlor”) is under section 733A(2) or (3) liable for tax on the income, and
 - (c) section 809B, 809D or 809E (remittance basis) applies to the settlor for that year.
- (2) The income (“the transferred-liability deemed income”) is treated as relevant foreign income of the settlor.
- (3) If, for the purposes of section 735 as it applies in relation to the beneficiary, any benefit or relevant income relates to any part of the transferred-liability deemed income then, for the purposes of Chapter A1 of Part 14 as it applies in relation to the settlor, that benefit or relevant income is to be treated as deriving from that part of the transferred-liability deemed income.
- (4) In the application of section 832 of ITTOIA 2005 in relation to the income, subsection (2) of that section has effect with the omission of its paragraph (b).”

Commencement of amendments in FA 2004, ITTOIA 2005 and ITA 2007

39 The amendments made by paragraphs 19 to 38 have effect for the tax year 2017-18 and subsequent tax years.

FA 2008

- 40 In Part 2 of Schedule 7 to FA 2008 (remittance basis: trusts etc), after paragraph 171 insert—
- “172 (1) Sub-paragraph (2) has effect for the purposes of—
paragraphs 100(1)(b), 101(1)(c) and 102(1)(e),
paragraph (b) of paragraph 118(3) so far as having effect for the purposes of paragraph 118(1)(d), and
paragraphs 124(1)(b), 126(7)(b), 127(1)(e) and 151(1)(b).
- (2) An individual not domiciled in the United Kingdom at a time in the tax year 2017-18, or a later tax year, is to be regarded as domiciled in the United Kingdom at that time if—
- (a) the individual was born in the United Kingdom,
 - (b) the individual’s domicile of origin was in the United Kingdom, and
 - (c) the individual is resident in the United Kingdom for the tax year concerned.”

PART 3

CAPITAL GAINS TAX REBASING

- 41 (1) This paragraph applies to the disposal of an asset by an individual (“P”) where—
- (a) the asset was held by P on 5 April 2017,
 - (b) the disposal is made on or after 6 April 2017,
 - (c) the asset was not situated in the United Kingdom at any time in the relevant period, and
 - (d) P is a qualifying individual.
- (2) The relevant period is the period which—
- (a) begins with 16 March 2016 or, if later, the date on which P acquired the asset, and
 - (b) ends with 5 April 2017.
- (3) P is a qualifying individual if—
- (a) section 809H of ITA 2007 (claim for remittance basis by long-term UK resident: charge) applied in relation to P for any tax year before the tax year 2017-18,
 - (b) P is not an individual—
 - (i) who was born in the United Kingdom, and
 - (ii) whose domicile of origin was in the United Kingdom,
 - (c) P was not domiciled in the United Kingdom at any time in a relevant tax year, and
 - (d) P met condition B in section 835BA of ITA 2007 in relation to each relevant tax year.
- (4) The relevant tax years are—
- (a) the tax year 2017-18, and

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- (b) if the disposal was made after that tax year, all subsequent tax years up to and including that in which the disposal was made.
 - (5) In computing, for the purpose of TCGA 1992, the gain or loss accruing on the disposal, it is to be assumed that P acquired the asset on 5 April 2017 for a consideration equal to its market value on that date.
 - (6) Sub-paragraph (5) applies notwithstanding section 58(1) of TCGA 1992 (disposals between spouses).
 - (7) Where under section 127 of TCGA 1992 (including that section as applied by sections 132, 135 and 136 of that Act) an original and a new holding of shares or other securities are treated as the same asset, the condition in sub-paragraph (1)(c) applies to both the original and the new holding.
 - (8) This Part of this Schedule has effect as if it were included in TCGA 1992.
- 42 (1) This paragraph applies for the purposes of paragraph 41(1)(c) in the case of an asset which, having been situated outside the United Kingdom, becomes situated in the United Kingdom before the end of the relevant period.
- (2) The asset is to be regarded as not situated in the United Kingdom at a time in the relevant period when—
- (a) it meets the condition in section 809Z(3)(a), (b) or (c) of ITA 2007 (public access),
 - (b) it meets the condition in section 809Z3(3)(a), (b) or (c) of ITA 2007 (repairs),
 - (c) the sole or principal purpose of its being situated in the United Kingdom is to sell it or put it up for sale, or
 - (d) in the case of clothing, footwear, jewellery or a watch, it is for the personal use of—
 - (i) P or a husband, wife or civil partner of P, or
 - (ii) a child or grandchild of a person within sub-paragraph (i), if the child or grandchild has not reached the age of 18.
- (3) The asset is to be regarded as not situated in the United Kingdom at any time in the relevant period if it is brought to, or received or used in, the United Kingdom in circumstances in which section 809L(2)(a) of ITA 2007 applies but—
- (a) by virtue of section 809X(5)(c) of ITA 2007 (notional remitted amount less than £1000) it is treated as not remitted to the United Kingdom, or
 - (b) by the end of the relevant period it has not failed to meet the temporary importation rule in section 809Z4 of ITA 2007.
- (4) Section 809M(3)(a) and (b) of ITA 2007 (persons living together) apply for the purposes of sub-paragraph (2)(d)(i).
- 43 (1) An individual may make an election for paragraph 41 not to apply to a disposal made by the individual.
- (2) Sections 42 and 43 of TMA 1970 (procedure and time limit for claims), except section 42(1A) of that Act, apply in relation to an election under this paragraph as they apply in relation to a claim for relief.
- (3) An election under this paragraph is irrevocable.

- (4) All such adjustments are to be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election under this paragraph.

PART 4

CLEANSING OF MIXED FUNDS

- 44 (1) This paragraph applies for the purposes of the application of section 809Q(3) of ITA 2007 in relation to an individual (“P”).
- (2) Section 809R(4) of ITA 2007 does not apply to an offshore transfer from a mixed fund where—
- (a) the transfer is made in the tax year 2017-18 or the tax year 2018-19,
 - (b) the transfer is a transfer of money,
 - (c) the mixed fund from which the transfer is made is an account (account A) and the transfer is made to another account (account B),
 - (d) the transfer is nominated by P for the purposes of this sub-paragraph,
 - (e) at the time of the nomination no other transfer from account A to account B has been so nominated, and
 - (f) P is a qualifying individual.
- (3) P is a qualifying individual if—
- (a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applied in relation to P for any tax year before the tax year 2017-18, and
 - (b) P is not an individual—
 - (i) who was born in the United Kingdom, and
 - (ii) whose domicile of origin was in the United Kingdom.
- (4) An offshore transfer to which sub-paragraph (2) applies is to be treated as containing such amount of such kind or kinds of income and capital in the mixed fund immediately before the transfer as may be specified in the nomination under sub-paragraph (2)(d).
- (5) An amount of a kind of income or capital specified under sub-paragraph (4) may not exceed the amount of that kind which is in the mixed fund immediately before the transfer.
- (6) In this paragraph “mixed fund” and “offshore transfer” have the same meanings as in section 809R(4) of ITA 2007.
- 45 (1) This paragraph applies to a transfer made by a person (“P”) from a mixed fund where—
- (a) the transfer is made in the tax year 2017-18 or the tax year 2018-19,
 - (b) the transfer is a transfer of money,
 - (c) the mixed fund from which the transfer is made is an overseas account (account A) containing pre-6 April 2008 income or chargeable gains,
 - (d) the transfer is made to another overseas account (account B),
 - (e) the transfer is nominated by the person for the purposes of this sub-paragraph,

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- (f) at the time of the nomination no other transfer from account A to account B has been so nominated, and
 - (g) P is a qualifying individual.
- (2) P is a qualifying individual if—
- (a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applied in relation to P for any tax year before the tax year 2017-18, and
 - (b) P is not an individual—
 - (i) who was born in the United Kingdom, and
 - (ii) whose domicile of origin was in the United Kingdom.
- (3) A transfer to which this paragraph applies is to be treated as containing such amount of such kind or kinds of income or capital in the mixed fund immediately before the transfer (for example, income or chargeable gains for a particular tax year) as may be specified in the nomination under sub-paragraph (1)(e).
- (4) An amount of a kind of income or capital specified under sub-paragraph (3) may not exceed the amount of that kind which is in the mixed fund immediately before the transfer.
- (5) In this paragraph and paragraph 46—
- “mixed fund” has the same meaning as in section 809R(4) of ITA 2007;
 - “overseas account” means an account situated outside the United Kingdom;
 - “pre-6 April 2008 income or chargeable gains” means income or chargeable gains for the tax year 2007-8 or any earlier tax year.
- 46 (1) This paragraph applies to determine, for the purposes of paragraph 45, the composition of the mixed fund referred to in paragraph 45(1).
- (2) Sub-paragraphs (3) to (5) apply where a transfer of money is made before 6 April 2008 from the mixed fund to another overseas account.
- (3) Take the following Steps—
- Step 1.* Calculate the total amount of income and chargeable gains in the mixed fund immediately before the transfer (“the total income and gains”).
 - Step 2.* Calculate what proportion of the total income and gains is income and what proportion is chargeable gains.
- (4) If the amount transferred does not exceed the total income and gains, the transfer is to be treated as if it consisted of income and chargeable gains in the proportions found under Step 2 in sub-paragraph (3).
- (5) If the amount transferred exceeds the total income and gains, the transfer is to be treated as if it consisted of—
- (a) all the income and chargeable gains that were in the mixed fund immediately before the transfer, and
 - (b) in respect of the balance, other capital from the mixed fund.
- (6) Sub-paragraphs (7) and (8) apply where—
- (a) a transfer of money is made before 6 April 2008 from another overseas account to the mixed fund, and
 - (b) there is insufficient evidence to determine the composition of the transfer.

Status: This is the original version (as it was originally enacted).

- (7) Take the following Steps—
- Step 1.* Calculate the total amount of income and chargeable gains in the other overseas account immediately before the transfer (“the total income and gains”).
 - Step 2.* Calculate what proportion of the total income and gains is income and what proportion is chargeable gains.
- (8) The transfer is to be presumed to consist of income and chargeable gains in the proportions found under Step 2 in sub-paragraph (7).
- (9) For the purposes of Steps 1 and 2 in sub-paragraph (7), if there is insufficient evidence to say that an amount is income or that it is chargeable gains, treat it as income.