

Status: Point in time view as at 16/11/2017.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2017, PART 1. (See end of Document for details)

SCHEDULES

SCHEDULE 8 **U.K.**

DEEMED DOMICILE: INCOME TAX AND CAPITAL GAINS TAX

PART 1 **U.K.**

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.

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