



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XVII

TAX AVOIDANCE

CHAPTER III

TRANSFER OF ASSETS ABROAD

739 Prevention of avoidance of income tax.

^{M1}(1) Subject to section 747(4)(b), the following provisions of this section shall have effect for the purpose of preventing the avoiding by individuals ordinarily resident in the United Kingdom of liability to income tax by means of transfers of assets by virtue or in consequence of which, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled outside the United Kingdom.

[^{F1}(1A) Nothing in subsection (1) above shall be taken to imply that the provisions of subsections (2) and (3) below apply only if—

- (a) the individual in question was ordinarily resident in the United Kingdom at the time when the transfer was made; or
- (b) the avoiding of liability to income tax is the purpose, or one of the purposes, for which the transfer was effected.]

(2) Where by virtue or in consequence of any such transfer, either alone or in conjunction with associated operations, such an individual has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a person resident or domiciled outside the United Kingdom which, if it were income of that individual received by him in the United Kingdom, would be chargeable to income tax by deduction or otherwise, that income shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be income of that individual for all purposes of the Income Tax Acts.

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- (3) Where, whether before or after any such transfer, such an individual receives or is entitled to receive any capital sum the payment of which is in any way connected with the transfer or any associated operation, any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a person resident or domiciled outside the United Kingdom shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be income of that individual for all purposes of the Income Tax Acts.
- (4) In subsection (3) above “capital sum” means, subject to subsection (5) below—
- (a) any sum paid or payable by way of loan or repayment of a loan, and
 - (b) any other sum paid or payable otherwise than as income, being a sum which is not paid or payable for full consideration in money or money’s worth.
- (5) For the purposes of subsection (3) above, there shall be treated as a capital sum which an individual receives or is entitled to receive any sum which a third person receives or is entitled to receive at the individual’s direction or by virtue of the assignment by him of his right to receive it.
- (6) Income shall not by virtue of subsection (3) above be deemed to be that of an individual for any year of assessment by reason only of his having received a sum by way of loan if that sum has been wholly repaid before the beginning of that year.

Textual Amendments

- F1** S. 739(1A) inserted (with application in accordance with s. 81(2) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), [s. 81\(1\)](#)

Modifications etc. (not altering text)

- C1** See 1989 s.110—*residence of trustees*; and s.111—*residence of personal representatives*.
- C2** Ss. 739, 740 modified (with effect in accordance with s. 105(1) of the modifying Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 13 para. 12](#) (with [Sch. 13 para. 16](#), [Sch. 15](#))
- C3** Ss. 739, 740 modified (6.4.2005 with effect in accordance with s. 883(1) of the modifying Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [ss. 459, 569](#) (with [Sch. 2](#))

Marginal Citations

- M1** Source—1970 s.478(1), (2), (2A), (2B); 1981 s.46(3), (4)

740 Liability of non-transferors.

- ^{M2}(1) This section has effect where—
- (a) by virtue or in consequence of a transfer of assets, either alone or in conjunction with associated operations, income becomes payable to a person resident or domiciled outside the United Kingdom; and
 - (b) an individual ordinarily resident in the United Kingdom who is not liable to tax under section 739 by reference to the transfer receives a benefit provided out of assets which are available for the purpose by virtue or in consequence of the transfer or of any associated operations.
- (2) Subject to the provisions of this section, the amount or value of any such benefit as is mentioned in subsection (1) above, if not otherwise chargeable to income tax in the hands of the recipient, shall—

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- (a) to the extent to which it falls within the amount of relevant income of years of assessment up to and including the year of assessment in which the benefit is received, be treated for all the purposes of the Income Tax Acts as the income of the individual for that year [^{F2}and be charged to income tax on that individual for that year];
 - (b) to the extent to which it is not by virtue of this subsection treated as his income for that year and falls within the amount of relevant income of the next following year of assessment, be treated for those purposes as his income for the next following year [^{F3}and be charged to income tax on him for that year], and so on for subsequent years, taking the reference in paragraph (b) to the year mentioned in paragraph (a) as a reference to that and any other year before the subsequent year in question.
- (3) Subject to subsection (7) below and section 744(1), the relevant income of a year of assessment, in relation to an individual, is any income which arises in that year to a person resident or domiciled outside the United Kingdom and which by virtue or in consequence of the transfer or associated operations referred to in subsection (1) above can directly or indirectly be used for providing a benefit for the individual or for enabling a benefit to be provided for him.
- (4) ^{F4}
- (5) An individual who is domiciled outside the United Kingdom shall not, in respect of any benefit not received in the United Kingdom, be chargeable to tax under this section by reference to relevant income which is such that if he had received it he would not, by reason of his being so domiciled, have been chargeable to income tax in respect of it [^{F5}; and sections 833 and 834 of ITTOIA 2005 shall apply for the purposes of this subsection as they would apply for the purposes of section 832 (remittance basis) of that Act if the benefit were relevant foreign income.]
- (6) Where—
- (a) the whole or part of the benefit received by an individual in a year of assessment is a capital payment [^{F6}to which section 87 or 89(2) of, or paragraph 8 of Schedule 4C to, the 1992 Act applies] (chargeable gains: [^{F7}gains attributed to beneficiaries]) (because not falling within the amount of relevant income referred to in paragraph (a) of subsection (2) above); and
 - (b) chargeable gains are by reason of that payment treated under either of those sections [^{F8}, or that paragraph,] as accruing to him in that or a subsequent year, paragraph (b) of that subsection shall apply in relation to any year of assessment (“a year of charge”) after one in which chargeable gains have been so treated as accruing to him as if a part of the amount or value of the benefit corresponding to the amount of those gains had been treated under that subsection as his income for a year of assessment before the year of charge.
- (7) This section applies irrespective of when the transfer or associated operations referred to in subsection (1) above took place, but applies only to relevant income arising on or after 10th March 1981.

Textual Amendments

- F2** Words in s. 740(2)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 304(2)(a) (with Sch. 2)

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- F3** Words in s. 740(2)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 304(2)(b)* (with Sch. 2)
- F4** S. 740(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 304(3), Sch. 3* (with Sch. 2)
- F5** Words in s. 740(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 304(4)* (with Sch. 2)
- F6** Words in s. 740(6)(a) substituted (with effect in accordance with s. 92(5) of the amending Act) by *Finance Act 2000 (c. 17), Sch. 26 para. 6(a)*
- F7** Words in 740(6)(a) substituted (with effect in accordance with s. 92(5) of the amending Act) by *Finance Act 2000 (c. 17), Sch. 26 para. 6(b)*
- F8** Words in 740(6)(b) inserted (with effect in accordance with s. 92(5) of the amending Act) by *Finance Act 2000 (c. 17), Sch. 26 para. 6(c)*

Modifications etc. (not altering text)

- C4** See 1989 s.110—*residence of trustees; and s.111—residence of personal representatives.*
- C5** Ss. 739, 740 modified (with effect in accordance with s. 105(1) of the modifying Act) by *Finance Act 1996 (c. 8), Sch. 13 para. 12* (with Sch. 13 para. 16, Sch. 15)
- C6** Ss. 739, 740 modified (6.4.2005 with effect in accordance with s. 883(1) of the modifying Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), ss. 459, 569* (with Sch. 2)
- C7** S. 740 applied (with modifications) (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 468* (with Sch. 2)
- C8** See 1981 s.83(3)—*treatment of capital sums for capital gains tax.*

Marginal Citations

- M2** Source—1981 s.45(1)-(6), (9)

741 Exemption from sections 739 and 740.

^{M3}Sections 739 and 740 shall not apply if the individual shows in writing or otherwise to the satisfaction of the Board either—

- (a) that the purpose of avoiding liability to taxation was not the purpose or one of the purposes for which the transfer or associated operations or any of them were effected; or
- (b) that the transfer and any associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation.

The jurisdiction of the Special Commissioners on any appeal shall include jurisdiction to review any relevant decision taken by the Board in exercise of their functions under this section.

Marginal Citations

- M3** Source—1970 s.478(3); 1981 s.45(7)

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VALID FROM 05/12/2005

[^{F9}741A Exemption from sections 739 and 740 (transactions on or after 5th December 2005)

- (1) The individual is not liable to income tax by virtue of section 739 or 740 for the year of assessment by reference to the relevant transactions if he satisfies an officer of the Board—
 - (a) that Condition A is met, or
 - (b) in a case where Condition A is not met, that Condition B is met.
- (2) Condition A is that it would not be reasonable to draw the conclusion, from all the circumstances of the case, that the purpose of avoiding liability to taxation was the purpose, or one of the purposes, for which the relevant transactions or any of them were effected.
- (3) Condition B is that—
 - (a) all the relevant transactions were genuine commercial transactions, and
 - (b) it would not be reasonable to draw the conclusion, from all the circumstances of the case, that any one or more of those transactions was more than incidentally designed for the purpose of avoiding liability to taxation.
- (4) The intentions and purposes of any person who, whether or not for consideration,—
 - (a) designs or effects the relevant transactions or any of them, or
 - (b) provides advice in relation to the relevant transactions or any of them,are to be taken into account in determining the purposes for which those transactions or any of them were effected.
- (5) A relevant transaction is a commercial transaction only if it is effected—
 - (a) in the course of a trade or business, or
 - (b) with a view to setting up and commencing a trade or business,and, in either case, for the purposes of that trade or business.
- (6) For that purpose, the making and managing of investments, or the making or managing of investments, is not a trade or business except to the extent that—
 - (a) the person by whom it is done, and
 - (b) the person for whom it is done,are independent persons dealing at arm's length.
- (7) In this section—

“commercial transaction” does not include—

 - (a) a transaction on terms other than those that would have been made between independent persons dealing at arm's length, or
 - (b) a transaction that would not have been entered into between independent persons dealing at arm's length;

“independent persons” means persons who are not connected with each other (within the meaning given by section 839);

“relevant transactions” means—

 - (a) the transfer, and
 - (b) any associated operations;

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“revenue” includes taxes, duties and national insurance contributions;
 “taxation” includes any revenue for whose collection and management the Commissioners for Her Majesty’s Revenue and Customs are responsible.

- (8) Any associated operation that would not (apart from this subsection) fall to be taken into account for the purposes of this section must be taken into account for those purposes if, were it to be so taken into account, the conditions in subsection (1) above would be failed by reference to—
- (a) that associated operation, or
 - (b) that associated operation taken together with the transfer or any one or more other associated operations.
- (9) The jurisdiction of the Special Commissioners on any appeal includes jurisdiction to review any decision taken by an officer of the Board in exercise of the officer’s functions under this section.
- (10) This section is subject to sections 741B and 741C (application of section 741 and this section etc).]

Textual Amendments

F9 S. 741A inserted (5.12.2005) by [Finance Act 2006 \(c. 25\)](#), [Sch. 7 para. 3](#)

VALID FROM 05/12/2005

^{F10}741B Application of sections 741 and 741A

- (1) This section makes provision with respect to the application for the year of assessment of—
- (a) section 741,
 - (b) section 741A, or
 - (c) section 741C,
- in the case of the individual and the relevant transactions.
- (2) In this section—
- “new transaction” means a relevant transaction effected on or after the relevant date;
- “old transaction” means a relevant transaction effected before the relevant date;
- “the relevant date” means 5th December 2005;
- “relevant transactions” means—
- (a) the transfer, and
 - (b) any associated operations.
- (3) If all the relevant transactions are old transactions, section 741 is the provision to be applied.
- (4) If all the relevant transactions are new transactions, section 741A is the provision to be applied.

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- (5) If—
- (a) any one or more of the relevant transactions are old transactions, and
 - (b) any one or more of the relevant transactions are new transactions,
- section 741C is the provision to be applied.]

Textual Amendments

F10 Ss. 741B, 741C inserted (5.12.2005) by Finance Act 2006 (c. 25), Sch. 7 para. 4

VALID FROM 05/12/2005

[^{F10}741C Cases where there are both old transactions and new transactions

- (1) This section applies by virtue of section 741B if the case falls within subsection (5) of that section.
- (2) Sections 739 and 740 do not apply, unless subsection (3) below applies.
- (3) This subsection applies if—
 - (a) the conditions in section 741(1) are failed by reference to the old transactions or any of them, or
 - (b) the conditions in section 741A(1) are failed by reference to the new transactions or any of them.
- (4) Where subsection (3) above applies, the general rule is that sections 739 and 740 apply as they would have applied apart from any exemption by virtue of sections 741 to 741C.
- (5) In any case where subsection (3) above applies by virtue only of paragraph (b) of that subsection, the general rule has effect subject to, and in accordance with, the Rules in subsections (6) to (8) below.
- (6) Rule 1 is that, for the purposes of section 739(2) or (3), any income arising before the relevant date must not be brought into account as income of the person resident or domiciled outside the United Kingdom.
- (7) Rule 2 is that for the purposes of section 740, where—
 - (a) a benefit is received by the individual in a year of assessment ending after the relevant date, and
 - (b) relevant income of years of assessment up to and including that year falls to be determined,the general rule requires years ending before the relevant date to be brought into account as well as years ending after that date.
- (8) Rule 3 is that, for the purposes of section 740, a benefit received by the individual in the year 2005-06 is to be left out of account to the extent that, on a time apportionment basis, it fell to be enjoyed in any part of the year that falls before the relevant date.
- (9) This section is to be read as one with section 741B.]

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Textual Amendments

F10 Ss. 741B, 741C inserted (5.12.2005) by Finance Act 2006 (c. 25), Sch. 7 para. 4

VALID FROM 05/12/2005

[^{F11}741D] Section 739: just and reasonable apportionment in certain cases

- (1) This section applies where—
 - (a) an individual is liable to tax by virtue of section 739 for a year of assessment (the “taxable year”), but
 - (b) the conditions in subsections (2) to (4) below are met.
- (2) Condition 1 is that since the making of the transfer there have been one or more years of assessment when the circumstances were such that, so far as relating to such of the relevant transactions as were effected before the end of the year, the individual—
 - (a) was not liable to tax by virtue of section 739, or
 - (b) would not have been liable to tax by virtue of section 739 if there had been any deemed income of his under that section,
 because an appropriate exemption applied or, in a case falling within paragraph (b) above, would have applied.
- (3) Condition 2 is that the individual is liable to tax under section 739 in the taxable year in consequence of Condition B in section 741A(3) not being met.
- (4) Condition 3 is that the income by reference to which the individual is liable to tax for the taxable year is attributable—
 - (a) partly to relevant transactions by reference to which the appropriate exemption applied for the last exempt year of assessment, and
 - (b) partly to associated operations not falling within paragraph (a) above (“chargeable operations”).
- (5) For the purposes of this section, a year of assessment is “exempt” if it is one of the years of assessment mentioned in subsection (2) and there is no earlier year of assessment for which—
 - (a) the individual was liable to tax by virtue of section 739, or
 - (b) the individual would have been liable to tax by virtue of section 739, if there had been any deemed income of his under that section.
- (6) Where this section applies, the liability of the individual is to be reduced as if it fell to be determined by reference to only so much of the income as appears to an officer of the Board to be justly and reasonably attributable to chargeable operations in all the circumstances of the case.
- (7) The facts and matters that may be taken into account in determining for the purposes of subsection (6) above whether income may be regarded as justly and reasonably attributable to chargeable operations include whether, and to what extent, the chargeable operations or any of them directly or indirectly affect any of the following—
 - (a) the character, description or amount of any income of any person,

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- (b) any person's power to enjoy any income,
 - (c) the character, description or amount of any income which a person has power to enjoy.
- (8) The jurisdiction of the Special Commissioners on any appeal includes jurisdiction to review any decision taken by an officer of the Board in exercise of the officer's functions under this section.
- (9) In this section—
- “appropriate exemption” means exemption by virtue of—
 - (a) paragraph (b) of section 741(1), or
 - (b) Condition B in section 741A(3);
 - “relevant transactions” means—
 - (a) the transfer, and
 - (b) any associated operations.]

Textual Amendments

F11 S. 741D inserted (5.12.2005) by [Finance Act 2006 \(c. 25\)](#), [Sch. 7 para. 5](#)

742 Interpretation of sections 739 to 741.

- (1) ^{M4}For the purposes of sections 739 to 741 “an associated operation” means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing, whether directly or indirectly, any of the assets transferred, or to the income arising from any such assets, or to any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets.
- (2) An individual shall, for the purposes of section 739, be deemed to have power to enjoy income of a person resident or domiciled outside the United Kingdom if—
- (a) the income is in fact so dealt with by any person as to be calculated, at some point of time, and whether in the form of income or not, to enure for the benefit of the individual; or
 - (b) the receipt or accrual of the income operates to increase the value to the individual of any assets held by him or for his benefit; or
 - (c) the individual receives or is entitled to receive, at any time, any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which directly or indirectly represent that income; or
 - (d) the individual may, in the event of the exercise or successive exercise of one or more powers, by whomsoever exercisable and whether with or without the consent of any other person, become entitled to the beneficial enjoyment of the income; or
 - (e) the individual is able in any manner whatsoever, and whether directly or indirectly, to control the application of the income.
- (3) In determining whether an individual has power to enjoy income within the meaning of subsection (2) above—

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- (a) regard shall be had to the substantial result and effect of the transfer and any associated operations, and
 - (b) all benefits which may at any time accrue to the individual (whether or not he has rights at law or in equity in or to those benefits) as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.
- (4)^{M5} Subsection (5) below applies where a person resident or domiciled outside the United Kingdom throughout any chargeable period in which an interest period (or part of it) falls would, at the end of the interest period, have been treated under section 714(2) as receiving annual profits or gains or annual profits or gains of a greater amount if he had been resident or domiciled in the United Kingdom during a part of each such chargeable period.
- (5) Sections 739 to 741 shall have effect as if the amount which the person would be treated as receiving or the additional amount (as the case may be) were income becoming payable to him; and, accordingly, any reference in those sections to income of (or payable or arising to) such a person shall be read as including a reference to such an amount.
- (6) Where income of a person resident or domiciled outside the United Kingdom throughout any chargeable period in which an interest period (or part of it) falls consists of interest—
- (a) which falls due at the end of the interest period, and
 - (b) which would have been treated under section 714(5) as reduced by an allowance or an allowance of a greater amount if he had been resident or domiciled in the United Kingdom during a part of each such chargeable period,
- then for the purposes of sections 739 to 741, the interest shall be treated as being reduced by the amount of the allowance or by the additional amount (as the case may be).
- (7) In subsections (4) to (6) above “interest period” has the meaning given by section 711.
- (8)^{M6} For the purposes of sections 739 to 741, any body corporate incorporated outside the United Kingdom^{F12} . . . shall be treated as if it were resident outside the United Kingdom whether it is so resident or not.
- (9) For the purposes of sections 739 to 741—
- (a) a reference to an individual shall be deemed to include the wife or husband of the individual;
 - (b) “assets” includes property or rights of any kind and “transfer”, in relation to rights, includes the creation of those rights;
 - (c) “benefit” includes a payment of any kind;
 - (d) *references to income of a person resident or domiciled outside the United Kingdom shall, where the amount of the income of a company for any year or period has been apportioned under section 423, include references to so much of the income of the company for that year or period as is equal to the amount so apportioned to that person, and that amount shall be treated as increased by such proportion of itself as corresponds to the rate of advance corporation tax applicable to a distribution made at the end of the accounting period to which the apportionment relates*^{F13},

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- (e) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligations of any other person to whom, those assets, that income or those accumulations are or have been transferred.

(10) Any amount which by virtue of subsection (9)(d) above is treated as the income of any person for the purposes of sections 739 to 741 shall also be treated for those purposes as payable to that person^{F13}.

Textual Amendments

- F12** Words in s. 742(8) repealed (with effect in accordance with s. 251(3)(a) of the repealing Act) by Finance Act 1994 (c. 9), s. 251(3), Sch. 26 Pt. 8(1), Note
- F13** Repealed by 1989 s.187 and Sch.17 Part V in relation to accounting periods beginning after 31 March 1989.

Marginal Citations

- M4** Source—1970 s.478(4)-(6); 1981 ss.45(7), 46(5)
- M5** Source—1985 Sch. 23 39
- M6** Source—1970 s.478(7)-(9); 1972 Sch.24 27; 1981 s.46(6)

743 Supplemental provisions.

^{M7}(1) Income tax at the basic rate [^{F14}, the lower rate or the [^{F15}dividend] ordinary rate] shall not be charged by virtue of section 739 in respect of [^{F16}any income to the extent that it has borne tax at that rate] by deduction or otherwise but, subject to that, [^{F15}income to which section 739 applies shall be charged to income tax.]

[^{F17}(1ZA) The charge to income tax under subsection (1) above operates on income falling within subsection (1A) below by treating the income as if it were income to which section 1A applies by virtue of subsection (2)(b) of that section.]

[^{F18}(1A) Income falls within this subsection if it is—

- [^{F19}(a) income chargeable under Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc.);
- (b) income chargeable under Chapter 4 of that Part (dividends from non-UK resident companies);
- (c) income chargeable under Chapter 5 of that Part (stock dividends from UK resident companies);
- (d) income chargeable under Chapter 6 of that Part (release of loan to participator in close company); or
- (e) a relevant foreign distribution chargeable under Chapter 8 of Part 5 of that Act (income not otherwise charged).]]

[^{F20}(1B) In subsection (1A) “relevant foreign distribution” means any distribution of a company not resident in the United Kingdom which—

- (a) is not chargeable under Chapter 4 of Part 4 of ITTOIA 2005, but
- (b) would be chargeable under Chapter 3 of that Part if the company were resident in the United Kingdom.]

(2) In computing the liability to income tax of an individual chargeable by virtue of section 739, the same deductions and reliefs shall be allowed as would have been

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allowed if the income deemed to be his by virtue of that section had actually been received by him.

- (3) An individual who is domiciled outside the United Kingdom shall not be chargeable to tax in respect of any income deemed to be his by virtue of that section if he would not, by reason of his being so domiciled, have been chargeable to tax in respect of it if it had in fact been his income.
- (4) Where an individual has been charged to income tax on any income deemed to be his by virtue of section 739 and that income is subsequently received by him, it shall be deemed not to form part of his income again for the purposes of the Income Tax Acts.
- (5) In any case where an individual has for the purposes of that section power to enjoy income of a person abroad by reason of his receiving any such benefit as is referred to in section 742(2)(c), then notwithstanding anything in subsection (1) above, the individual shall be chargeable to income tax by virtue of section 739 for the year of assessment in which the benefit is received on the whole of the amount or value of that benefit except in so far as it is shown that the benefit derives directly or indirectly from income on which he has already been charged to tax for that or a previous year of assessment.

Textual Amendments

- F14** Words in s. 743(1) substituted (with effect in accordance with Sch. 4 para. 20(4) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 20(2)(a)**
- F15** Words in s. 743(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 305(2)** (with Sch. 2)
- F16** Words in s. 743(1) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 20(b)**
- F17** S. 743(1ZA) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 305(3)** (with Sch. 2)
- F18** S. 743(1A) inserted (with effect in accordance with Sch. 4 para. 20(4) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 20(3)**
- F19** S. 743(1A)(a)-(e) substituted for s. 743(1A)(a)-(g) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 305(4)** (with Sch. 2)
- F20** S. 743(1B) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 305(5)** (with Sch. 2)

Modifications etc. (not altering text)

- C9** See 1970(M) s.31(3)—*appeals to go to Special Commissioners.*

Marginal Citations

- M7** Source—1970 s.480; 1971 Sch.6 72; 1981 s.46(7)

744 No duplication of charge.

^{M8}(1) No amount of income shall be taken into account more than once in charging tax under the provisions of sections 739 and 740; and where there is a choice as to the persons in relation to whom any amount of income can be so taken into account—

- (a) it shall be so taken into account in relation to such of them, and if more than one in such proportions respectively, as appears to the Board to be just and reasonable; and

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- (b) the jurisdiction of the Special Commissioners on any appeal against an assessment charging tax under those provisions shall include jurisdiction to review any relevant decision taken by the Board under this subsection.
- (2) In subsection (1) above references to an amount of income taken into account in charging tax are—
- (a) in the case of tax which under section 739 is charged on income, to the amount of that income;
 - (b) in the case of tax charged under that section by virtue of section 743(5), to an amount of the income out of which the benefit is provided equal to the amount or value of the benefit charged;
 - (c) in the case of tax charged under section 740, to the amount of relevant income taken into account under subsection (2) of that section in charging the benefit.

Marginal Citations

M8 Source—1981 s.46(1), (2)

745 Power to obtain information.

- ^{M9}(1) The Board may by notice require any person to furnish them within such time as they may direct (not being less than 28 days) with such particulars as they think necessary for the purposes of this Chapter.
- (2) The particulars which a person must furnish under this section, if he is required by such a notice so to do, include particulars—
- (a) as to transactions with respect to which he is or was acting on behalf of others;
 - (b) as to transactions which in the opinion of the Board it is proper that they should investigate for the purposes of this Chapter notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under this Chapter; and
 - (c) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions of a description specified in the notice.
- (3) Notwithstanding anything in subsection (2) above, a solicitor shall not be deemed for the purposes of paragraph (c) of that subsection to have taken part in a transaction by reason only that he has given professional advice to a client in connection with that transaction, and shall not, in relation to anything done by him on behalf of his client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of the client and also—
- (a) in the case of anything done by the solicitor in connection with the transfer of any asset by or to an individual ordinarily resident in the United Kingdom to or by any such body corporate as is mentioned in subsection (4) below, or in connection with any associated operation in relation to any such transfer, the names and addresses of the transferor and the transferee or of the persons concerned in the associated operations, as the case may be;
 - (b) in the case of anything done by the solicitor in connection with the formation or management of any such body corporate as is mentioned in subsection (4) below, the name and address of the body corporate;

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- (c) in the case of anything done by the solicitor in connection with the creation, or with the execution of the trusts, of any settlement by virtue or in consequence of which income becomes payable to a person resident or domiciled outside the United Kingdom, the names and addresses of the settlor and of that person.
- (4) The bodies corporate mentioned in subsection (3) above are bodies corporate resident or incorporated outside the United Kingdom ^{F21} . . . which are, or if resident in the United Kingdom would be, close companies, but not [^{F22}companies whose business consists wholly or mainly of the carrying on of a trade or trades.]
- (5) Nothing in this section shall impose on any bank the obligation to furnish any particulars of any ordinary banking transactions between the bank and a customer carried out in the ordinary course of banking business, unless the bank has acted or is acting on behalf of the customer in connection with the formation or management of any such body corporate as is mentioned in subsection (4) above or in connection with the creation, or with the execution of the trusts, of any such settlement as is mentioned in subsection (3)(c) above.
- [^{F23}(5A) In this section “bank” has the meaning given by section 840A.]
- (6) In this section “settlement” and “settlor” have the meanings given by [^{F24}section 620 of ITTOIA 2005].

Textual Amendments

- F21** Words in s. 745(4) repealed (partly retrospective to 30.11.1993 and otherwise with effect in accordance with s. 251(3)(a) of the repealing Act) by Finance Act 1994 (c. 9), s. 251(1)(3), Sch. 16 Pt. 8(1), Note
- F22** 1989 s.107 and Sch.12 para.17. *Previously* “trading companies (as defined in paragraph 7 of Schedule 19)”.
- F23** S. 745(5A) inserted (with application in accordance with Sch. 37 para. 9 of the amending Act) by Finance Act 1996 (c. 8), Sch. 37 para. 2(1)(2)(c)
- F24** Words in s. 745(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 306 (with Sch. 2)

Modifications etc. (not altering text)

- C10** See—1981 s.84—s.745 to have effect for 1981 ss.80 to 82 (*capital gains of non-resident settlements*). 1984 Sch.14 para.15(2)—s.745 to have effect for 1984 Sch.14 para.15(1) as for s.745, but references to Part XVII Ch.III to be construed as references to 1984 s.70 and Sch.14.
- C11** S. 745(2)-(5) applied (with modifications) (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 98(2), 289 (with ss. 60, 101(1), 171, 201(3))
- C12** See S.I. 1989 No. 1343 (N.I.14) Art.10(2) and Sch.1 para.38(3) for construction in the case of a solicitor who is an officer or employee of a recognised body.

Marginal Citations

- M9** Source—1970 s.481; 1972 Sch.24 28; 1981 s.45(8)

746 Persons resident in the Republic of Ireland.

- [^{F25}(1)] ^{M10}In relation to amounts which by virtue of [^{F26}the lease premium rules] would, in the case of a person resident in the Republic of Ireland and not resident in the United Kingdom, be included in his income if he were not resident in the Republic of Ireland, sections 739, 742(1) to (3), 743 and 745 shall apply—

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- (a) as if his income included those amounts; and
- (b) as if references to an individual included references to any person (and so that in accordance with section 9 those sections then apply for corporation tax as well as for income tax);

but section 741 shall not apply in any such case.

[^{F27}(2) Corporation tax chargeable by virtue of subsection (1)(b) above shall be charged under Case VI of Schedule D.

(3) In this section “the lease premium rules” means any provision of sections 277 to 285 of ITTOIA 2005 or sections 34 to 36 of this Act.]

Textual Amendments

- F25** S. 746 renumbered as s. 746(1) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 307\(2\)](#) (with Sch. 2)
- F26** Words in s. 746(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 307\(3\)](#) (with Sch. 2)
- F27** S. 746(2)(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 307\(4\)](#) (with Sch. 2)

Marginal Citations

- M10** Source—1970 s.479.

Status:

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