



Income Tax Act 2007

2007 CHAPTER 3

PART 13

TAX AVOIDANCE

CHAPTER 1

TRANSACTIONS IN SECURITIES

f¹Introduction

Textual Amendments

- F1** Ss. 682-687 and cross-headings substituted (8.4.2010 with effect in accordance with Sch. 12 para. 15(1) of the amending Act) for s. 682-694 and cross-headings by [Finance Act 2010 \(c. 13\)](#), [Sch. 12 para. 2](#)

682 Overview of Chapter

This Chapter makes provision for counteracting income tax advantages from transactions in securities.

683 Provisions of Chapter

- (1) Sections 684 to 687 specify when a person is liable to counteraction of income tax advantages from transactions in securities.
- (2) Sections 695 to 700 make provision about the procedure for counteraction of such income tax advantages.
- (3) Sections 701 and 702 make provision for a clearance procedure.

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- (4) Section 705 makes provision for appeals against counteraction notices.
- (5) Sections 712 deals with cases in which a person liable to counteraction dies.
- (6) Section 713 contains interpretative provisions.

Person liable to counteraction of income tax advantages

684 Person liable to counteraction of income tax advantage

- (1) This section applies to a person [^{F2}(“the party”)] where—
 - (a) the person is a party to a transaction in securities or two or more transactions in securities (see subsection (2)),
 - (b) the circumstances are covered by section 685 and not excluded by section 686,
 - (c) the main purpose, or one of the main purposes, of ^{F3}... the transaction in securities, or any of the transactions in securities, is to obtain an income tax advantage, and
 - (d) [^{F4}the party or any other person] obtains an income tax advantage in consequence of the transaction or the combined effect of the transactions.
- (2) In this Chapter “transaction in securities” means a transaction, of whatever description, relating to securities, and includes in particular—
 - (a) the purchase, sale or exchange of securities,
 - (b) issuing or securing the issue of new securities,
 - (c) applying or subscribing for new securities, ^{F5}...
 - (d) altering or securing the alteration of the rights attached to securities.
 - [^{F6}(e) a repayment of share capital or share premium, and
 - (f) a distribution in respect of securities in a winding up.]
- (3) Section 687 defines “income tax advantage”.
- [^{F7}(4) This section is subject to no-counteraction notices issued under section 698A.]

Textual Amendments

- F2** Words in s. 684(1) inserted (with effect in accordance with s. 33(8) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 33\(2\)\(a\)](#) (with s. 33(9)(10))
- F3** Words in s. 684(1)(c) omitted (with effect in accordance with s. 33(8) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), s. 33\(2\)\(b\)](#) (with s. 33(9)(10))
- F4** Words in s. 684(1)(d) substituted (with effect in accordance with s. 33(8) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 33\(2\)\(c\)](#) (with s. 33(9)(10))
- F5** Word in s. 684(2)(c) omitted (with effect in accordance with s. 33(8) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), s. 33\(3\)\(a\)](#) (with s. 33(9)(10))
- F6** S. 684(2)(e)(f) inserted (with effect in accordance with s. 33(8) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 33\(3\)\(b\)](#) (with s. 33(9)(10))
- F7** S. 684(4) substituted (with effect in accordance with s. 34(8)(9) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 34\(7\)](#)

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685 Receipt of consideration in connection with distribution by or assets of close company

- (1) The circumstances covered by this section are circumstances where condition A or condition B is met.
- (2) Condition A is that, as a result of the transaction in securities or any one or more of the transactions in securities, [^{F8}a relevant person] receives relevant consideration in connection with—
 - (a) the distribution, transfer or realisation of assets of a close company,
 - (b) the application of assets of a close company in discharge of liabilities, or
 - (c) the direct or indirect transfer of assets of one close company to another close company,and [^{F9}the relevant person] does not pay or bear income tax on the consideration (apart from this Chapter).
- (3) Condition B is that—
 - (a) [^{F10}a relevant person] receives relevant consideration in connection with the transaction in securities or any one or more of the transactions in securities,
 - (b) two or more close companies are concerned in the transaction or transactions in securities concerned, and
 - (c) [^{F11}the relevant person] does not pay or bear income tax on the consideration (apart from this Chapter).

[^{F12}(3A) In subsections (2) and (3) “relevant person” means—

- (a) the party, or
 - (b) any person other than the party in relation to whom the condition in section 684(1)(d) is met.]
- (4) In a case within subsection (2)(a) or (b) “relevant consideration” means consideration which—
 - (a) is or represents the value of—
 - (i) assets which are available for distribution by way of dividend by the company, or
 - (ii) assets which would have been so available apart from anything done by the company,
 - (b) is received in respect of future receipts of the company, or
 - (c) is or represents the value of trading stock of the company.
 - (5) In a case within subsection (2)(c) or (3) “relevant consideration” means consideration which consists of any share capital or any security issued by a close company and which is or represents the value of assets which—
 - (a) are available for distribution by way of dividend by the company,
 - (b) would have been so available apart from anything done by the company, or
 - (c) are trading stock of the company.

[^{F13}(6)]

- (7) So far as subsection (2)(c) or (3) relates to share capital other than redeemable share capital, it applies only so far as the share capital is repaid (on a winding up or otherwise); and for this purpose any distribution made in respect of any shares on a winding up or dissolution of the company is to be treated as a repayment of share capital.

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- [^{F14}(7A) The references in subsection (4)(a)(i) and (ii) to assets do not include assets shown to represent return of sums paid by subscribers on the issue of securities merely because the law of the country in which the company is incorporated allows assets of that description to be available for distribution by way of dividend.
- (7B) The references in subsections (4)(a)(i) and (5)(a) to assets which are available for distribution by way of dividend by the company include assets which are available for distribution to the company by way of dividend by any other company it controls.]
- (8) References in this section to the receipt of consideration include references to the receipt of any money or money's worth.
- (9) In this section—
 “security” includes securities not creating or evidencing a charge on assets;
 “share” includes stock and any other interest of a member in a company.

Textual Amendments

- F8** Words in s. 685(2) substituted (with effect in accordance with s. 33(8) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 33\(4\)\(a\)\(i\)](#) (with s. 33(9)(10))
- F9** Words in s. 685(2) inserted (with effect in accordance with s. 33(8) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 33\(4\)\(a\)\(ii\)](#) (with s. 33(9)(10))
- F10** Words in s. 685(3)(a) substituted (with effect in accordance with s. 33(8) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 33\(4\)\(b\)\(i\)](#) (with s. 33(9)(10))
- F11** Words in s. 685(3)(c) substituted (with effect in accordance with s. 33(8) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 33\(4\)\(b\)\(ii\)](#) (with s. 33(9)(10))
- F12** S. 685(3A) inserted (with effect in accordance with s. 33(8) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 33\(4\)\(c\)](#) (with s. 33(9)(10))
- F13** S. 685(6) omitted (with effect in accordance with s. 33(8) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), s. 33\(4\)\(d\)](#) (with s. 33(9)(10))
- F14** S. 685(7A)(7B) inserted (with effect in accordance with s. 33(8) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 33\(4\)\(e\)](#) (with s. 33(9)(10))

686 Excluded circumstances: fundamental change of ownership

- (1) Circumstances are excluded by this section if—
- (a) immediately before the transaction in securities (or the first of the transactions in securities) [^{F15}the party] holds shares or an interest in shares in the close company, and
 - (b) there is a fundamental change of ownership of the close company.
- [^{F16}(2) There is a fundamental change of ownership of the close company if, as a result of the transaction or transactions in securities, the condition in subsection (3) is met.
- (3) The condition in this subsection is that the original shareholder or original shareholders taken together with any associate or associates—
- (a) do not directly or indirectly hold more than 25% of the ordinary share capital of the close company,
 - (b) do not directly or indirectly hold shares in the close company carrying an entitlement to more than 25% of the distributions which may be made by the close company, and

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- (c) do not directly or indirectly hold shares in the close company carrying more than 25% of the total voting rights in the close company.
- (4) In this section “original shareholder” means a person who, immediately before the transaction in securities (or the first of the transactions in securities), held any ordinary share capital of the close company.
- (5) For the purposes of this section, shares of or share capital in the close company which are held by a person controlled by an original shareholder, or by two or more original shareholders taken together, count as shares or share capital held by that original shareholder or those original shareholders.]

Textual Amendments

- F15** Words in s. 686(1)(a) substituted (with effect in accordance with s. 33(8) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 33\(5\)\(a\)](#) (with s. 33(9)(10))
- F16** S. 686(2)-(5) substituted (with effect in accordance with s. 33(8) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 33\(5\)\(b\)](#) (with s. 33(9)(10))

687 Income tax advantage

- (1) For the purposes of this Chapter [^{F17}a person] obtains an income tax advantage if—
 - (a) the amount of any income tax which would be payable by the person in respect of the relevant consideration if it constituted a ^{F18}... distribution exceeds the amount of any capital gains tax payable in respect of it, or
 - (b) income tax would be payable by the person in respect of the relevant consideration if it constituted a ^{F18}... distribution and no capital gains tax is payable in respect of it.
- (2) So much of the relevant consideration as exceeds the maximum amount that could in any circumstances have been paid to the person [^{F19}or an associate of the person] by way of a ^{F18}... distribution at the time when [^{F20}Condition A or B in section 685 is met] is to be left out of account for the purposes of subsection (1).
- (3) The amount of the income tax advantage is the amount of the excess or (if no capital gains tax is payable) the amount of the income tax which would be payable.
- (4) In this section [^{F21}—
 - (a) distribution” does not include a distribution which is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph C or D in section 1000(1) of CTA 2010 (redeemable share capital or security issued as bonus in respect of shares in, or securities of, the company), and
 - (b)] “relevant consideration” has the same meaning as in section 685.]

Textual Amendments

- F17** Words in s. 687(1) substituted (with effect in accordance with s. 33(8) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 33\(6\)\(a\)](#) (with s. 33(9)(10))
- F18** Word in s. 687 omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), Sch. 1 para. 63\(10\)\(a\)](#)
- F19** Words in s. 687(2) inserted (with effect in accordance with s. 33(8) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 33\(6\)\(b\)\(i\)](#) (with s. 33(9)(10))

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- F20** Words in s. 687(2) substituted (with effect in accordance with s. 33(8) of the amending Act) by Finance Act 2016 (c. 24), s. 33(6)(b)(ii) (with s. 33(9)(10))
- F21** Words in s. 687(4) inserted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by Finance Act 2016 (c. 24), Sch. 1 para. 63(10)(b)

^{F1}688 Receipt of consideration representing company's assets, future receipts or trading stock (circumstance C)

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^{F1}689 Receipt of consideration in connection with relevant company distribution (circumstance D)

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^{F1}690 Receipt of assets of relevant company (circumstance E)

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^{F1}691 Meaning of “relevant company” in sections 689 and 690

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^{F1}692 Abnormal dividends: general

.....

^{F1}693 Abnormal dividends: the excessive return condition

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^{F1}694 Abnormal dividends: the excessive accrual condition

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Procedure for counteraction of income tax advantages

[^{F22}695 Notice of enquiry

- (1) An officer of Revenue and Customs may enquire into a transaction or transactions if—
 - (a) the officer has reason to believe that section 684 (person liable to counteraction of income tax advantage) may apply to a person (“the taxpayer”) in respect of the transaction or transactions, and
 - (b) the officer notifies the taxpayer of his intention to do so.
- (2) The notification may be given at any time not more than 6 years after the end of the tax year to which the income tax advantage in question relates.]

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Textual Amendments

F22 S. 695 substituted (with effect in accordance with s. 34(8)(9) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 34\(2\)](#)

^{F23} 696 Opposed notifications: statutory declarations

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Textual Amendments

F23 Ss. 696, 697 omitted (with effect in accordance with s. 34(8)(9) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), s. 34\(3\)](#)

^{F23} 697 Opposed notifications: determinations by tribunal

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Textual Amendments

F23 Ss. 696, 697 omitted (with effect in accordance with s. 34(8)(9) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), s. 34\(3\)](#)

698 Counteraction notices

[^{F24}(1) If on an enquiry under section 695 an officer of Revenue and Customs determines that section 684 applies to the taxpayer, the income tax advantage in question is to be counteracted by adjustments, unless the officer is of the opinion that no counteraction is required.]

(2) The adjustments required to be made to counteract the income tax advantage and the basis on which they are to be made are to be specified in a notice served on the person by an officer of Revenue and Customs.

(3) In this Chapter such a notice is referred to as a “counteraction notice”.

(4) Any of the following adjustments may be specified—

- (a) an assessment,
- (b) the nullifying of a right to repayment,
- (c) the requiring of the return of a repayment already made, or
- (d) the calculation or recalculation of profits or gains or liability to income tax.

[^{F25}(5) An assessment may be made in accordance with a counteraction notice at any time (without regard to any time limit on making the assessment that would otherwise apply).]

(6) This section is subject to—

^{F26} ...

section 700 (timing of assessments ^{F27}...), and
section 702(2) (effect of clearance notification under section 701).

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- (7) But no other provision in the Income Tax Acts is to be read as limiting the powers conferred by this section.

Textual Amendments

- F24** S. 698(1) substituted (with effect in accordance with s. 34(8)(9) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 34\(4\)](#)
- F25** S. 698(5) substituted (with effect in accordance with s. 34(8)(9) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 34\(5\)](#)
- F26** Words in s. 698(6) omitted (8.4.2010 with effect in accordance with Sch. 12 para. 15(1) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 12 para. 3\(a\)](#)
- F27** Words in s. 698(6) omitted (8.4.2010 with effect in accordance with Sch. 12 para. 15(1) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 12 para. 3\(b\)](#)

[^{F28}698A No-counteraction notices

- (1) If on an enquiry under section 695 an officer of Revenue and Customs is of the opinion that no counteraction is required, the officer must serve notice on the person (a “no-counteraction notice”) stating that no counteraction is required and why.
- (2) The taxpayer may apply to the tribunal for a direction requiring an officer of Revenue and Customs to issue one of the following within a specified period—
 - (a) a counteraction notice;
 - (b) a no-counteraction notice.
- (3) Any such application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).
- (4) The tribunal must give the direction applied for unless satisfied that there are reasonable grounds for not serving either a counteraction notice or a no-counteraction notice within a specified period.]

Textual Amendments

- F28** S. 698A inserted (with effect in accordance with s. 34(8)(9) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 34\(6\)](#)

^{F29}699 Limit on amount assessed in section 689 and 690 cases

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Textual Amendments

- F29** S. 699 omitted (8.4.2010 with effect in accordance with Sch. 12 para. 15(1) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 12 para. 4](#)

700 Timing of assessments ^{F30}...

- (1) This section applies if section 684 (person liable to counteraction of income tax advantage) applies to a person because the person is in a position to obtain or has

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obtained an income tax advantage by falling within the circumstances mentioned in section [F31 685(2)(c) or (3)] when share capital is repaid.

- (2) An assessment to income tax made in accordance with a counteraction notice must be an assessment for the tax year in which the repayment occurs.
- (3) The references in this section to the repayment of share capital include references to any distribution made in respect of any shares in a winding up or dissolution of the company.
- (4) In subsection (3) “shares” includes stock and any other interest of a member in a company.

Textual Amendments

- F30** Words in s. 700 heading omitted (8.4.2010 with effect in accordance with Sch. 12 para. 15(1) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 12 para. 5\(b\)](#)
- F31** Words in s. 700(1) substituted (8.4.2010 with effect in accordance with Sch. 12 para. 15(1) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 12 para. 5\(a\)](#)

Clearance procedure^{F32}...

Textual Amendments

- F32** Words in s. 701 heading omitted (retrospective to 1.4.2009) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 12 paras. 6, 15\(2\)](#)

701 Application for clearance of transactions

- (1) A person may provide the Commissioners for Her Majesty's Revenue and Customs with particulars of a transaction or transactions effected or to be effected by the person in order to obtain a notification about them under this section.
- (2) If the Commissioners consider that the particulars, or any further information provided under this subsection, are insufficient for the purposes of this section, they must notify the person what further information they require for those purposes within 30 days of receiving the particulars or further information.
- (3) If any such further information is not provided within 30 days from the notification, or such further time as the Commissioners allow, they need not proceed further under this section.
- (4) The Commissioners must notify the person whether they are satisfied that the transaction or transactions, as described in the particulars, were or will be such that no counteraction notice ought to be served about the transaction or transactions.
- (5) The notification must be given within 30 days of receipt of the particulars, or, if subsection (2) applies, of all further information required.

702 Effect of clearance notification under section 701

- (1) This section applies if the Commissioners for Her Majesty's Revenue and Customs notify a person under section 701 that they are satisfied that a transaction or

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transactions, as described in the particulars provided under that section, were or will be such that no counteraction notice ought to be served about the transaction or transactions.

- (2) No such notice may be served on the person in respect of the transaction or transactions.
- (3) But the notification does not prevent such a notice being served on the person in respect of transactions including not only the ones to which the notification relates but also others.
- (4) The notification is void if the particulars and any further information given under section 701 about the transaction or transactions do not fully and accurately disclose all facts and considerations which are material for the purposes of that section.

^{F33}703 Power to obtain information

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Textual Amendments

F33 S. 703 omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, **Sch. para. 49**

^{F34} ...

Textual Amendments

F34 S. 704 and cross-heading omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 458**

^{F34}704 The tribunal

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Appeals

705 Appeals against counteraction notices

- (1) A person on whom a counteraction notice has been served may appeal ^{F35}... on the grounds that—
 - (a) section 684 (person liable to counteraction of income tax advantage) does not apply to the person in respect of the transaction or transactions in question, or
 - (b) the adjustments directed to be made are inappropriate.
- (2) Such an appeal may be made only by giving notice to the Commissioners for Her Majesty's Revenue and Customs within 30 days of the service of the counteraction notice.
- (3) On an appeal under this section [^{F36}that is notified to the tribunal, the tribunal] may—
 - (a) affirm, vary or cancel the counteraction notice, or

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- (b) affirm, vary or quash an assessment made in accordance with the notice.
- (4) But the bringing of an appeal under this section ^{F37} ... does not affect—
 - (a) the validity of the counteraction notice, or
 - (b) the validity of any other thing done under or in accordance with section 698 (counteraction notices),pending the determination of the proceedings.

Textual Amendments

- F35** Words in s. 705(1) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 459(2)**
- F36** Words in s. 705(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 459(3)**
- F37** Words in s. 705(4) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 459(4)**

^{F38}706 Rehearing by tribunal of appeal against counteraction notice

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Textual Amendments

- F38** Ss. 706-711 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 460**

^{F38}707 Statement of case by tribunal for opinion of High Court or Court of Session

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Textual Amendments

- F38** Ss. 706-711 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 460**

^{F38}708 Cases before High Court or Court of Session

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Textual Amendments

- F38** Ss. 706-711 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 460**

^{F38}709 Effect of appeals against tribunal's determination under section 706

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Textual Amendments

F38 Ss. 706-711 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 460**

F38 710 Appeals from High Court or Court of Session

.....

Textual Amendments

F38 Ss. 706-711 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 460**

F38 711 Proceedings in Northern Ireland

.....

Textual Amendments

F38 Ss. 706-711 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 460**

Supplementary

712 Application of Chapter where individual within section 684 dies

- (1) This section applies if an individual to whom section 684 (person liable to counteraction of income tax advantage) applies (or may apply) has died.
- (2) Any notice or notification to the individual under this Chapter may be given to the individual's personal representatives.
- (3) The provisions of this Chapter relating to any such notice or notification, to the making of a statutory declaration, to rights of appeal and to the giving of information must be read accordingly.

713 Interpretation of Chapter

[^{F39}(1)] In this Chapter—

[^{F40}“associate” is to be construed in accordance with section 681DL, but as if subsection (4) of that section also included, as persons associated with each other, a person as trustee of a settlement and an individual, where one or more beneficiaries of the settlement are connected or associated with the individual;]

[^{F41}“close company” includes a company that would be a close company if it were resident in the United Kingdom,]

“company” includes any body corporate,

“dividends” includes references to other ^{F42}... distributions and to interest,

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“securities”—

- (a) includes shares and stock, and
 - (b) in relation to a company not limited by shares (whether or not it has a share capital) also includes a reference to the interest of a member of the company as such, whatever the form of that interest,
- “trading stock” has the meaning given by section 174 of ITTOIA 2005, and

F43
...

[^{F44}(2) In the definition of “dividends” given by subsection (1), “other distributions” does not include a distribution which is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph C or D in section 1000(1) (redeemable share capital or security issued as bonus in respect of shares in, or securities of, the company).]

Textual Amendments

- F39** S. 713 renumbered as s. 713(1) (with effect in accordance with Sch. 1 para. 73 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), **Sch. 1 para. 63(11)(a)**
- F40** Words in s. 713 inserted (with effect in accordance with s. 33(8) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), **s. 33(7)** (with s. 33(9)(10))
- F41** Words in s. 713 inserted (8.4.2010 with effect in accordance with Sch. 12 para. 15(1) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), **Sch. 12 para. 7(2)**
- F42** Word in s. 713(1) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), **Sch. 1 para. 63(11)(b)**
- F43** Words in s. 713 omitted (8.4.2010 with effect in accordance with Sch. 12 para. 15(1) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), **Sch. 12 para. 7(3)**
- F44** S. 713(2) inserted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), **Sch. 1 para. 63(11)(c)**

CHAPTER 2

TRANSFER OF ASSETS ABROAD

Modifications etc. (not altering text)

- C1** Pt. 13 Ch. 2 applied by 1988 c. 1, s. 762ZA (as inserted (21.7.2008 with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 94**)
- C2** Pt. 13 Ch. 2 applied (with effect in accordance with art. 1(2)(3) Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **21**

Introduction

714 Overview of Chapter

- (1) This Chapter imposes a charge to income tax on—
 - (a) individuals to whom income is treated as arising under section 721 (individuals with power to enjoy income as a result of relevant transactions),
 - (b) individuals to whom income is treated as arising under section 728 (individuals receiving capital sums as a result of relevant transactions), and

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- (c) individuals to whom income is treated as arising under section 732 (non-transferors receiving a benefit as a result of relevant transactions).
- (2) The charges apply only if a relevant transfer occurs, and they operate by reference to income of a person abroad that is connected with the transfer or another relevant transaction.
- (3) For the meaning of “relevant transaction”, “relevant transfer” and “person abroad”, see sections 715, 716 and 718 respectively.
- (4) In this Chapter references to individuals include their spouses or civil partners.

715 Meaning of “relevant transaction”

- (1) A transaction is a relevant transaction for the purposes of this Chapter if it is—
 - (a) a relevant transfer, or
 - (b) an associated operation.
- (2) For the meaning of “relevant transfer” and “associated operation”, see sections 716 and 719 respectively.

716 Meaning of “relevant transfer” and “transfer”

- (1) A transfer is a relevant transfer for the purposes of this Chapter if—
 - (a) it is a transfer of assets, and
 - (b) as a result of—
 - (i) the transfer,
 - (ii) one or more associated operations, or
 - (iii) the transfer and one or more associated operations,
 income becomes payable to a person abroad.
- (2) In this Chapter “transfer”, in relation to rights, includes the creation of the rights.
- (3) For the meaning of “assets”, see section 717.

717 Meaning of “assets” etc

In this Chapter—

- (a) “assets” includes property or rights of any kind, and
- (b) references to assets representing any assets, income or accumulations of income include references to—
 - (i) shares in or obligations of any company to which the assets, income or accumulations are or have been transferred, or
 - (ii) obligations of any other person to whom the assets, income or accumulations are or have been transferred.

718 Meaning of “person abroad” etc

[^{F45}(1) In this Chapter “person abroad” means—

- (a) a person who is resident outside the United Kingdom, or
- (b) an individual who is domiciled outside the United Kingdom.]

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(2) For the purposes of this Chapter, the following persons are treated as resident outside the United Kingdom—

- ^{F46}(a)
- (b) the person treated as [^{F47}non-UK resident] under section 475(3) (trustees of settlements), and
- (c) persons treated as non-UK resident under section 834(4) (personal representatives).

[^{F48}(3) Section 835BA (deemed domicile) applies for the purposes of subsection (1)(b).]

Textual Amendments

- F45** S. 718(1) substituted (with effect in accordance with Sch. 10 para. 9(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 10 para. 2(2)**
- F46** S. 718(2)(a) omitted (with effect in accordance with Sch. 10 para. 9(1) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 10 para. 2(3)**
- F47** Words in s. 718(2)(b) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 46 para. 59** (with [Sch. 46 para. 73](#))
- F48** S. 718(3) inserted (with effect in accordance with Sch. 8 para. 13(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 8 para. 13(1)**

719 Meaning of “associated operation”

- (1) In this Chapter “associated operation”, in relation to a transfer of assets, means an operation of any kind effected by any person in relation to—
 - (a) any of the assets transferred,
 - (b) any assets directly or indirectly representing any of the assets transferred,
 - (c) the income arising from any assets within paragraph (a) or (b), or
 - (d) any assets directly or indirectly representing the accumulations of income arising from any assets within paragraph (a) or (b).
- (2) It does not matter whether the operation is effected before, after or at the same time as the transfer.

Charge where power to enjoy income

720 Charge to tax on income treated as arising under section 721

- (1) The charge under this section applies for the purpose of preventing the avoiding of liability to income tax by individuals who are ^{F49}... UK resident by means of relevant transfers.
- (2) Income tax is charged on income treated as arising to such an individual under section 721 (individuals with power to enjoy income as a result of relevant transactions).
- (3) Tax is charged under this section on the amount of income treated as arising in the tax year.

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- (4) But see section 724 (special rules where benefit provided out of income of person abroad) [^{F50}and section 726 (non-UK domiciled individuals to whom remittance basis applies)].
- (5) The person liable for any tax charged under this section is the individual to whom the income is treated as arising.
- (6) For rules about the reduction in the amount charged in some circumstances and the availability of deductions and reliefs, see—
 - section 725 (reduction in amount charged where controlled foreign company involved), and
 - section 746 (deductions and reliefs where individual charged under this section or section 727).
- (7) For exemptions from the charge under this section, see sections 736 to [^{F51}742A] (exemptions where no tax avoidance purpose or genuine commercial transaction [^{F52}etc]).

Textual Amendments

- F49** Word in s. 720(1) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 60](#) (with [Sch. 46 para. 73](#))
- F50** Words in s. 720(4) inserted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 164](#)
- F51** Word in s. 720(7) substituted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 3\(a\)](#)
- F52** Word in s. 720(7) inserted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 3\(b\)](#)

721 Individuals with power to enjoy income as a result of relevant transactions

- (1) Income is treated as arising to such an individual as is mentioned in section 720(1) in a tax year for income tax purposes if [^{F53}conditions A to C] are met.
 - (2) Condition A is that the individual has power in the tax year to enjoy income of a person abroad as a result of—
 - (a) a relevant transfer,
 - (b) one or more associated operations, or
 - (c) a relevant transfer and one or more associated operations.
 - (3) Condition B is that the income [^{F54}of the person abroad] would be chargeable to income tax if it were the individual's and received by the individual in the United Kingdom.
- [^{F55}(3A) Condition C is that the individual is UK resident for the tax year.]
- [^{F56}[^{F57}(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

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(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).]

(3C) Subsection (1) does not apply if—

- (a) the individual is liable for income tax charged on the income of the person abroad by virtue of a charge not contained in this Chapter, and
- (b) all that income tax has been paid.]

(4) For the purposes of subsection (2), it does not matter whether the income [^{F58}of the person abroad] may be enjoyed immediately or only later.

(5) It does not matter for the purposes of this section—

- ^{F59}(a)
- [^{F60}(b) whether the individual is UK resident for the tax year in which the relevant transfer is made (if different from the tax year mentioned in subsection (1)), or]
- (c) whether the avoiding of liability to income tax is a purpose for which the transfer is effected.

(6) For the circumstances in which an individual is treated as having the power to enjoy income for the purposes of this section, see section 722.

Textual Amendments

- F53** Words in s. 721(1) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 61\(2\)](#) (with [Sch. 46 para. 73](#))
- F54** Words in s. 721(3) inserted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 10\(2\)](#)
- F55** S. 721(3A) inserted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 61\(3\)](#) (with [Sch. 46 para. 73](#))
- F56** S. 721(3B)(3BA) substituted for s. 721(3B) (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 28](#)
- F57** S. 721(3B)(3C) inserted (with effect in accordance with Sch. 10 paras. 20, 21(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 10\(3\)](#)
- F58** Words in s. 721(4) inserted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 10\(4\)](#)
- F59** S. 721(5)(a) omitted (with effect in accordance with Sch. 10 paras. 20, 21(2) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 10\(5\)](#)
- F60** S. 721(5)(b) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 61\(4\)](#) (with [Sch. 46 para. 73](#))

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

[^{F61}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
 - (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.

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- (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.

Textual Amendments

F61 Ss. 721A, 721B inserted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), [Sch. 8 para. 29](#)

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,

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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
 - (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.]

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

Textual Amendments

F61 Ss. 721A, 721B inserted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 8 para. 29**

722 When an individual has power to enjoy income of person abroad

- (1) For the purposes of section 721, an individual is treated as having power to enjoy income of a person abroad if any of the enjoyment conditions are met.
- (2) In subsection (1) “the enjoyment conditions” means conditions A to E as specified in section 723.
- (3) In determining whether an individual has power to enjoy income for the purposes of section 721, regard must be had to the substantial result and effect of all the relevant transactions.
- (4) In making that determination all benefits which may at any time accrue to the individual as a result of the transfer and any associated operations must be taken into account, irrespective of—
 - (a) the nature or form of the benefits, or
 - (b) whether the individual has legal or equitable rights in respect of the benefits.

723 The enjoyment conditions

- (1) Condition A is that the income is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of the individual, whether in the form of income or not.
- (2) Condition B is that the receipt or accrual of the income operates to increase the value to the individual—
 - (a) of any assets the individual holds, or
 - (b) of any assets held for the individual's benefit.
- (3) Condition C is that the individual receives or is entitled to receive at any time any benefit provided or to be provided out of the income or related money.
- (4) In subsection (3) “related money” means money which is or will be available for the purpose of providing the benefit as a result of the effect or successive effects—
 - (a) on the income, and
 - (b) on any assets which directly or indirectly represent the income, of the associated operations referred to in section 721(2).
- (5) Condition D is that the individual may become entitled to the beneficial enjoyment of the income if one or more powers are exercised or successively exercised.
- (6) For the purposes of subsection (5) it does not matter—
 - (a) who may exercise the powers, or
 - (b) whether they are exercisable with or without the consent of another person.
- (7) Condition E is that the individual is able in any manner to control directly or indirectly the application of the income.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

724 Special rules where benefit provided out of income of person abroad

- (1) This section applies if an individual has power to enjoy income of a person abroad for the purposes of section 721 because of receiving any such benefit as is referred to in section 723(3) (benefit provided out of income of person abroad).
- (2) Despite anything in section 720, the individual is liable to income tax under that section for the tax year in which the benefit is received on [^{F62}an amount equal to] the whole of the amount or value of that benefit.
- (3) But subsection (2) does not apply so far as it is shown that the benefit derives directly or indirectly from income [^{F63}by reference to] which the individual has already been charged to income tax for that tax year or a previous tax year [^{F64}under this Chapter].

Textual Amendments

- F62** Words in s. 724(2) inserted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 11\(2\)](#)
- F63** Words in s. 724(3) substituted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 11\(3\)\(a\)](#)
- F64** Words in s. 724(3) inserted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 11\(3\)\(b\)](#)

725 Reduction in amount charged where controlled foreign company involved

- [^{F65}(1) This section applies if—
- (a) under Part 9A of TIOPA 2010 (controlled foreign companies), the CFC charge is charged in relation to a CFC's accounting period,
 - [^{F66}(b) an amount of income is treated as arising to an individual under section 721 for a tax year, and
 - (c) the income mentioned in section 721(2) is or includes a sum forming part of the CFC's chargeable profits for that accounting period.]]
- (2) The amount of income so treated is reduced by—

$$S \times \frac{CA}{CP}$$

where—

S is the sum forming part of the [^{F67}CFC's] chargeable profits for that accounting period,

CA is the [^{F68}CFC's chargeable profits for that accounting period so far as apportioned to chargeable companies at step 3 in section 371BC(1) of TIOPA 2010], and

CP is the [^{F67}CFC's] chargeable profits for that accounting period.

- [^{F69}(2A) In a case in which section 724 applies, the reference to S in the formula in subsection (2) is to be read as a reference to X% of S.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

(2B) “X%” is determined as follows—

$$100 \% \times A I$$

where—

A is the amount on which the individual is liable as determined under section 724(2), and

I is the amount of the income mentioned in section 721(2).]

[^{F70}(3) Terms used in this section which are defined in Part 9A of TIOPA 2010 have the same meaning as in that Part.]

Textual Amendments

- F65** S. 725(1) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 22\(2\)](#) (with [Sch. 20 para. 50\(9\)](#))
- F66** S. 725(1)(b)(c) substituted for s. 725(1)(b) (with effect in accordance with [Sch. 10 para. 20](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 12\(2\)\(4\)](#) (with [Sch. 10 para. 12\(4\)\(5\)](#))
- F67** Words in s. 725(2) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 22\(3\)\(a\)](#) (with [Sch. 20 para. 50\(9\)](#))
- F68** Words in s. 725(2) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 22\(3\)\(b\)](#) (with [Sch. 20 para. 50\(9\)](#))
- F69** S. 725(2A)(2B) inserted (with effect in accordance with [Sch. 10 para. 20](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 12\(3\)](#)
- F70** S. 725(3) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 22\(4\)](#) (with [Sch. 20 para. 50\(9\)](#))

[^{F71}726 Non-UK domiciled individuals to whom remittance basis applies

[^{F72}(1) This section applies in relation to income treated under section 721 as arising to an individual in a tax year (“the deemed income”) if section 809B, 809D or 809E (remittance basis) applies to the individual for that year.]

(2) For the purposes of this section the deemed income is “foreign” if (and to [^{F73}the corresponding extent] that) the income mentioned in section 721(2) would be relevant foreign income if it were the individual's.

(3) Treat the foreign deemed income as relevant foreign income of the individual.

(4) For the purposes of Chapter A1 of Part 14 (remittance basis) treat so much of the income within section 721(2) as would be relevant foreign income if it were the individual's as deriving from the foreign deemed income.

[^{F74}(5) In the application of section 832 of ITTOIA 2005 to the foreign deemed income, subsection (2) of that section has effect with the omission of paragraph (b).]

[^{F75}(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.

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

(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 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.]]

Textual Amendments

- F71** S. 726 substituted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 165](#)
- F72** S. 726(1) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 19](#) (with [Sch. 46 para. 26](#))
- F73** Words in s. 726(2) substituted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 13](#)
- F74** S. 726(5) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 91\(2\)](#)
- F75** S. 726(6)(7) inserted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 30](#)

Charge where capital sums received

727 Charge to tax on income treated as arising under section 728

- (1) The charge under this section applies for the purpose of preventing the avoiding of liability to income tax by individuals who are ^{F76}... UK resident by means of relevant transfers.
- (2) Income tax is charged on income treated as arising to such an individual under section 728 (individuals receiving capital sums as a result of relevant transactions).
- (3) Tax is charged under this section on the amount of income treated as arising in the tax year.

[^{F77}(3A) But see section 730 (non-UK domiciled individuals to whom remittance basis applies).]

- (4) The person liable for any tax charged under this section is the individual to whom the income is treated as arising.
- (5) For exemptions from the charge under this section, see sections 736 to [^{F78}742A] (exemptions where no tax avoidance purpose or genuine commercial transaction [^{F79}, etc]).

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (6) For rules about the availability of deductions and reliefs where income is charged under this section, see section 746 (deductions and reliefs where individual charged under section 720 or this section).

Textual Amendments

- F76** Word in s. 727(1) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 62](#) (with [Sch. 46 para. 73](#))
- F77** S. 727(3A) inserted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 166](#)
- F78** Word in s. 727(5) substituted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 4\(a\)](#)
- F79** Word in s. 727(5) inserted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 4\(b\)](#)

728 Individuals receiving capital sums as a result of relevant transactions

- (1) Income is treated as arising to such an individual as is referred to in section 727(1) in a tax year for income tax purposes if—
- (a) income has become the income of a person abroad as a result of—
 - (i) a relevant transfer,
 - (ii) one or more associated operations, or
 - (iii) a relevant transfer and one or more associated operations,^{F80} ...
 - (b) the capital receipt conditions are met in respect of the individual in the tax year (see section 729) [^{F81}, and
 - (c) the individual is UK resident for the tax year].

[^{F82}(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).]

- (2) Section 725 (reduction in amount charged where controlled foreign company involved) applies for determining the amount of income treated as arising under subsection (1) as [^{F83}if—
- (a) in subsection (1) of that section—
 - (i) the reference to section 721 were a reference to this section, and
 - (ii) the reference to section 721(2) were a reference to subsection (1)(a) of this section, and
 - (b) subsections (2A) and (2B) of that section were omitted.]

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- [^{F84}(2A) Subsection (1) does not apply if—
- (a) the individual is liable for income tax charged on the income of the person abroad by virtue of a charge not contained in this Chapter, and
 - (b) all that income tax has been paid.]
- (3) It does not matter for the purposes of this section—
- ^{F85}(a)
 - [^{F86}(b) whether the individual is UK resident for the tax year in which the relevant transfer abroad is made (if different from the tax year mentioned in subsection (1)), or]
 - (c) whether the avoiding of liability to income tax is a purpose for which that transfer is effected.

Textual Amendments

- F80** Word in s. 728(1)(a)(iii) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 63\(2\)\(a\)](#) (with [Sch. 46 para. 73](#))
- F81** S. 728(1)(c) and word inserted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 63\(2\)\(b\)](#) (with [Sch. 46 para. 73](#))
- F82** S. 728(1A)(1B) substituted for s. 728(1A) (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 31](#)
- F83** Words in s. 728(2) substituted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 14\(3\)](#)
- F84** S. 728(2A) inserted (with effect in accordance with Sch. 10 paras. 20, 21(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 14\(4\)](#)
- F85** S. 728(3)(a) omitted (with effect in accordance with Sch. 10 paras. 20, 21(2) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 14\(5\)](#)
- F86** S. 728(3)(b) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 63\(3\)\(b\)](#) (with [Sch. 46 para. 73](#))

729 The capital receipt conditions

- (1) For the purposes of section 728(1), the capital receipt conditions are met in respect of the individual in a tax year (“the relevant year”) if—
- (a) either—
 - (i) in the relevant year the individual receives or is entitled to receive any capital sum, whether before or after the relevant transfer, or
 - (ii) in any earlier tax year the individual has received any capital sum, whether before or after the relevant transfer, and
 - (b) the payment of that sum is (or, in the case of an entitlement, would be) in any way connected with any relevant transaction.
- (2) But subsection (1)(a)(ii) does not apply merely because of the receipt of a sum by way of loan if the loan is wholly repaid before the relevant year begins.
- (3) In subsection (1) “capital sum” means—
- (a) any sum paid or payable by way of loan or repayment of a loan, and
 - (b) any other sum paid or payable—
 - (i) otherwise than as income, and
 - (ii) not for full consideration in money or money's worth.

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- (4) For the purposes of subsection (1), a sum is treated as a capital sum which the individual (“A”) receives or is entitled to receive if another person receives or is entitled to receive it—
- (a) at A's direction, or
 - (b) as a result of the assignment by A of A's right to receive it.

[^{F87}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—
 - (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

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- (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—
 - “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.]

Textual Amendments

F87 S. 729A inserted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 32](#)

[^{F88}730 Non-UK domiciled individuals to whom remittance basis applies

- [^{F89}(1) This section applies in relation to income treated under section 728 as arising to an individual in a tax year (“the deemed income”) if section 809B, 809D or 809E (remittance basis) applies to the individual for that year.]
- (2) For the purposes of this section the deemed income is “foreign” if (and to [^{F90}the corresponding extent] that) the income mentioned in section 728(1)(a) would be relevant foreign income if it were the individual's.
- (3) Treat the foreign deemed income as relevant foreign income of the individual.
- (4) For the purposes of Chapter A1 of Part 14 (remittance basis) treat so much of the income within section 728(1)(a) as would be relevant foreign income if it were the individual's as deriving from the foreign deemed income.
- [^{F91}(5) In the application of section 832 of ITTOIA 2005 to the foreign deemed income, subsection (2) of that section has effect with the omission of paragraph (b).]
- [^{F92}(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

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(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.]]

Textual Amendments

- F88** S. 730 substituted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 167](#)
- F89** S. 730(1) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 20](#) (with [Sch. 46 para. 26](#))
- F90** Words in s. 730(2) substituted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 15](#)
- F91** S. 730(5) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 91\(3\)](#)
- F92** S. 730(6)(7) inserted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 33](#)

Charge where benefit received

731 Charge to tax on income treated as arising under section 732

(1) Income tax is charged on income treated as arising to an individual under section 732 ([^{F93}individuals] receiving a benefit as a result of relevant transactions).

[^{F94}(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 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—
 - (i) is treated by section 732 as arising to the individual, and

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- (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).]
- [^{F95}(1C) Subsection (1A) does not restrict the charge to tax under this section on income treated as arising to the individual by section 733C or 733E (onward gifts: recipient or settlor treated as individual to whom income is treated as arising).]
- (2) Tax is charged under this section on the amount of income treated as arising for the tax year.
- [^{F96}(2A) But see [^{F97}sections 735, 735B and 735C] (non-UK domiciled individuals to whom remittance basis applies).]
- (3) The person liable for any tax charged under this section is the individual to whom the income is treated as arising[^{F98}, but this is subject to section 733A.]
- (4) For exemptions from the charge under this section, see sections 736 to [^{F99}742A] (exemptions where no tax avoidance purpose or genuine commercial transaction [^{F100}, etc]).

Textual Amendments

- F93** Word in s. 731(1) substituted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 34\(2\)](#)
- F94** S. 731(1A)(1B) inserted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 34\(3\)](#)
- F95** S. 731(1C) inserted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 13\(2\)](#), 21(1)
- F96** S. 731(2A) inserted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 168](#)
- F97** Words in s. 731(2A) substituted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 13\(3\)](#), 21(1)
- F98** Words in s. 731(3) inserted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 34\(4\)](#)
- F99** Word in s. 731(4) substituted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 5\(a\)](#)
- F100** Word in s. 731(4) inserted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 5\(b\)](#)

732 [^{F101}Individuals] receiving a benefit as a result of relevant transactions

- (1) This section applies if—
- (a) a relevant transfer occurs,
- (b) an individual [^{F102}receives a benefit in a tax year],

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- (c) the benefit is provided out of assets which are available for the purpose as a result of—
 - (i) the transfer, or
 - (ii) one or more associated operations,
 - [^{F103}(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]
 - (e) the individual is not liable to income tax [^{F104}, under any provision that is none of section 731 of this Act and sections 643A, 643J and 643L of ITTOIA 2005,] on the amount or value of the benefit ^{F105}....
- (2) Income is treated as arising to the individual for income tax purposes for any tax year for which section 733 provides that income arises.
- (3) Also see that section for the amount of income treated as arising for any such tax year.
- [^{F106}(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.]

Textual Amendments

- F101** Word in s. 732 heading substituted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 8 para. 35(4)**
- F102** Words in s. 732(1)(b) substituted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 8 para. 35(2)(a)**
- F103** S. 732(1)(d) substituted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 8 para. 35(2)(b)**
- F104** Words in s. 732(1)(e) inserted (with effect according to Sch. 10 para. 21(1) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), **Sch. 10 para. 14(a)**,
- F105** Words in s. 732(1)(e) omitted (with effect according to Sch. 10 para. 21(1) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\)](#), **Sch. 10 para. 14(b)**
- F106** S. 732(4) inserted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 8 para. 35(3)**

733 Income charged under section 731

- (1) To find the amount (if any) of the income treated as arising under section 732(2) for any tax year in respect of benefits provided as mentioned in section 732(1)(c) take the following steps.

Step 1

Identify the amount or value of such benefits received by the individual in the tax year and in any earlier tax years in which section 732 has applied.

The sum of those amounts and values is “the total benefits”.

Step 2

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Deduct from the total benefits the total amount of income treated as arising to the individual under section 732(2) for earlier tax years as a result of the relevant transfer or associated operations.

The result is “the total untaxed benefits” [F107] 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.]

Step 3

Identify the amount of any income which—

- (a) arises in the tax year to a person abroad, and
- (b) as a result of the relevant transfer or associated operations can be used directly or indirectly for providing a benefit for the individual.

That amount is “the relevant income of the tax year” in relation to the individual and the tax year.

Step 4

Add together the relevant income of the tax year and the relevant income of earlier tax years in relation to the individual (identified as mentioned in Step 3).

The sum of those amounts is “total relevant income”.

Step 5

Deduct from total relevant income—

- (a) the amount deducted at Step 2, and
- (b) any other amount which may not be taken into account because of section 743(1) and (2) (no duplication of charges).

The result is “the available relevant income”.

Step 6

Compare the total untaxed benefits and the available relevant income.

The amount of the income treated as arising under section 732(2) for any tax year is the total untaxed benefits unless the available relevant income is lower.

If the available relevant income is lower, it is the amount of income treated as so arising.

- (2) Subsection (1) is subject to section 734 (reduction in amount charged: previous capital gains tax charge).
- (3) See also section 740(5) to (7) (which makes provision about relevant income and benefits where relevant transactions include both transactions before 5 December 2005 and transactions after 4 December 2005 and exemptions under this Chapter cease to apply).

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

Textual Amendments

F107 Words in s. 733(1) inserted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 8 para. 35(5)**

[^{F108}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—
 - (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.

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- (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.
- (7) For the purposes of subsection (1)(b)(ii), a person is a close member of the family of the settlor ^{F109}at any time if the settlor is living at that time and—
- (a) the person is the settlor's spouse or civil partner at that time, or
 - (b) the person—
 - (i) is a child of the settlor, or of a person who at that time is the settlor's spouse or civil partner, and
 - (ii) at that time 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.]

Textual Amendments

F108 S. 733A inserted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 36](#)

F109 Words in s. 733A(7) substituted (with effect for the tax year 2017-18 and tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 15, 21\(1\)\(5\)](#)

^{F110}~~733B~~ Recipients of onward gifts

- (1) Sections 733C to 733E apply if—
- (a) an amount of income is treated as arising under section 732 to an individual (“the original beneficiary”) in a tax year (“the arising year”) but neither by section 733C nor by section 733E,
 - (b) under section 735A (if it applied also for this purpose) that amount would be matched—
 - (i) 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
 - (ii) with the whole or part of a benefit received by the original beneficiary,
 - (c) at the time that benefit is received by the original beneficiary (“the distribution time”)—

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- (i) there are arrangements, or there is an intention, as regards the (direct or indirect) passing-on of the whole or part of that benefit to another person, and
 - (ii) it is reasonable to expect that, in the event of the whole or part of that benefit being passed on to another person as envisaged by the arrangements or intention, that other person will be UK resident when they receive at least part of what is passed on to them,
 - (d) the original beneficiary makes, directly or indirectly, a gift (“the onward payment”) to a person (“the subsequent recipient”)—
 - (i) at the distribution time, or at any later time in the 3 years beginning with the start time, or
 - (ii) at any time before the distribution time and, it is reasonable to assume, in anticipation of receipt of the benefit mentioned in paragraph (b)(ii),
 - (e) the gift is of or includes—
 - (i) the whole or part of the benefit mentioned in paragraph (b)(ii),
 - (ii) anything that (wholly or in part, and directly or indirectly) derives from, or represents, the whole or part of that benefit, or
 - (iii) any other property, but only if the benefit mentioned in paragraph (b)(ii) is provided with a view to enabling or facilitating, or otherwise in connection with, the making of the gift of the property to the subsequent recipient,
 - (f) except where an individual is liable as a result of section 733A(2) or (3) for the tax charged under section 731 on the amount mentioned in paragraph (a), either—
 - (i) the original beneficiary is non-UK resident for the arising year, or
 - (ii) section 809B or 809D or 809E (remittance basis) applies to the original beneficiary for the arising year and none of the amount mentioned in paragraph (a) is relevantly remitted before the end of the charging year, and
 - (g) where an individual is liable as a result of section 733A(2) or (3) for the tax charged under section 731 on the amount mentioned in paragraph (a), section 809B or 809D or 809E applies to that individual for the arising year and none of the amount mentioned in paragraph (a) is relevantly remitted before the end of the charging year.
- (2) If—
 - (a) the amount mentioned in subsection (1)(a) is not treated as arising by section 733D (and neither by section 733C nor by section 733E),
 - (b) except where an individual is liable as a result of section 733A(2) or (3) for the tax charged under section 731 on that amount, section 809B or 809D or 809E applies to the original beneficiary for the arising year,
 - (c) where an individual is liable as a result of section 733A(2) or (3) for the tax charged under section 731 on that amount, section 809B or 809D or 809E applies to that individual for the arising year, and
 - (d) part only of that amount is relevantly remitted before the end of the charging year,subsection (1)(a) is to be treated as referring instead only to the remainder of that amount.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (3) The original beneficiary is not liable to tax for any year after the charging year on so much of the amount mentioned in subsection (1)(a) as is—
- (a) treated as arising to the subsequent recipient by section 733C, or
 - (b) treated as arising to the settlor by section 733E;
- and the settlor is not is liable under section 733A(2) or (3) to tax for any year after the charging year on so much of the amount mentioned in subsection (1)(a) as is treated as arising to the subsequent recipient by section 733C.
- (4) For the purposes of subsection (1)(d)(i)—
- (a) if the amount mentioned in subsection (1)(a) is not one that is treated as arising by section 733D, “the start time” is the time the benefit mentioned in subsection (1)(b) is provided to the original beneficiary, and
 - (b) if the amount mentioned in subsection (1)(a) is one that is treated as arising by section 733D in connection with the operation of this section on a previous occasion, “the start time” is the time given by this subsection as the start time on that occasion.
- (5) Where the onward payment is made as mentioned in subsection (1)(d)(ii), the onward payment is to be treated—
- (a) for the purposes of the provisions of this section following subsection (1)(d), and
 - (b) for the purposes of sections 733C to 733E,
- as made immediately after, and in the tax year containing, the distribution time.
- (6) Where subsection (1)(d) and (e) are met in any case, it is to be presumed (unless the contrary is shown) that subsection (1)(c) is also met in that case.
- (7) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
- “the charging year” means the gift year or, if later, the matching year,
- “gift” includes any benefit,
- “the gift year” means the tax year in which the onward payment is made, but see subsection (5),
- “make”, in relation to a gift that is a benefit, means provide,
- “the matching year” means the first tax year in which the matching mentioned in subsection (1)(b) would occur,
- “relevantly remitted” means remitted to the United Kingdom in a tax year for which the original beneficiary is UK resident but, where an individual is liable as a result of section 733A(2) or (3) for the tax charged under section 731 on the amount mentioned in subsection (1)(a), means remitted to the United Kingdom in a tax year for which that individual is UK resident, and
- “the settlor” means the settlor of the settlement, mentioned in section 721A(3) or (4) or 729A(3) or (4), which because of subsection (1)(b) (i) is the settlement concerned.
- (8) Sections 742C to 742E (value of benefit provided to a person) apply in relation to the onward payment as if references in those sections to a benefit provided were references to a gift made.

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (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)—
- (a) apply for the purposes of this section and sections 733C to 733E, and
 - (b) apply for those purposes in relation to references to remittance of the onward payment as if the onward payment were relevant foreign income of the subsequent recipient.

Textual Amendments

F110 Ss. 733B-733E inserted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 16, 21\(1\)](#)

733C Cases where income treated as arising to recipient of onward gift

- (1) Subsection (3) applies if—
- (a) this section applies (see section 733B(1)), and
 - (b) the subsequent recipient is UK resident for the gift year, and
 - (c) the subsequent recipient is UK resident for the matching year if that is later than the gift year, and
 - (d) none of sections 809B, 809D and 809E applies to the subsequent recipient for the charging year.
- (2) Subsection (3) also applies if—
- (a) this section applies (see section 733B(1)), and
 - (b) the subsequent recipient is UK resident for the gift year, and
 - (c) the subsequent recipient is UK resident for the matching year if that is later than the gift year, and
 - (d) section 809B, 809D or 809E applies to the subsequent recipient for the charging year, and
 - (e) the whole, or part only, of the onward payment is remitted to the United Kingdom in the charging year.
- (3) Section 731 has effect—
- (a) as if the subsequent recipient were an individual to whom income is treated as arising under section 732 for the charging year, and
 - (b) as if, subject to subsection (4), the amount of that income—
 - (i) were equal to the amount or value of so much of the onward payment as is within any of sub-paragraphs (i) to (iii) of section 733B(1)(e), or
 - (ii) were, where this subsection applies because of subsection (2) and part only of that much of the onward payment is remitted to the United Kingdom in the charging year, equal to the amount or value of that part.
- (4) The amount given by subsection (3) (before adjustment under this subsection) is to be adjusted as follows—
- (a) deduct any part of the amount on which the subsequent recipient is liable to income tax otherwise than under this section, and

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- (b) if following any adjustment under paragraph (a) the amount exceeds the amount mentioned in section 733B(1)(a), deduct the excess.

Textual Amendments

F110 Ss. 733B-733E inserted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 16, 21\(1\)](#)

733D Cases where deemed income attributed to recipient of onward gift

- (1) Subsection (3) applies if this section applies (see section 733B(1)) and—
- (a) the subsequent recipient is non-UK resident for the gift year, or
 - (b) the matching year is later than the gift year and the subsequent recipient is UK resident for the gift year but non-UK resident for the matching year.
- (2) Subsection (3) also applies if—
- (a) this section applies (see section 733B(1)), and
 - (b) the subsequent recipient is UK resident for the gift year, and
 - (c) the subsequent recipient is UK resident for the matching year if that is later than the gift year, and
 - (d) section 809B, 809D or 809E applies to the subsequent recipient for the charging year, and
 - (e) none, or part only, of the onward payment is remitted to the United Kingdom in the charging year.
- (3) Section 733B(1)(a) has effect—
- (a) as if the subsequent recipient were an individual to whom income is treated as arising under section 732 for the charging year, and
 - (b) as if, subject to subsection (4), the amount of that income—
 - (i) were equal to the amount or value of so much of the onward payment as is within any of sub-paragraphs (i) to (iii) of section 733B(1)(e) and is not treated as arising to someone other than the subsequent recipient as a result of the operation of section 733E, or
 - (ii) were, where this subsection applies because of subsection (2) and part only of that much of the onward payment is remitted to the United Kingdom in the charging year, equal to the amount or value of the remainder of that much of the onward payment.
- (4) The amount given by subsection (3) (before adjustment under this subsection) is to be adjusted as follows: if that amount exceeds the amount mentioned in section 733B(1)(a) in the case of the original beneficiary, deduct the excess.
- (5) Where the amount mentioned in section 733B(1)(a) is one treated as arising by this section in connection with the operation of section 733B and this section on a previous occasion, section 733B(1) has effect—
- (a) with the omission of its paragraphs (b) and (c),
 - (b) as if the reference in its paragraph (d) to the benefit mentioned in its paragraph (b)(ii) were, instead, to what was the onward payment on that previous occasion,
 - (c) as if the references in its paragraph (d) to the distribution time were, instead, to the time when that onward payment was made, and

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- (d) as if the references in its paragraph (e) to the benefit mentioned in its paragraph (b)(ii) were, instead, to so much of that onward payment as was on that previous occasion within any of sub-paragraphs (i) to (iii) of its paragraph (e).

Textual Amendments

F110 Ss. 733B-733E inserted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 16, 21\(1\)](#)

733E Cases where settlor liable following onward gift

- (1) Subsection (3) applies if—
- (a) this section applies (see section 733B(1)),
 - (b) the subsequent recipient is a close member of the settlor's family when the onward payment is made,
 - (c) the subsequent recipient is UK resident for the charging year,
 - (d) section 809B, 809D or 809E applies to the subsequent recipient for the charging year,
 - (e) none, or part only, of the onward payment is remitted to the United Kingdom in the charging year,
 - (f) there is a time in the charging year when the settlor is UK resident,
 - (g) there is no time in the charging year when the settlor is domiciled in the United Kingdom, and
 - (h) there is no time in the charging 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) Subsection (3) also applies if—
- (a) this section applies (see section 733B(1)),
 - (b) the subsequent recipient is a close member of the settlor's family when the onward payment is made,
 - (c) the subsequent recipient is non-UK resident for the charging year,
 - (d) there is a time in the charging year when the settlor is UK resident,
 - (e) there is no time in the charging year when the settlor is domiciled in the United Kingdom, and
 - (f) there is no time in the charging 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.
- (3) Section 731 applies—
- (a) as if the settlor were an individual to whom income is treated as arising under section 732 for the charging year, and
 - (b) as if, subject to subsection (4), the amount of that income—
 - (i) were equal to the amount or value of so much of the onward payment as is within any of sub-paragraphs (i) to (iii) of section 733B(1)(e), or

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- (ii) were, where this subsection applies because of subsection (1) in a case where part only of that much of the onward payment is remitted to the United Kingdom in the charging year, equal to the amount or value of the remainder of that much of the onward payment.
- (4) The amount given by subsection (3)(b) (before adjustment under this subsection) is to be adjusted as follows—
- (a) deduct any part of the amount on which the settlor is liable to income tax otherwise than under this section, and
 - (b) if following any adjustment under paragraph (a) the amount exceeds the amount mentioned in section 733B(1)(a), deduct the excess.
- (5) Where any tax for which the settlor is liable as a result of subsections (3) and (4) is paid, the settlor is entitled to recover the amount of the tax from the subsequent recipient.
- (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.
- (7) In this section—
- (a) “the settlor” means the settlor of the settlement, mentioned in section 721A(3) or (4) or 729A(3) or (4), which because of section 733B(1)(b)(i) is the settlement concerned, and
 - (b) “close member”, in relation to the family of the settlor, is to be read in accordance with section 733A(7) and (8).]

Textual Amendments

F110 Ss. 733B-733E inserted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 16, 21\(1\)](#)

734 Reduction in amount charged: previous capital gains tax charge

- (1) This section applies if—
- (a) benefits provided as mentioned in section 732(1)(c) are received in a tax year,
 - ^{F111}(b)
 - ^{F111}(c)
 - [^{F112}(d) chargeable gains are treated by section 87, 87K, 87L or 89(2) of, or paragraph 8 of Schedule 4C to, TCGA 1992 as accruing to a person in that or a subsequent tax year by reference (direct or indirect) to the whole or part of any benefits so provided.]
- (2) For any tax year after one in which such chargeable gains are so treated, the amount of income treated as arising to the individual under section 732(2) in respect of benefits provided as mentioned in section 732(1)(c) as a result of the transfer or operations in question is calculated as follows.
- (3) The amount is calculated under section 733(1) as if the total untaxed benefits were reduced by the amount of those gains.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

(4) In this section “the total untaxed benefits” [^{F113}has] the same meaning as in section 733(1) (see [^{F114}Step 2]).

[^{F115}(5) References in this section to chargeable gains treated as accruing to an individual include offshore income gains treated as arising to the individual (see [^{F116}regulations 20 and 22 to 24 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001)].)]

Textual Amendments

- F111** S. 734(1)(b)(c) omitted (with effect for the tax year 2018-19 and subsequent years) by virtue of [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 17\(a\)](#), 21(1)
- F112** S. 734(1)(d) substituted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 17\(b\)](#), 21(1)
- F113** Word in s. 734(4) substituted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 17\(c\)\(i\)](#), 21(1)
- F114** Words in s. 734(4) substituted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 17\(c\)\(ii\)](#), 21(1)
- F115** S. 734(5) inserted (21.7.2008 with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 97](#)
- F116** Words in s. 734(5) substituted (with effect in accordance with art. 1(2)(3) Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\)](#), [129\(5\)](#)

[^{F117}734A] Reduction in amount charged: previous settlements charge

- (1) This section applies if—
- benefits provided as mentioned in section 732(1)(c) are received in a tax year, and
 - income is treated by section 643A, 643J or 643L of ITTOIA 2005 as arising to a person in that or a subsequent tax year by reference (direct or indirect) to the whole or part of any benefits so provided.
- (2) For any tax year after one in which such income is so treated, the amount of income treated as arising to the individual under section 732(2) in respect of benefits provided as mentioned in section 732(1)(c) as a result of the transfer or operations in question is calculated as follows.
- (3) The amount is calculated under section 733(1) as if the total untaxed benefits were reduced by the amount of that income.
- (4) In this section “the total untaxed benefits” has the same meaning as in section 733(1) (see Step 2).]

Textual Amendments

- F117** S. 734A inserted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 18](#), 21(1)

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

[^{F118}735 Non-UK domiciled individuals to whom remittance basis applies

- [^{F119}(1) This section applies in relation to income treated under section 732 as arising to an individual in a tax year (“the deemed income”) if section 809B, 809D or 809E (remittance basis) applies to the individual for that year.]
- (2) For the purposes of this section the deemed income is “foreign” if (and to the extent that) the relevant income to which it relates would be relevant foreign income if it were the individual's.
- (3) Treat the foreign deemed income as relevant foreign income of the individual.
- (4) For the purposes of Chapter A1 of Part 14 (remittance basis) treat relevant income, or a benefit, that relates to any part of the foreign deemed income as deriving from that part of the foreign deemed income.
- [^{F120}(5) In the application of section 832 of ITTOIA 2005 to the foreign deemed income, subsection (2) of that section has effect with the omission of paragraph (b).]

Textual Amendments

F118 Ss. 735, 735A substituted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) for s. 735 by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 169](#)

F119 S. 735(1) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 21](#) (with [Sch. 46 para. 26](#))

F120 S. 735(5) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 91\(4\)](#)

735A Section 735: relevant income and benefits relating to foreign deemed income

- (1) For the purposes of section 735—
- (a) place the benefits mentioned in Step 1 in the order in which they were received by the individual (starting with the earliest benefit received),
 - (b) deduct from those benefits so much of any benefit within section 734(1)(b) as gives rise as mentioned in section 734(1)(d) to chargeable gains or offshore income gains,
 - (c) place the income mentioned in Step 3 for the tax years mentioned in Step 4 (“the relevant income”) in the order determined under subsection (3),
 - (d) deduct from that income any income that may not be taken into account because of section 743(1) or (2) (no duplication of charges),
 - (e) place the income treated under section 732(2) as arising to the individual in respect of the benefits in the order in which it is treated as arising (starting with the earliest income treated as having arisen), and
 - (f) treat the income mentioned in paragraph (e) as related to—
 - (i) the benefits, and
 - (ii) the relevant income,
 by matching that income with the benefits and the relevant income (in the orders mentioned in paragraphs (a), (c) and (e)).
- (2) In subsection (1) references to a step are to a step in section 733(1).
- (3) The order referred to in subsection (1)(c) is arrived at by taking the following steps.

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Step 1

Find the relevant income for the earliest tax year (of the tax years referred to in subsection (1)(c)).

Step 2

Place so much of that income as is not foreign in the order in which it arose (starting with the earliest income to arise).

Step 3

After that, place so much of that income as is foreign in the order in which it arose (starting with the earliest income to arise).

Step 4

Repeat Steps 1 to 3.

For this purpose, read references to the relevant income for the earliest tax year as references to the relevant income for the first tax year after the last tax year in relation to which those Steps have been undertaken.

- (4) For the purposes of subsection (3) relevant income is “foreign” where it would be relevant foreign income if it were the individual's.
- (5) For those purposes treat income for a period as arising immediately before the end of the period.
- (6) Subsection (1)(d) does not apply if the income may not be taken into account because the individual^[F121], or as a result of section 733A another person,] has been charged to income tax under section 731 by reason of the income.]

Textual Amendments

F118 Ss. 735, 735A substituted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) for s. 735 by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 169](#)

F121 Words in s. 735A(6) inserted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 37](#)

[^{F122}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,

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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).]

Textual Amendments

F122 S. 735B inserted (with effect in accordance with Sch. 8 para. 39 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 38](#)

[^{F123}735 Person liable under section 733C or 733E and remittance basis applies

- (1) This section applies in relation to income if—
- (a) the income is treated as arising to an individual for a tax year—
 - (i) as a result of the operation of section 733C(3) and (4) where section 733C(3) applies because of section 733C(2), or
 - (ii) as a result of the operation of section 733E, and
 - (b) section 809B, 809D or 809E (remittance basis) applies to the individual for that year.
- (2) The income is treated as relevant foreign income of the individual.
- (3) For the purposes of Chapter A1 of Part 14 (remittance basis) treat the onward payment, or (as the case may be) the part of it whose amount or value is equal to the amount of the income, as deriving from the 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).]

Textual Amendments

F123 S. 735C inserted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 19, 21\(1\)](#)

Exemptions: no tax avoidance purpose or genuine commercial transaction

736 Exemptions: introduction

- (1) Sections 737 to [^{F124}742A] deal with exemptions from liability under this Chapter.
- (2) Some exemptions apply according to whether the relevant transactions are all pre-5 December 2005 transactions or all post-4 December 2005 transactions or include both (see sections 737, 739 and 740).
- [^{F125}(2A) The exemption given by section 742A applies only in the case of a relevant transaction effected on or after 6 April 2012.]
- (3) In this section and sections 737 to 742—
 “post-4 December 2005 transaction” means a relevant transaction effected on or after 5 December 2005, and

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

“pre-5 December 2005 transaction” means a relevant transaction effected before 5 December 2005.

Textual Amendments

F124 Word in s. 736(1) substituted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 6\(2\)](#)

F125 S. 736(2A) inserted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 6\(3\)](#)

737 Exemption: all relevant transactions post-4 December 2005 transactions

- (1) This section applies if all the relevant transactions are post-4 December 2005 transactions.
- (2) An individual is not liable to income tax under this Chapter for the tax year by reference to the relevant transactions if the individual satisfies an officer of Revenue and Customs—
 - (a) that Condition A is met, or
 - (b) in a case where Condition A is not met, that Condition B is met.
- (3) 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.
- (4) Condition B is that—
 - (a) all the relevant transactions were genuine commercial transactions (see section 738), 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.
- (5) In determining the purposes for which the relevant transactions or any of them were effected, the intentions and purposes of any person within subsection (6) are to be taken into account.
- (6) A person is within this subsection if, whether or not for consideration, the person—
 - (a) designs or effects, or
 - (b) provides advice in relation to,the relevant transactions or any of them.
- (7) In this section—

“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) If—
 - (a) apart from this subsection, an associated operation would not be taken into account for the purposes of this section, and
 - (b) the conditions in subsections (2) to (4) are not met if it is taken into account, because of—

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- (i) the associated operation, or
- (ii) the associated operation taken together with any other relevant transactions,

it must be taken into account for those purposes.

738 Meaning of “commercial transaction”

- (1) For the purposes of section 737, a relevant transaction is a commercial transaction only if it meets the conditions in subsections (2) and (3).
- (2) It must be effected—
 - (a) in the course of a trade or business and for its purposes, or
 - (b) with a view to setting up and commencing a trade or business and for its purposes.
- (3) It must not—
 - (a) be on terms other than those that would have been made between persons not connected with each other dealing at arm's length, or
 - (b) be a transaction that would not have been entered into between such persons so dealing.
- (4) For the purposes of subsection (2), making investments, managing them or making and managing them is a trade or business only so far as—
 - (a) the person by whom it is done, and
 - (b) the person for whom it is done,
 are persons not connected with each other and are dealing at arm's length.

739 Exemption: all relevant transactions pre-5 December 2005 transactions

- (1) This section applies if all the relevant transactions are pre-5 December 2005 transactions.
- (2) An individual is not liable for income tax under this Chapter for the tax year by reference to the relevant transactions if the individual satisfies an officer of Revenue and Customs that condition A or B is met.
- (3) Condition A is that the purpose of avoiding liability to taxation was not the purpose, or one of the purposes, for which the relevant transactions or any of them were effected.
- (4) Condition B is that the transfer and any associated operations—
 - (a) were genuine commercial transactions, and
 - (b) were not designed for the purpose of avoiding liability to taxation.

740 Exemption: relevant transactions include both pre-5 December 2005 and post-4 December 2005 transactions

- (1) This section applies if the relevant transactions include both pre-5 December transactions and post-4 December transactions.
- (2) An individual is not liable to tax under this Chapter for the tax year by reference to the relevant transactions if—

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (a) the condition in section 737(2) (exemption where all relevant transactions are post-4 December 2005 transactions) is met by reference to the post-4 December 2005 transactions, and
 - (b) the condition in section 739(2) (exemption where all relevant transactions are pre-5 December 2005 transactions) is met by reference to the pre-5 December transactions.
- (3) If subsection (2)(b) applies but subsection (2)(a) does not, this Chapter applies with the modifications in subsections (4) to (6).
- (4) For the purposes of sections 720 to 730, any income arising before 5 December 2005 must not be brought into account as income of the person abroad.
- (5) In determining the relevant income of an earlier tax year for the purposes of section 733(1) (see Step 4), it does not matter whether that year was a year for which the individual was not liable under section 731 because of section 739 or this section.
- (6) For the purposes of Step 1 in section 733(1), a benefit received by the individual in or before the tax year 2005-06 is to be left out of account.
- (7) But, in the case of a benefit received in the tax year 2005-06, subsection (6) applies only so far as, on a time apportionment basis, the benefit fell to be enjoyed in any part of the year that fell before 5 December 2005.

741 Application of section 742 (partial exemption)

- (1) Section 742 (partial exemption where later associated operations fail conditions) applies if—
- (a) an individual is liable to tax because of section 720 or 727 for a tax year (the “taxable year”) because condition B in section 737(4) (genuine commercial transaction: post-4 December 2005 transactions) is not met, and
 - (b) subsections (2) and (3) apply.
- (2) This subsection applies if—
- (a) since the relevant transfer there has been at least one tax year for which the individual was not so liable by reference to the relevant transactions effected before the end of the year, and
 - (b) the individual was not so liable for that year because—
 - (i) condition B in section 737(4) was met, or
 - (ii) condition B in section 739(4) (genuine commercial transaction: pre-5 December 2005 transactions) was met.
- (3) This subsection applies if 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 one of those conditions was met for the last exempt tax year, and
 - (b) partly to associated operations not falling within paragraph (a).
- (4) For the purposes of this section a tax year is exempt if—
- (a) it is one of the tax years mentioned in subsection (2), and
 - (b) there is no earlier tax year for which the individual was liable to tax because of section 720 or 727 by reference to the relevant transactions or any of them.

Status: Point in time view as at 06/04/2019.

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- (5) References in this section to a person being liable to tax for a tax year because of section 720 or 727 include references to the individual being so liable had any income been treated as arising to the individual for that year under section 721 or 728.

742 Partial exemption where later associated operations fail conditions

- (1) If this section applies, the individual is liable to tax under this Chapter only in respect of part of the income for which the individual would otherwise be liable.
- (2) That part is so much of the income as appears to an officer of Revenue and Customs to be justly and reasonably attributable to the operations mentioned in section 741(3)(b) in all the circumstances of the case.
- (3) Those circumstances include how far those operations or any of them directly or indirectly affect—
 - (a) the nature or amount of any person's income, or
 - (b) any person's power to enjoy any income.

[^{F126}742A] Post-5 April 2012 transactions: exemption for genuine transactions

- (1) Subsection (2) applies for the purpose of determining the liability of an individual to tax under this Chapter by reference to a relevant transaction if—
 - (a) the transaction is effected on or after 6 April 2012, and
 - (b) conditions A and B are met.
- (2) Income is to be left out of account so far as the individual satisfies an officer of Revenue and Customs that it is attributable to the transaction.
- (3) Condition A is that—
 - (a) were, viewed objectively, the transaction to be considered to be a genuine transaction having regard to any arrangements under which it is effected and any other relevant circumstances, and
 - (b) were the individual to be liable to tax under this Chapter by reference to the transaction,

the individual's liability to tax would, in contravention of a relevant treaty provision, constitute an unjustified and disproportionate restriction on a freedom protected under that relevant treaty provision.
- (4) In subsection (3) “relevant treaty provision” means—
 - (a) Title II or IV of Part Three of the Treaty on the Functioning of the European Union,
 - (b) Part II or III of the EEA agreement, or
 - (c) the provision of any subsequent treaty replacing a provision mentioned in paragraph (a) or (b).
- (5) Condition B is that the individual satisfies an officer of Revenue and Customs that, viewed objectively, the transaction must be considered to be a genuine transaction having regard to any arrangements under which it is effected and any other relevant circumstances.
- (6) Without prejudice to the generality of subsection (3)(a) or (5), in order for the transaction to be considered to be a genuine transaction the transaction must not—

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- (a) be on terms other than those that would have been made between persons not connected with each other dealing at arm's length, or
 - (b) be a transaction that would not have been entered into between such persons so dealing,
- having regard to any arrangements under which the transaction is effected and any other relevant circumstances.
- (7) Subsection (8) applies if any asset or income falling within subsection (12) is used for the purposes of, or is received in the course of, activities carried on in a territory outside the United Kingdom by a person (“the relevant person”) through a business establishment which the relevant person has in that territory.
- (8) Without prejudice to the generality of subsection (3)(a) or (5), in order for the transaction to be considered to be a genuine transaction the activities mentioned in subsection (7) must consist of the provision by the relevant person of goods or services to others on a commercial basis and involve—
- (a) the use of staff in numbers, and with competence and authority,
 - (b) the use of premises and equipment, and
 - (c) the addition of economic value, by the relevant person, to those to whom the goods or services are provided,
- commensurate with the size and nature of those activities.
- (9) In subsection (8)(a) “staff” means employees, agents or contractors of the relevant person.
- (10) To determine if a person has a “business establishment” in a territory outside the United Kingdom, apply sections 1141, 1142(1) and 1143 of CTA 2010 as if in those provisions—
- (a) references to a company were to a person, and
 - (b) references to a permanent establishment were to a business establishment.
- (11) Subsection (6) does not apply if—
- (a) the relevant transfer is made by an individual who makes it wholly—
 - (i) for personal reasons (and not commercial reasons), and
 - (ii) for the personal benefit (and not the commercial benefit) of other individuals, and
 - (b) no consideration is given (directly or indirectly) for the relevant transfer or otherwise for any benefit received by any individual mentioned in paragraph (a)(ii),
- and all assets and income falling within subsection (12) are dealt with accordingly.
- (12) The assets and income falling within this subsection are—
- (a) any of the assets transferred by the relevant transfer;
 - (b) any assets directly or indirectly representing any of the assets transferred;
 - (c) any income arising from any assets within paragraph (a) or (b);
 - (d) any assets directly or indirectly representing the accumulations of income arising from any assets within paragraph (a) or (b).
- (13) In subsections (11) and (12) references to the relevant transfer are to—
- (a) if the transaction mentioned in subsection (1) is a relevant transfer, the transfer, or

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- (b) if the transaction so mentioned is an associated operation, the relevant transfer to which it relates.
- (14) Subsection (15) applies if—
- (a) subsection (2) would apply in relation to a transaction but for the individual being unable to satisfy an officer of Revenue and Customs for the purposes of condition B that the transaction meets the requirements set out in subsection (6), but
 - (b) the individual does satisfy an officer of Revenue and Customs that those requirements are met in relation to a part of the transaction.
- (15) Subsection (2) applies as if the reference to the transaction were to that part of the transaction.]

Textual Amendments

F126 S. 742A inserted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 7](#)

[^{F127}Value of certain benefits

Textual Amendments

F127 Ss. 742B-742E and cross-heading inserted (with effect in accordance with Sch. 9 para. 3 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 9 para. 2](#)

742B Value of certain benefits

Sections 742C to 742E apply where it is necessary, for the purpose of calculating a charge to income tax under the preceding provisions of this Chapter, to determine the value of a benefit provided to a person by way of—

- (a) a payment by way of loan (see section 742C),
- (b) making available movable property without any transfer of the property in it (see section 742D), or
- (c) making available land for use without transferring the whole interest in it (see section 742E).

742C Value of benefit provided by a payment by way of loan

- (1) The value of the benefit provided to a person (P) by a payment by way of loan to P is, for each tax year in which the loan is outstanding, the amount (if any) by which—
 - (a) the amount of interest that would have been payable in that year on the loan if interest had been payable on the loan at the official rate, exceeds
 - (b) the amount of interest (if any) actually paid by P in that year on the loan.
- (2) In this section and section 742D the “official rate”, in relation to interest, means the rate 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.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

Modifications etc. (not altering text)

- C3** Ss. 742C-742E applied by 2005 c. 5, s. 643B(3) (as inserted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 11, 21\(1\)](#) (with [Sch. 11 para. 22](#)))
- C4** Ss. 742C-742E applied by 2005 c. 5, s. 643I(8) (as inserted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 11, 21\(1\)](#) (with [Sch. 11 para. 22](#)))

742D Value of benefit provided by making movable property available

- (1) The value of the benefit provided by making movable property available, without any transfer of the property in it, to a person (P) is, for each tax year in which the benefit is provided to P—

$$(CC \times R \times D Y) - T$$

where—

CC is the capital cost of the movable property on the date when the property is first made available to P in the tax year,

D is the number of days in the tax year on which the property is made available to P (the relevant period),

R is the official rate of interest for the relevant period (but see subsection (3)),

T is the total of the amounts (if any) paid in the tax year by P—

- (a) to the person providing the benefit, in respect of the availability of the movable property, or
- (b) so far as not within paragraph (a), in respect of the repair, insurance, maintenance or storage of the movable property, and

Y is the number of days in the tax year.

- (2) In subsection (1), in the meaning of CC, the “capital cost” of the movable property means an amount equal to the total of—

- (a) the amount which is the greater of—
- (i) the amount or value of the consideration given for the acquisition of the movable property by, or on behalf of, the person (A) providing the benefit, and
- (ii) its market value at the time of that acquisition, and
- (b) the amount of any expenditure wholly and exclusively incurred by, or on behalf of, A for the purpose of enhancing the value of the movable property.

- (3) If the official rate of interest changes during the relevant period, then in subsection (1) R is the average official rate of interest for the period calculated as follows.

Step 1 Multiply each official rate of interest in force during the relevant period by the number of days when it is in force.

Step 2 Add together the products found in Step 1.

Step 3 Divide the total found in Step 2 by the number of days in the relevant period.

- (4) In subsections (1) and (2), “movable property” means any tangible movable property other than money.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

Modifications etc. (not altering text)

- C3** Ss. 742C-742E applied by 2005 c. 5, s. 643B(3) (as inserted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 11, 21\(1\)](#) (with [Sch. 11 para. 22](#)))
- C4** Ss. 742C-742E applied by 2005 c. 5, s. 643I(8) (as inserted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 11, 21\(1\)](#) (with [Sch. 11 para. 22](#)))

742E Value of benefit provided by making land available

- (1) The value of the benefit provided by making land available for the use of a person (P) is, for each tax year in which the benefit is provided to P, the amount by which—
- (a) the rental value of the land for the period of the tax year during which the land is made available to P, exceeds
 - (b) the total of the amounts (if any) paid in the tax year by P—
 - (i) to the person providing the benefit, in respect of the availability of the land, or
 - (ii) so far as not within sub-paragraph (i), in respect of costs of repair, insurance or maintenance relating to the land.
- (2) Subsection (1) does not apply in the case where the person providing the benefit transfers the whole of the person's interest in the land to P.
- (3) In subsection (1) “the rental value” of the land for a period means the rent which would have been payable for the period if the land had been let to P at an annual rent equal to the annual value.
- (4) For the purposes of subsection (3) “the annual value” of land is the rent that might reasonably be expected to be obtained on a letting from year to year if—
- (a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and
 - (b) the landlord undertook to bear the costs of the repairs and insurance and the other expenses (if any) necessary for maintaining the property in a state to command that rent.
- (5) For the purposes of subsection (4) that rent—
- (a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of a letting of the land, and
 - (b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the costs to the landlord of providing any relevant services.
- (6) In subsection (5) “relevant service” means a service other than the repair, insurance or maintenance of the property.]

Modifications etc. (not altering text)

- C3** Ss. 742C-742E applied by 2005 c. 5, s. 643B(3) (as inserted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 11, 21\(1\)](#) (with [Sch. 11 para. 22](#)))
- C4** Ss. 742C-742E applied by 2005 c. 5, s. 643I(8) (as inserted (with effect for the tax year 2018-19 and subsequent years) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 paras. 11, 21\(1\)](#) (with [Sch. 11 para. 22](#)))

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

General

743 No duplication of charges

- (1) No amount of income may be taken into account more than once in charging income tax under this Chapter.
 - (2) If there is a choice about the persons in relation to whom any amount of income may be taken into account in charging income tax under this Chapter, it is to be taken into account—
 - (a) in relation to such one or more of them as appears to an officer of Revenue and Customs to be just and reasonable, and
 - (b) if more than one, in such respective proportions as appears to the officer to be just and reasonable.
- [^{F128}(2A) Subsection (2B) applies if—
- (a) in the case of an individual, an amount of income is taken into account in charging income tax under section 720 or 727, and
 - (b) the individual subsequently receives that income.
- (2B) The income received is treated as not being the individual's income for income tax purposes.]
- (3) For the meaning of references in [^{F129}this section] to an amount of income taken into account in charging tax, see section 744.
 - (4)^{F130}

Textual Amendments

- F128** S. 743(2A)(2B) inserted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 16\(2\)](#)
- F129** Words in s. 743(3) substituted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 16\(3\)](#)
- F130** S. 743(4) omitted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 16\(4\)](#)

744 Meaning of taking income into account in charging income tax for section 743

- (1) References in section [^{F131}743] (no duplication of charges) to an amount of income taken into account in charging income tax are to be read as follows.
- (2) In the case of tax charged on income under section 720 (charge where income enjoyed as a result of relevant transactions)—
 - (a) if section 724(1) (benefit provided out of income of person abroad) applies, they are references to an amount of the income out of which the benefit is provided equal to the amount ^{F132}... charged, and
 - (b) otherwise they are references to the amount of [^{F133}the income mentioned in section 721(2)].
- (3) In the case of tax charged on income under section 727 (charge where capital sums received as a result of relevant transactions), they are references to the amount of [^{F134}the income mentioned in section 728(1)(a)].

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (4) In the case of tax charged under section 731 (charge to tax on income treated as arising to non-transferors where benefit received as a result of relevant transfers), they are references to the amount of relevant income taken into account under section 733 (income charged under section 731) in calculating the amount to be charged in respect of the benefit for the tax year in question.

Textual Amendments

- F131** Word in s. 744(1) substituted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 17\(2\)](#)
- F132** Words in s. 744(2)(a) omitted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 17\(3\)\(a\)](#)
- F133** Words in s. 744(2)(b) substituted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 17\(3\)\(b\)](#)
- F134** Words in s. 744(3) substituted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 17\(4\)](#)

745 Rates of tax applicable to income charged under sections 720 and 727 etc

- (1) Income tax at the basic rate, [^{F135}or] the [^{F136}starting rate for savings][^{F137}when that rate is more than 0%,]^{F138}... is not charged under section 720 or 727 in respect of any income [^{F139}if (and to the corresponding extent that) the income mentioned in section 721(2) or 728(1)(a)] has borne tax at that rate by deduction or otherwise.
- [^{F140}(1A) Income tax at a Scottish rate above 0% and below, or equal to, the basic rate is not charged under section 720 or 727 in respect of any income if (and to the corresponding extent that) the income mentioned in section 721(2) or 728(1)(a) has borne tax at the basic rate.]
- [^{F141}(1B) Income tax at the Welsh basic rate when that rate is above 0% and below, or equal to, the basic rate is not charged under section 720 or 727 in respect of any income if (and to the corresponding extent that) the income mentioned in section 721(2) or 728(1)(a) has borne tax at the basic rate.]
- (2) [^{F142}Subsections (1) [^{F143}, (1A) and (1B)] do] not affect the tax charged if section 724(2) applies (benefit provided out of income of person abroad charged in year of receipt).
- [^{F144}(3) Subsection (4) applies to income treated as arising to an individual under section 721 or 728 so far as [^{F145}none of subsections (1), (1A) and (1B)] applies to it.
- (4) The charge to income tax under section 720 or 727 operates by treating the income as if it were income within section 19(2) (meaning of “dividend income”) if the income mentioned in section 721(2) or 728(1)(a) would be dividend income were it the income of the individual.]

Textual Amendments

- F135** Word in s. 745(1) inserted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 63\(12\)\(a\)](#)
- F136** Words in s. 745(1) substituted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 24](#)
- F137** Words in s. 745(1) inserted (with effect for the tax year 2016-17 and subsequent years) by [Finance Act 2016 \(c. 24\)](#), [s. 4\(9\)\(17\)](#)

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- F138** Words in s. 745(1) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 63\(12\)\(b\)](#)
- F139** Words in s. 745(1) substituted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 18\(2\)](#)
- F140** S. 745(1A) inserted (6.4.2018) by [The Scottish Rates of Income Tax \(Consequential Amendments\) Order 2018 \(S.I. 2018/459\)](#), arts. 1(2), [6\(6\)\(a\)](#)
- F141** S. 745(1B) inserted (with effect according to art. 1(2) of the amending S.I.) by [The Devolved Income Tax Rates \(Consequential Amendments\) Order 2019 \(S.I. 2019/201\)](#), arts. 1(1), [12\(9\)\(a\)](#)
- F142** Words in s. 745(2) substituted (6.4.2018) by [The Scottish Rates of Income Tax \(Consequential Amendments\) Order 2018 \(S.I. 2018/459\)](#), arts. 1(2), [6\(6\)\(b\)](#)
- F143** Words in s. 745(2) substituted (with effect according to art. 1(2) of the amending S.I.) by [The Devolved Income Tax Rates \(Consequential Amendments\) Order 2019 \(S.I. 2019/201\)](#), arts. 1(1), [12\(9\)\(b\)](#)
- F144** S. 745(3)(4) substituted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 18\(3\)](#)
- F145** Words in s. 745(3) substituted (with effect according to art. 1(2) of the amending S.I.) by [The Devolved Income Tax Rates \(Consequential Amendments\) Order 2019 \(S.I. 2019/201\)](#), arts. 1(1), [12\(9\)\(c\)](#)

746 Deductions and reliefs where individual charged under section 720 or 727

(1) This section applies for the purpose of calculating the liability to income tax of an individual charged under section 720 or 727.

[^{F146}(2) For the purpose of determining the deductions and reliefs allowed to the individual, the individual is to be treated as if the individual had actually received the amount by reference to which the income treated as arising to the individual under section 721 or 728 is determined.]

Textual Amendments

- F146** S. 746(2) substituted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 19](#)

747 Amounts corresponding to accrued income profits and related interest

- (1) This subsection applies if a person—
- (a) would have been treated as—
 - (i) making qualifying accrued income profits, or
 - (ii) making qualifying accrued income profits of a greater amount, in an interest period, but
 - (b) is not so treated because of being resident or domiciled outside the United Kingdom throughout any tax year in which the interest period (or part of it) falls.
- (2) If subsection (1) applies, this Chapter applies as if the amount which the person would be treated as making or, as the case may be, the additional amount were income becoming payable to the person.
- (3) Accordingly, any reference in this Chapter to income of (or payable or arising to) a person abroad must be read as including a reference to such an amount.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (4) This subsection applies if income consisting of interest which falls due at the end of an interest period—
- (a) would have been income as respects which a person is entitled to an exemption, or an exemption of a greater amount, from liability to income tax under section 679 (interest on securities involving accrued income losses: general), but
 - (b) is not such income because it is income of a person who is resident or domiciled outside the United Kingdom throughout any tax year in which the interest period (or part of it) falls.
- (5) If subsection (4) applies, for the purposes of this Chapter the interest is treated as reduced by the amount of the exemption or, as the case may be, the additional exemption.
- (6) In this section—
- (a) expressions which are also used in Chapter 2 of Part 12 (accrued income profits) have the same meaning as in that Chapter (but see subsection (7)), and
 - (b) “qualifying accrued income profits” means accrued income profits which are treated as made—
 - (i) under section 628(5), or
 - (ii) under section 630(2) in respect of a transfer of variable rate securities.
- (7) In the case of qualifying accrued income profits within sub-paragraph (ii) of the definition of that expression in subsection (6)(b)—
- (a) references in subsection (1)(a) to making qualifying accrued income profits in an interest period are to be read as making them in the tax year in which the settlement day falls, and
 - (b) the reference in subsection (1)(b) to the interest period is to the period—
 - (i) beginning with the day after the last day of the only or last interest period of the securities, and
 - (ii) ending with the settlement day.

Supplementary

748 Power to obtain information

- (1) An officer of Revenue and Customs may by notice require any person to provide the officer with such particulars as the officer may reasonably require for the purposes of this Chapter.
- (2) The officer may direct the time within which the particulars must be provided and that time must be at least 30 days.
- (3) The particulars which a person must provide under this section, if required to do so by a notice under subsection (1), include particulars about—
 - (a) transactions with respect to which the person is or was acting on behalf of others,
 - (b) transactions which in the opinion of the officer should properly be investigated for the purposes of this Chapter even though in the person's opinion no liability to income tax arises under this Chapter, and

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (c) whether the person has taken or is taking any part and, if so, what part in transactions of a description specified in the notice.
- (4) A ^{F147}[relevant lawyer] is not treated as having taken part in a transaction for the purposes of subsection (3)(c) merely because of giving professional advice to a client about it.
- ^{F148}(4A) In this section “relevant lawyer” means a barrister, advocate, solicitor or other legal representative communications with whom may be the subject of a claim to professional privilege or, in Scotland, protected from disclosure in legal proceedings on grounds of confidentiality of communication.]
- (5) This section is subject to—
section 749 (restrictions on particulars to be provided by ^{F149}[relevant lawyers]),
and
section 750 (restrictions on particulars to be provided by banks).

Textual Amendments

- F147** Words in s. 748(4) substituted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), s. 211(2), [Sch. 21 para. 158\(a\)](#) (with [ss. 29, 192, 193](#)); [S.I. 2009/3250](#), art. 2(h)
- F148** S. 748(4A) inserted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), s. 211(2), [Sch. 21 para. 158\(b\)](#) (with [ss. 29, 192, 193](#)); [S.I. 2009/3250](#), art. 2(h)
- F149** Words in s. 748(5) substituted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), s. 211(2), [Sch. 21 para. 158\(c\)](#) (with [ss. 29, 192, 193](#)); [S.I. 2009/3250](#), art. 2(h)

749 Restrictions on particulars to be provided by ^{F150}[relevant lawyers]

- (1) In relation to anything done by a ^{F151}[relevant lawyer] on behalf of a client who does not consent to the information otherwise required from the ^{F151}[relevant lawyer] under section 748 being provided, the ^{F151}[relevant lawyer] may not be compelled under that section to do more than—
- (a) state that the ^{F151}[relevant lawyer] is or was acting on behalf of a client, and
- (b) give the name and address of the client and any relevant person.
- (2) In the case of anything done by the ^{F151}[relevant lawyer] in connection with the transfer of any asset by or to an individual who is ^{F152}... UK resident to or by a body corporate to which subsection (6) applies, the transferor and the transferee are relevant persons.
- (3) In the case of anything done by the ^{F151}[relevant lawyer] in connection with any associated operation in relation to any such transfer, the persons concerned in the associated operations are relevant persons.
- (4) In the case of anything done by the ^{F151}[relevant lawyer] in connection with the formation or management of a body corporate to which subsection (6) applies, the body corporate is a relevant person.
- (5) In the case of anything done by the ^{F151}[relevant lawyer] in connection with—
- (a) the creation of any settlement as a result of which income becomes payable to a person abroad, or
- (b) the execution of the trusts of any such settlement,
the settlor and that person are relevant persons.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (6) This subsection applies to bodies corporate resident or incorporated outside the United Kingdom which—
- (a) are, or if UK resident would be, close companies, and
 - (b) are not companies whose business consists wholly or mainly of the carrying on of a trade or trades.

[^{F153}(7) In this section—

“relevant lawyer” means a barrister, advocate, solicitor or other legal representative communications with whom may be the subject of a claim to professional privilege or, in Scotland, protected from disclosure in legal proceedings on grounds of confidentiality of communication;

“settlement” and “settlor” have the meanings given by section 620 of ITTOIA 2005.]

- (8) In the application of this section to Scotland, any reference to the trusts of a settlement is a reference to the purposes of the settlement.

Textual Amendments

F150 Words in s. 749 heading substituted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), s. 211(2), **Sch. 21 para. 159(a)** (with [ss. 29, 192, 193](#)); [S.I. 2009/3250](#), art. 2(h)

F151 Words in s. 749 substituted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), s. 211(2), **Sch. 21 para. 159(b)** (with [ss. 29, 192, 193](#)); [S.I. 2009/3250](#), art. 2(h)

F152 Word in s. 749(2) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 46 para. 65(1)** (with [Sch. 46 paras. 65\(2\), 73](#))

F153 S. 749(7) substituted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), s. 211(2), **Sch. 21 para. 159(c)** (with [ss. 29, 192, 193](#)); [S.I. 2009/3250](#), art. 2(h)

750 Restrictions on particulars to be provided by banks

- (1) Section 748 does not oblige a bank to provide any particulars of any ordinary banking transactions between the bank and a customer carried out in the ordinary course of banking business, unless subsection (2) or (3) applies.
- (2) This subsection applies if the bank has acted or is acting on behalf of the customer in connection with—
 - (a) the creation of any settlement as a result of which income becomes payable to a person abroad, or
 - (b) the execution of the trusts of any such settlement.
- (3) This subsection applies if the bank has acted or is acting on behalf of the customer in connection with the formation or management of a body corporate to which section 749(6) applies.
- (4) In this section—

“bank” has the meaning given by section 991, and

“settlement” has the meaning given by section 620 of ITTOIA 2005.
- (5) In the application of this section to Scotland, any reference to the trusts of a settlement is a reference to the purposes of the settlement.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

751 ^{F154}The tribunal’s] jurisdiction on appeals

^{F155}On any appeal that is notified to the tribunal, the jurisdiction of the tribunal] includes jurisdiction to affirm or replace any decision taken by an officer of Revenue and Customs in exercise of the officer’s functions under—

- (a) section 737 (exemption: all relevant transactions post-4 December 2005 transactions),
- (b) section 738 (meaning of “commercial transaction”),
- (c) section 739 (exemption: all relevant transactions pre-5 December 2005 transactions),
- (d) section 742 (partial exemption where later associated operations fail conditions),
- ^{F156}(da) section 742A (post-5 April 2012 transactions: exemption for genuine transactions),]
- (e) section 743(2) (no duplication of charges: choice of persons in relation to whom income is taken into account).

Textual Amendments

F154 Words in s. 751 heading substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 461(2)**

F155 Words in s. 751 substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 461(3)**

F156 S. 751(da) inserted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 10 para. 8**

^{F157}CHAPTER 3

TRANSACTIONS IN LAND

Textual Amendments

F157 Pt. 13 Ch. 3 omitted (with effect in relation to disposals on or after 5.7.2016) by virtue of [Finance Act 2016 \(c. 24\)](#), **ss. 79(5), 82(1)** (with s. 82(2)-(15)); which omission also has effect so far as it would not otherwise have effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **s. 39(1)(2)**

Introduction

752 Overview of Chapter

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753 Meaning of disposing of land

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Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

754 Priority of other income tax provisions

.....

Charge on gains from transactions in land

755 Charge to tax on gains from transactions in land

.....

756 Income treated as arising when gains obtained from some land disposals

.....

757 Person obtaining gain

.....

758 Income charged

.....

759 Person liable

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760 Method of calculating gain

.....

Further provisions relevant to the charge

761 Transactions, arrangements, sales and realisations relevant for Chapter

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762 Tracing value

.....

763 Meaning of “another person”

.....

764 Valuations and apportionments

.....

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

Exemptions

765 Exemption: gain attributable to period before intention to develop formed

.....

766 Exemption: disposals of shares in companies holding land as trading stock

.....

767 Exemption: private residences

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Recovery of tax

768 Recovery of tax where consideration receivable by person not assessed

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769 Recovery of tax: certificates of tax paid etc

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Clearances and power to obtain information

770 Clearance procedure

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771 Power to obtain information

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Interpretation

772 Interpretation of Chapter

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Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

CHAPTER 4

SALES OF OCCUPATION INCOME

Introduction

773 Overview of Chapter

- (1) This Chapter imposes a charge to income tax—
 - (a) on individuals to whom income is treated as arising under section 778 (income arising where capital amount other than derivative property or right obtained), and
 - (b) on individuals to whom income is treated as arising under section 779 (income arising where derivative property or right obtained).
- (2) Income is treated as arising under those sections only if—
 - (a) transactions are effected or arrangements made to exploit the earning capacity of an individual in an occupation, and
 - (b) the main object or one of the main objects of the transactions or arrangements is the avoidance or reduction of liability to income tax.

774 Meaning of “occupation”

In this Chapter references to an occupation, in relation to an individual, are references to any activities of a kind undertaken in a profession or vocation, regardless of whether the individual—

- (a) is carrying on a profession or vocation on the individual's own account, or
- (b) is an employee or office-holder.

775 Priority of other tax provisions

This Chapter has effect subject to—

- (a) Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor), and
- (b) any other provision of the Tax Acts treating income as belonging to a particular person.

Charge on sale of occupation income

776 Charge to tax on sale of occupation income

- (1) Income tax is charged on income treated as arising under—
 - (a) section 778 (income arising where capital amount other than derivative property or right obtained), or
 - (b) section 779 (income arising where derivative property or right obtained).
- (2) Tax is charged under this section on the full amount of income treated as arising in the tax year.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (3) The person liable for any tax charged under this section is the individual to whom the income is treated as arising.
- (4) This section is subject to section 784 (exemption for sales of going concerns).

777 Conditions for sections 778 and 779 to apply

- (1) Sections 778 and 779 apply only if conditions A to C are met in respect of an individual.
- (2) Condition A is that the individual carries on an occupation wholly or partly in the United Kingdom.
- (3) Condition B is that transactions are effected or arrangements made to exploit the individual's earning capacity in the occupation by putting another person (see section 782) in a position to enjoy—
 - (a) all or part of the income or receipts derived from the individual's activities in the occupation, or
 - (b) anything derived directly or indirectly from such income or receipts.
- (4) The reference in subsection (3) to income or receipts derived from the individual's activities includes a reference to payments for any description of copyright or licence or franchise or other right deriving its value from the individual's activities (including past activities).
- (5) Condition C is that as part of, or in connection with, or in consequence of, the transactions or arrangements a capital amount is obtained by the individual for the individual or another person.
- (6) For the purposes of subsection (5), the cases where an individual (“A”) obtains a capital amount for another person (“B”) include cases where A has put B in a position to receive the capital amount by providing B with something of value derived, directly or indirectly, from A's activities in the occupation.
- (7) In this Chapter “capital amount” means an amount in money or money's worth which does not fall to be included in a calculation of income for ^{F158}purposes of the Tax Acts otherwise than as a result of] this Chapter.

Textual Amendments

F158 Words in s. 777(7) substituted (retrospective with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) \(No. 2\) Order 2009 \(S.I. 2009/2859\)](#), [art. 4\(5\)](#)

778 Income arising where capital amount other than derivative property or right obtained

- (1) This section applies if the capital amount obtained as mentioned in section 777(5) does not consist of—
 - (a) property which derives substantially the whole of its value from the individual's activities, or
 - (b) a right which does so.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (2) The capital amount is treated for income tax purposes as income arising to the individual.
- (3) The income is treated as arising in the tax year in which the capital amount is receivable.
- (4) A capital amount is not regarded as having become receivable by a person for the purposes of this section until the person can effectively enjoy or dispose of it.

779 Income arising where derivative property or right obtained

- (1) This section applies if—
 - (a) the capital amount obtained as mentioned in section 777(5) consists of—
 - (i) property which derives substantially the whole of its value from the activities of an individual, or
 - (ii) a right which does so, and
 - (b) the property or right is sold or otherwise realised.
- (2) For the purposes of subsection (1), it does not matter whether the capital amount is obtained on one occasion or on two or more occasions (for example, because the individual acquires a stock option and subsequently exercises it).
- (3) Income of an amount equal to the proceeds of sale or the realised value is treated for income tax purposes as income arising to the individual.
- (4) The income is treated as arising in the tax year in which the property or right is sold or otherwise realised.

Further provisions relevant to the charge

780 Transactions, arrangements, sales and realisations relevant for Chapter

- (1) For the purposes of this Chapter, account is to be taken of any method, however indirect, by which—
 - (a) any property or right is transferred or transmitted, or
 - (b) the value of any property or right is enhanced or diminished.
- (2) Accordingly—
 - (a) the occasion of the transfer or transmission of any property or right however indirect, and
 - (b) the occasion when the value of any property or right is enhanced, may be an occasion when tax is charged under this Chapter.
- (3) Subsections (1) and (2) apply in particular—
 - (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
 - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning—
 - (i) share capital or other rights in a company,
 - (ii) rights in a partnership, or
 - (iii) an interest in settled property,

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- (c) to the creation of an option and the giving of consideration for granting it,
- (d) to the creation of a requirement for consent and the giving of consideration for granting it,
- (e) to the creation of an embargo affecting the disposition of any property or right and the giving of consideration for releasing it, and
- (f) to the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

781 Tracing value

- (1) This section applies if it is necessary to determine the extent to which the value of any property or right is derived from any other property or right for the purposes of this Chapter.
- (2) Value may be traced through any number of companies, partnerships and trusts.
- (3) The property held by a company, partnership or trust must be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.

782 Meaning of “other person”

- (1) For the purposes of this Chapter references to other persons are to be read in accordance with subsections (2) to (4).
- (2) A partnership or partners in a partnership may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.
- (3) The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being trustees.
- (4) Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.

783 Valuations and apportionments

- (1) All such valuations are to be made as are appropriate to give effect to this Chapter.
- (2) For the purposes of this Chapter, any expenditure, receipt, consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances.

Exemption for sales of going concerns

784 Exemption for sales of going concerns

- (1) This section applies if a capital amount is obtained from the disposal—
 - (a) of assets (including any goodwill) of a profession or vocation,
 - (b) of a share in a partnership which is carrying on a profession or vocation, or
 - (c) of shares in a company.
- (2) An individual is not liable to income tax under this Chapter in respect of the capital amount so far as the going concern condition is met (see subsections (4) and (5)).

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (3) Subsection (2) is subject to section 785 (restriction on exemption: sales of future earnings).
- (4) In the case of a disposal within subsection (1)(a) or (b), the going concern condition is that the value of what is disposed of at the time of disposal is attributable to the value of the profession or vocation as a going concern.
- (5) In the case of a disposal within subsection (1)(c), the going concern condition is that the value of what is disposed of at the time of disposal is attributable to the value of the company's business as a going concern.
- (6) In subsection (5) the reference to the company's business includes a reference to the business of any other company in which it holds shares directly or indirectly.

785 Restriction on exemption: sales of future earnings

- (1) This section applies if the value as a going concern mentioned in section 784(4) or (5) is derived to a material extent from prospective income or receipts derived directly or indirectly from the individual's activities in the occupation.
- (2) The exemption under section 784 applies to the value so derived only if the future earnings condition is met.
- (3) The future earnings condition is met if, ignoring all capital amounts, the individual will receive full consideration for the prospective income or receipts, whether as a partner in a partnership or as an employee or otherwise.
- (4) The references in subsections (1) and (3) to income or receipts include references to payments for any description of copyright, licence, franchise or other right deriving its value from the individual's activities (including past activities).

Recovery of tax

786 Recovery of tax where consideration receivable by person not assessed

- (1) This section applies if a person (“A”) is assessed to tax under this Chapter in respect of consideration receivable by another person (“B”).
- (2) Consideration is not regarded as having become receivable by B for this purpose until B can effectively enjoy or dispose of it.
- (3) A is entitled to recover from B any part of the tax which A has paid.
- (4) If any part of the tax remains unpaid at the end of the period of 6 months beginning with the date when it became due and payable, it is recoverable from B as if B were the person assessed.
- (5) Subsection (4) does not affect the right to recover the tax from A.
- (6) For the purposes of this section, any income which an individual is treated as having as a result of this Chapter (the “occupation income”) is treated as the highest part of the individual's total income.
- (7) But if in the tax year—

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- (a) more than one capital amount is treated as the individual's occupation income, or
 - (b) the individual is also treated as having income as a result of Chapter 3 (transactions in land),
- only a just and reasonable proportion of each capital amount treated as occupation income is to be treated as the highest part of the individual's total income.
- (8) See section 1012 for the relationship between—
- (a) the rules in subsections (6) and (7), and
 - (b) other rules requiring particular income to be treated as the highest part of a person's total income.

787 Recovery of tax: certificates of tax paid etc

- (1) For the purposes of section 786(3), an officer of Revenue and Customs must, if requested to do so, produce a certificate specifying—
- (a) the amount of income in respect of which tax has been paid, and
 - (b) the amount of tax paid.
- (2) The certificate is conclusive evidence of any facts stated in it.
- (3) See also section 944 (under which directions may be given for payments within this Chapter to non-UK residents to be subject to a duty to deduct income tax).

Power to obtain information

^{F159}788 Power to obtain information

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Textual Amendments

F159 S. 788 omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, [Sch. para. 50](#)

Interpretation

789 Minor definitions

In this Chapter—

- “company” includes any body corporate, and
- “share” includes stock.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

CHAPTER 5

AVOIDANCE INVOLVING TRADING LOSSES

Introduction

790 Overview of Chapter

- (1) This Chapter imposes charges to income tax on—
 - (a) individuals who are treated as receiving income under section 792 (individuals in partnership claiming excess relief),
 - (b) individuals who are treated as receiving income under section 797 (individuals claiming relief for film-related trading losses), and
 - (c) individuals who are treated as receiving income under section 805 (individuals in partnership claiming relief for licence-related trading losses).
- (2) The charges apply if (among other things) the individual makes a loss in a trade for which the individual claims sideways relief or capital gains relief.
- (3) For the purposes of this Chapter sideways relief is—
 - (a) trade loss relief against general income (see sections 64 to 70), or
 - (b) early trade losses relief (see sections 72 to 74).
- (4) For the purposes of this Chapter—
 - (a) capital gains relief is, in relation to a loss, the treatment of the loss as an allowable loss by virtue of section 261B of TCGA 1992 (use of trading loss as a CGT loss), and
 - (b) capital gains relief is claimed for a loss when a claim under that section is made in relation to the loss.
- (5) References in this Chapter to a firm are to be read in the same way as references to a firm in Part 9 of ITTOIA 2005 (which contains special provision about partnerships).

Individuals in partnership: recovery of excess relief

791 Charge to tax on income treated as received under section 792

- (1) Income tax is charged on income treated as received by an individual under section 792.
- (2) Tax is charged under this section on the amount of the income treated as received in the tax year.
- (3) The person liable for any tax charged under this section is the individual treated as receiving the income.

792 Partners claiming excess sideways or capital gains relief

- (1) This section applies if—
 - (a) an individual carrying on a trade (“the relevant trade”) as a partner in a firm makes post-1 December 2004 losses in the relevant trade for which the individual claims relief within subsection (2),

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (b) any of sections 104, 107 and 110 applies in relation to the relief (whether or not any of those sections restricts the amount of the relief), and
 - (c) after the individual makes the claim or claims, a chargeable event occurs.
- (2) The relief within this subsection is—
- (a) sideways relief but only if the whole or part of the relief is claimed against income of the individual apart from profits of the relevant trade, and
 - (b) capital gains relief.
- (3) A chargeable event occurs whenever—
- (a) the amount of the individual's contribution to the firm is reduced as a result of the application of regulations made under section 114, and
 - (b) that reduction in the individual's contribution to the firm immediately results in—
 - (i) the total amount of trade losses claimed (less any reclaimed relief) becoming greater than the contribution, or
 - (ii) an increase in the amount by which the total amount of trade losses claimed (less any reclaimed relief) exceeds the contribution.
- (4) The individual is treated as receiving an amount of income every time a chargeable event occurs.

The income is treated as arising otherwise than as profits of a trade.

- (5) The amount of the income is calculated in accordance with section 793.
- (6) If—
- (a) the firm is carrying on, or has carried on, more than one trade, and
 - (b) subsection (1)(a) and (b) applies in relation to losses made by the individual in one or more of those trades as a partner in the firm,
- the firm's trades are taken together for the purpose of determining whether a chargeable event occurs at any time after a claim in relation to any of those losses has been made and, if one does occur, the amount of income treated as received by the individual at that time.

See section 794(6) for modifications giving effect to this.

- (7) References in this section to an individual being a partner in a firm include a reference to an individual being a limited partner within the meaning of section [F¹⁶⁰103A] as a result of subsection (1)(c) of that section.
- (8) And, accordingly, in the case of an individual who is such a limited partner, in this section and in sections 793 to 795 references to the individual's firm are references to the relationship between the individual and the other persons mentioned in section [F¹⁶¹103A(3)(a)].

Textual Amendments

F160 Word in s. 792(7) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 4 paras. 17\(a\), 21](#)

F161 Word in s. 792(8) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 4 paras. 17\(b\), 21](#)

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

793 Calculating the amount of income treated as received

- (1) The amount of income treated as received by the individual under section 792 when the chargeable event occurs is the lowest of amounts A to C.
- (2) Amount A is the amount by which the individual's contribution to the firm is reduced as a result of the application of regulations made under section 114.
- (3) Amount B is the amount given by—
 - (a) taking, at the time immediately after the chargeable event occurs, the total amount of trade losses claimed that are post-1 December 2004 losses, and
 - (b) reducing that amount (but not below nil) by any reclaimed relief.
- (4) Amount C is the amount given by—
 - (a) taking the amount by which, at the time immediately after the chargeable event occurs, the total amount of trade losses claimed exceeds the individual's contribution to the firm, and
 - (b) reducing that amount (but not below nil) by any reclaimed relief.

794 Meaning of “the total amount of trade losses claimed” etc

- (1) In sections 792 and 793 “the total amount of trade losses claimed” means the total amount of losses within subsection (2) for which the individual has claimed sideways relief or capital gains relief.
- (2) The losses within this subsection are losses made by the individual in the relevant trade—
 - (a) in a tax year at a time during which the individual carries on the relevant trade as a limited partner or as a member of an LLP, or
 - (b) in an early tax year during which the individual carries on the relevant trade as a non-active partner.

Expressions used in this subsection are to be read as if contained in Chapter 3 of Part 4.

- (3) In sections 792 and 793 “reclaimed relief” means the total amount of income treated as received by the individual under section 792 as a result of that section being previously applied in relation to claims for relief for losses made by the individual in the relevant trade.
- (4) In sections 792 and 793 “the individual's contribution to the firm” at any time means the individual's contribution to the firm or the LLP (as the case may be) at that time as calculated for the purposes of the relevant restriction provision.
- (5) The “relevant restriction provision” means—
 - (a) whichever of sections 104, 107 and 110 applied as mentioned in section 792(1)(b), or
 - (b) if more than one of those sections applied as mentioned in section 792(1)(b), the section which so applied to the amount of relief which could be given for the loss most recently made by the individual in the relevant trade.
- (6) In a case to which section 792(6) applies, for the purpose of determining the total amount of trade losses claimed, the amount of the reclaimed relief and the relevant restriction provision—

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (a) apply subsections (1) and (2) in relation to each of the trades that the firm is carrying on, or has carried on, and then add the results together, and
- (b) apply subsections (3) and (5)(b) as if references to the relevant trade were references to any of the trades that the firm is carrying on, or has carried on.

But if a trade is of the kind mentioned in section 110(8), do not apply subsection (2)(b) in relation to it.

795 Meaning of “post-1 December 2004 loss”

- (1) For the purposes of sections 792 and 793 a “post-1 December 2004 loss” means—
 - (a) any loss made by an individual in a trade in a tax year the basis period for which begins on or after 2 December 2004, or
 - (b) the post-1 December 2004 part of any loss made by an individual in a trade in a tax year the basis period for which includes 2 December 2004 (but begins before that date).
- (2) The “post-1 December 2004 part” of any loss made by an individual in a trade means the individual's share of any losses made by the relevant firm in the trade in the period—
 - (a) beginning with 2 December 2004, and
 - (b) ending with the end of the basis period for the tax year concerned.
- (3) For this purpose “the relevant firm” means the firm in which the individual carried on the trade, and—
 - (a) the losses of that firm are calculated as if that period were one for which profits and losses had to be calculated for the purposes of section 849 of ITTOIA 2005 (calculation of firm's profits or losses), and
 - (b) the individual's share of the losses is determined in accordance with the individual's interest in the firm during that period.
- (4) In this section “basis period”, in relation to an individual with a notional trade, means the basis period for the notional trade (within the meaning of Part 9 of ITTOIA 2005).

Individuals claiming relief for film-related trading losses

796 Charge to tax on income treated as received under section 797

- (1) Income tax is charged on income treated as received by an individual under section 797.
- (2) Tax is charged under this section on the amount of the income treated as received in the tax year.
- (3) The person liable for any tax charged under this section is the individual treated as receiving the income.

797 Individuals claiming sideways or capital gains relief for film-related losses

- (1) This section applies if—

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (a) an individual makes a film-related loss (see section 800) in a trade for which the individual claims sideways relief or capital gains relief (a “relevant claim”),
 - (b) there is a disposal of a right of the individual to profits arising from the trade (a “relevant disposal”) (see section 799), and
 - (c) an exit event occurs.
- (2) An exit event occurs whenever—
- (a) the individual receives any non-taxable consideration (see section 798) for a relevant disposal, or
 - (b) an increase in the individual's claimed film-related losses (see section 800) or a decrease in the individual's capital contribution (see section 801) results in—
 - (i) those losses becoming greater than that contribution, or
 - (ii) an increase in the amount by which those losses exceed that contribution.
- (3) The individual is treated as receiving an amount of income every time a chargeable event occurs.

The income is treated as arising otherwise than as profits of the trade.

- (4) A chargeable event occurs whenever—
- (a) the individual makes a relevant claim (if by that time a relevant disposal and an exit event have occurred),
 - (b) a relevant disposal occurs (if by that time an exit event has occurred and the individual has made a relevant claim), or
 - (c) an exit event occurs (if by that time a relevant disposal has occurred and the individual has made a relevant claim).
- (5) The amount of income treated as received when a chargeable event occurs is equal to the sum of—
- (a) the total amount or value of all non-taxable consideration received by the individual for relevant disposals, and
 - (b) the amount (if any) by which the individual's claimed film-related losses exceed the individual's capital contribution.

The calculation in this subsection is made immediately after the chargeable event occurs and is subject to section 803.

- (6) For the purposes of this section it does not matter—
- (a) if the individual (or anyone else) is still carrying on the trade when a chargeable event occurs, or
 - (b) if the individual receives both non-taxable and taxable consideration for a relevant disposal.

798 Meaning of “non-taxable consideration” etc

- (1) This section applies for the purposes of section 797.
- (2) Consideration is non-taxable if (apart from section 796) it is not chargeable to income tax.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (3) Non-taxable consideration from which a deduction within subsection (4) is made is treated as received free of the deduction.
- (4) A deduction is within this subsection if it is in consideration of any person's agreeing to, or facilitating, any relevant disposal or exit event.

799 Meaning of “disposal of a right of the individual to profits” etc

- (1) For the purposes of section 797 any reference to a disposal of a right of an individual to profits arising from a trade includes, in particular, any of events A to D.
- (2) Event A is the disposal, giving up or loss by—
 - (a) the individual, or
 - (b) a firm in which the individual is a partner,of a right arising from the trade to income (or any part of any income).

It does not matter if the right is disposed of, given up or lost as part of a larger disposal, giving up or loss.
- (3) Event B is the disposal, giving up or loss of the individual's interest in a firm that carries on the trade (including the dissolution of the firm).
- (4) Event C is a default in the payment of income to which—
 - (a) the individual, or
 - (b) a firm in which the individual is a partner,has a right arising from the trade.
- (5) Event D is a change in the individual's entitlement to any profits or losses arising from the trade the effect of which is that—
 - (a) the individual's share of any profits is reduced (including to nil), or
 - (b) the individual becomes entitled to a share, or a greater share, of any losses without becoming entitled to a corresponding share of profits.
- (6) The changes covered by event D include cases where there is an agreement under which the individual is entitled—
 - (a) to a particular share of any profits or losses arising from the trade in a period (including a nil share), and
 - (b) to a different share of any such profits or losses in a succeeding period (including a nil share).
- (7) In such cases the change in the individual's entitlement is treated for the purposes of section 797 as occurring at the beginning of the succeeding period.

800 Meaning of “film-related losses” etc

- (1) This section applies for the purposes of sections 797, 801 and 802.
- (2) A loss is a “film-related loss” if the calculation of profits or losses that it results from is made in accordance with any provision of Chapter 9 of Part 2 of ITTOIA 2005.
- (3) “The individual's claimed film-related losses” means—
 - (a) the total amount of film-related losses made by the individual in the trade so far as they are losses for which the individual has made a relevant claim, less

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (b) the amount of any relevant recovered relief.
- (4) “The amount of any relevant recovered relief” means—
 - (a) amount A, or
 - (b) if less, amount B.
- (5) Amount A is the total amount of income treated as received by the individual under section 792 (recovery of excess relief) as a result of the application of that section in relation to claims for relief for losses made by the individual in the trade.
- (6) Amount B is the total amount of film-related losses within subsection (7) for which the individual has made a relevant claim.
- (7) A loss is within this subsection if it is made by the individual in the trade—
 - (a) in a tax year at a time during which the individual carries on the trade as a member of an LLP or as a limited partner, or
 - (b) in an early tax year during which the individual carries on the trade as a non-active partner.
- (8) Expressions used in subsection (7) are to be read as if contained in Chapter 3 of Part 4.
- (9) Subsection (10) applies if—
 - (a) the individual has made a relevant claim for a film-related loss made in the trade as a partner in a firm, and
 - (b) the firm is carrying on, or has carried on, more than one trade.
- (10) For the purpose of determining the individual's claimed film-related losses—
 - (a) apply subsection (3)(a) in relation to each of the trades and then add the results together,
 - (b) apply subsection (5) as if the reference to the trade were a reference to any of the trades, and
 - (c) apply subsections (6) and (7) in relation to each of the trades and then add the results together.

801 Meaning of “capital contribution”

- (1) This section applies for the purposes of section 797.
- (2) The individual's capital contribution is the amount which the individual has contributed to the trade as capital less so much of that amount (if any) as is within subsection (6).

This is subject to subsection (3).
- (3) If the individual has made a relevant claim for a film-related loss made in the trade as a partner in a firm, the individual's capital contribution is the amount which the individual has contributed to the firm as capital less so much of that amount (if any) as is within subsection (6).
- (4) In particular, the individual's share of any profits of the firm is to be included for the purposes of subsection (3) in the amount which the individual has contributed to the firm as capital so far as that share has been added to the firm's capital.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (5) In subsection (4) the reference to profits are to profits calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits for income tax purposes).
- (6) An amount of capital is within this subsection if it is an amount which—
 - (a) the individual has previously drawn out or received back,
 - (b) the individual is entitled to draw out or receive back,
 - (c) another person has reimbursed to the individual, or
 - (d) the individual is entitled to require another person to reimburse to the individual.
- (7) But if a chargeable event occurs, anything treated for the purposes of section 797(5)(a) as consideration received by the individual for a relevant disposal is not to be treated as capital within subsection (6) in calculating the individual's capital contribution for the purposes of section 797(5)(b).
- (8) In this section—
 - (a) any reference to drawing out, receiving back or reimbursing an amount is to doing so directly or indirectly,
 - (b) any reference to drawing out or receiving back an amount does not include drawing out or receiving back an amount which, because of its being drawn out or received back, is chargeable to income tax as profits of a trade, and
 - (c) any reference to reimbursing an amount includes discharging or assuming all or part of a liability of the individual,but the express provision made by paragraph (c) does not affect what counts as the receipt back or reimbursement of an amount.
- (9) This section needs to be read with any regulations made under section 802 (specified amounts to be excluded in calculating a partner's capital contribution for the purposes of section 797).

802 Exclusion of amounts in calculating capital contribution by a partner

- (1) This section applies if an individual makes a relevant claim for a film-related loss made by the individual in a trade as a partner in a firm.
- (2) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that any amount of a specified description is to be excluded in calculating the individual's capital contribution for the purposes of section 797.
- (3) “Specified” means specified in the regulations.
- (4) The regulations may—
 - (a) make provision having retrospective effect,
 - (b) contain incidental, supplemental, consequential and transitional provision and savings, and
 - (c) make different provision for different cases or purposes.
- (5) The provision which may be made as a result of subsection (4)(b) includes provision amending or repealing any provision of an Act passed before FA 2005.
- (6) No regulations may be made under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

803 Prohibition against double counting

- (1) Subsections (2) and (3) apply for the purpose of calculating the amount of income received under section 797 on a chargeable event in respect of the individual and the trade.
- (2) If chargeable events have previously occurred in respect of the individual and the trade, any consideration taken into account in calculating the amount of income received on an earlier chargeable event is left out of account.
- (3) If chargeable events have previously occurred in respect of the individual and the trade, the amount of income received as a result of section 797(5)(b) is reduced (but not below nil) by the total amount of income received on earlier chargeable events as a result of that provision.
- (4) In a case to which section 800(10) (cases in which firm is carrying on, or has carried on, more than one trade) applies—
 - (a) subsections (2) and (3) of this section have effect as if references to the trade were references to any of the firm's trades, and
 - (b) if chargeable events in respect of the individual and any of the firm's trades occur at the same time, to find the total amount of income received under section 797 at that time on those chargeable events—
 - (i) calculate separately the income received on each chargeable event ignoring the other chargeable events,
 - (ii) add the results from sub-paragraph (i) together, and
 - (iii) reduce the total amount of income resulting from sub-paragraph (ii) so far as necessary to ensure that no amount is included more than once in that total.

Individuals in partnership claiming relief for licence-related trading losses

804 Charge to tax on income treated as received under section 805

- (1) Income tax is charged on income treated as received by an individual under section 805.
- (2) Tax is charged under this section on the amount of the income treated as received in the tax year.
- (3) The person liable for any tax charged under this section is the individual treated as receiving the income.

805 Partners claiming relief for licence-related trading losses

- (1) This section applies if—
 - (a) an individual carries on a trade as a non-active partner during an early tax year,
 - (b) the individual makes a loss in the trade in that tax year for which the individual claims sideways relief or capital gains relief (a “relevant claim”),
 - (c) the loss derives to any extent from expenditure incurred in the trade in exploiting a licence acquired in carrying on the trade, and
 - (d) there is a relevant disposal of the licence.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (2) For the purposes of this section and section 806 there is a relevant disposal of the licence whenever the individual receives non-taxable consideration for—
- (a) a disposal of the licence, or
 - (b) a disposal of a right to income under an agreement related to or containing the licence.
- (3) If one or more chargeable events occur in any tax year, the individual is treated as receiving an amount of income in the tax year.
- The income is treated as arising otherwise than as profits of the trade.
- (4) For the purposes of this section and section 806 a chargeable event occurs whenever—
- (a) there is a relevant disposal of the licence (if by that time the individual has made a relevant claim), or
 - (b) the individual makes a relevant claim (if by that time there has been a relevant disposal of the licence).
- (5) For the purposes of this section and section 806 consideration is non-taxable if—
- (a) (apart from section 804) it is not chargeable to income tax, and
 - (b) its receipt is not an exit event for the purposes of section 797.
- (6) For the purposes of this section and section 806 it does not matter—
- (a) if the individual (or anyone else) is still carrying on the trade when a chargeable event occurs,
 - (b) if the individual receives both non-taxable and taxable consideration for a relevant disposal of the licence, or
 - (c) if a relevant disposal of the licence is part of a larger disposal.

806 Calculation of amount of income treated as received by the individual

The amount of income treated under section 805 as received by the individual in the tax year is calculated by taking the following steps. *Step 1*

Calculate, at the end of the tax year, the total amount of the claimed losses (so far as relating to the licence) made by the individual in the trade in any early tax year during which the individual carried on the trade as a non-active partner.

Step 2

Calculate, at the end of the tax year, the total amount of the profits (so far as relating to the licence) made by the individual in the trade in any tax year.

Step 3

Deduct the total calculated at Step 2 from the total calculated at Step 1.

The result is “the net licence-related loss”.

If the net licence-related loss is nil or a negative figure—

- (a) the income treated as received in the tax year is nil, and
- (b) ignore Steps 4 and 5.

Step 4

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

Calculate, at the end of the tax year, the total amount or value of all non-taxable consideration received by the individual for relevant disposals (including consideration received in previous tax years).

Step 5

Deduct from—

- (a) the net licence-related loss, or
- (b) if less, the total calculated at Step 4,

the total amount of all income treated under section 805 as received by the individual in previous tax years as a result of chargeable events.

The result is the amount of the income treated as received in the tax year.

(If the result is a negative figure, the income is nil.)

807 Supplementary provision relating to calculation in section 806

- (1) This section applies for the purposes of section 806.
- (2) For the purposes of Step 1, the amount of a loss made in a tax year that relates to the licence is so much of the loss in the tax year as derives from expenditure incurred in the trade in exploiting the licence.
- (3) The amount of the loss that derives from such expenditure is determined on a just and reasonable basis.
- (4) For the purposes of Step 1, a loss is a claimed loss if the individual has claimed sideways relief or capital gains relief for the loss.
- (5) For the purposes of Step 2, the amount of profits made in a tax year that relates to the licence is so much of the individual's profits from the trade in the tax year as derives from income arising from an agreement related to or containing the licence.
- (6) The amount of the profits that derives from such income is determined on a just and reasonable basis.

808 Meaning of “disposal of the licence” etc

- (1) For the purposes of section 805 any reference to—
 - (a) a disposal of a licence acquired in carrying on a trade, or
 - (b) a disposal of a right to income under an agreement related to or containing a licence acquired in carrying on a trade (“a licence-related agreement”),
 includes, in particular, any of events A to E.
- (2) Event A is the revocation of the licence.
- (3) Event B is the disposal, giving up or loss of—
 - (a) a right under the licence, or
 - (b) a right to income (or any part of any income) under a licence-related agreement,
 by the individual or by a firm in which the individual is a partner.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

It does not matter if the right is disposed of, given up or lost as part of a larger disposal, giving up or loss.

- (4) Event C is the disposal, giving up or loss of the individual's interest in a firm that has the licence or a right to income under a licence-related agreement (including the dissolution of the firm).
- (5) Event D is a default in the payment of income to which—
 - (a) the individual, or
 - (b) a firm in which the individual is a partner, has a right under a licence-related agreement.
- (6) Event E is a change in the individual's entitlement to any profits or losses relating to the licence the effect of which is that—
 - (a) the individual's share of any profits is reduced (including to nil), or
 - (b) the individual becomes entitled to a share, or a greater share, of any losses without becoming entitled to a corresponding share of profits.
- (7) The changes covered by event E include cases where there is an agreement under which the individual is entitled—
 - (a) to a particular share of any profits or losses relating to the licence in a period (including a nil share), and
 - (b) to a different share of any such profits or losses in a succeeding period (including a nil share).
- (8) In such cases the change in the individual's entitlement is treated for the purposes of section 805 as occurring at the beginning of the succeeding period.
- (9) For the purposes of this section—
 - (a) references to any profits relating to the licence are to any profits deriving to any extent from income to which the individual has a right under a licence-related agreement, and
 - (b) references to any losses relating to the licence are to losses deriving to any extent from expenditure incurred in exploiting the licence.

809 Other definitions

- (1) References in sections 805 and 806 to an individual carrying on a trade as a non-active partner in an early tax year are to be read as if those sections were contained in Chapter 3 of Part 4 (see, in particular, section [F¹⁶²103B]).
- (2) But for that purpose, section [F¹⁶³103B(1)(b)] (which contains a requirement that the individual does not carry on the trade as a limited partner at any time during the tax year) is treated as if it were omitted.
- (3) For the purposes of sections 805 to 808 an agreement is related to a licence if the agreement and licence are entered into under the same arrangement (regardless of when the agreement or licence is entered into).
- (4) For the purposes of sections 805 to 808 an agreement, or part of an agreement, is not prevented from being a licence merely because it imposes an obligation to do a thing (rather than merely gives authority to do it).

References to exploiting a licence are to be read in that light.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

Textual Amendments

- F162** Word in s. 809(1) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 18\(a\), 21](#)
- F163** Word in s. 809(2) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 18\(b\), 21](#)

[^{F164}CHAPTER 5A

TRANSFERS OF INCOME STREAMS

Textual Amendments

- F164** Pt. 13 Ch. 5A inserted (with effect in accordance with Sch. 25 para. 10 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 25 para. 7](#)

809AZA Application of Chapter

- (1) This Chapter applies where—
 - (a) a person within the charge to income tax (“the transferor”) makes a transfer to another person (“the transferee”) of a right to relevant receipts (see subsection (2)), and
 - (b) (subject to subsection (3)) the transfer of the right is not a consequence of the transfer to the transferee of an asset from which the right to relevant receipts arises.
- (2) “Relevant receipts” means any income—
 - (a) which (but for the transfer) would be charged to income tax as income of the transferor, or
 - (b) which (but for the transfer) would be brought into account in calculating profits of the transferor for the purposes of income tax.
- (3) Despite paragraph (b) of subsection (1), this Chapter applies if the transfer of the right is a consequence of the transfer to the transferee of all rights under an agreement for annual payments; and for the purposes of that paragraph the transfer of an asset under a sale and repurchase agreement is not to be regarded as a transfer of the asset.
- (4) Section 809AZB makes provision as to the consequences of this Chapter applying.
- (5) For exclusions from this Chapter, see—
 - (a) section 809AZC (amount otherwise taxed),
 - (b) section 809AZD (certain annuities), and
 - (c) section 809AZE (transfer by way of security).
- (6) Section 809AZF makes special provision about transfers of partnership shares.
- (7) Section 809AZG contains supplementary provisions.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

809AZB Value of transferred income stream treated as income

- (1) The relevant amount (see subsection (2)) is to be treated as income of the transferor chargeable to income tax in the same way and to the same extent as that in which the relevant receipts—
 - (a) would have been chargeable to income tax, or
 - (b) would have been brought into account in calculating any profits for the purposes of income tax,but for the transfer of the right to relevant receipts.
- (2) The relevant amount is—
 - (a) (except where paragraph (b) applies) the amount of the consideration for the transfer of the right, or
 - (b) where the amount of any such consideration is substantially less than the market value of the right at the time when the transfer takes place (or where there is no consideration for the transfer of the right), the market value of the right at that time.
- (3) The income under subsection (1) is to be treated as arising in the chargeable period of the transferor in which the transfer takes place.
- (4) But subsection (5) applies if (apart from the transfer) any of the relevant receipts—
 - (a) would have been brought into account in accordance with Part 2 or 3 of ITTOIA 2005 (trading income and property income) in calculating any profits for the purposes of income tax, and
 - (b) in accordance with generally accepted accounting practice, would have been recognised otherwise than wholly in the chargeable period in which the transfer takes place.
- (5) If this subsection applies, the income under subsection (1) is to be treated as arising—
 - (a) to the extent that it does not exceed the amount of the consideration for the transfer of the right, in the chargeable period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer is recognised for accounting purposes in a profit and loss account or income statement of the transferor, and
 - (b) otherwise, in the chargeable period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer would be so recognised if it were of an amount equal to the market value of the right at the time when the transfer takes place.
- (6) But if in a case where the transferor is a company it at any time becomes reasonable to assume that the income (to any extent) is not, or would not be, treated by subsection (5) as arising in an accounting period of the transferor, the income is to that extent to be treated as arising immediately before that time.

809AZC Exception: amount otherwise taxed

This Chapter does not apply if and to the extent that the income under section 809AZB(1) is (apart from this Chapter)—

- (a) charged to tax as income of the transferor,
- (b) brought into account in calculating the profits of the transferor, or
- (c) brought into account under CAA 2001.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

809AZD Exception: certain annuities

This Chapter does not apply to a transfer of a right to—

- (a) annual payments under a life annuity as defined in section 473(2) of ITTOIA 2005, or
- (b) annual payments under an annuity which is pension income within the meaning of Part 9 of ITEPA 2003 (see section 566(2) of that Act).

[^{F165}809AZE Exception: transfer by way of security

(1) This Chapter does not apply if—

- (a) the consideration for the transfer is the advance under a type 1 finance arrangement, and
- (b) the transferor is, or is a member of a partnership which is, the borrower in relation to the arrangement.

(2) This Chapter does not apply if—

- (a) the consideration for the transfer is the advance under a type 2 finance arrangement or a type 3 finance arrangement, and
- (b) the transferor is a member of the partnership which receives that advance under the arrangement.

(3) In this section—

“type 1 finance arrangement” has the meaning given for the purposes of Chapter 5B by section 809BZA,

“type 2 finance arrangement” has the meaning given for the purposes of Chapter 5B by section 809BZF, and

“type 3 finance arrangement” has the meaning given for the purposes of Chapter 5B by section 809BZJ.]

Textual Amendments

F165 S. 809AZE substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 273](#) (with Sch. 9 paras. 1-9, 22)

809AZF Partnership shares

(1) For the purposes of this Chapter a transfer of a right to relevant receipts consisting of the reduction in a transferor's share in the profits or losses of a partnership is to be regarded as a consequence of a transfer of an asset from which the right arose (that is, the partnership property) ^{F166}....

^{F167}(2)

^{F167}(3)

Textual Amendments

F166 Words in s. 809AZF(1) omitted (with effect in accordance with Sch. 17 para. 23(4) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\), Sch. 17 para. 23\(2\)](#)

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

F167 S. 809AZF(2)(3) omitted (with effect in accordance with Sch. 17 para. 23(4) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 17 para. 23\(3\)](#)

809AZG Interpretation

- (1) For the purposes of this Chapter—
 - (a) the grant or surrender of a lease of land is to be regarded as a transfer of the land, and
 - (b) the disposal of an interest in an oil licence (within the meaning of section 809 of CTA 2009) is to be regarded as a transfer of the oil licence.
- (2) The Treasury may by order make other provision for securing that other transactions are to be regarded as transfers of assets for those purposes.
- (3) In this Chapter—
 - (a) references to a transfer include sale, exchange, gift and assignment (or assignation) and any other arrangement which equates in substance to a transfer, and
 - (b) references to a transfer taking place are, in the case of an arrangement other than a sale, exchange, gift or assignment (or assignation), to the making of the arrangement.
- (4) A transfer to or by any partnership of which the transferor or transferee is a member, and a transfer to the trustees of any trust of which the transferor is a beneficiary, counts as a transfer in relation to which this Chapter applies.]

[^{F168} CHAPTER 5AA

DISPOSALS OF INCOME STREAMS THROUGH PARTNERSHIPS

Textual Amendments

F168 Pt. 13 Ch. 5AA inserted (with effect in accordance with Sch. 17 para. 24(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 para. 24\(1\)](#)

809AAZ Application of Chapter

- (1) This Chapter applies (subject to subsection (2)) if directly or indirectly in consequence of, or otherwise in connection with, arrangements involving a person within the charge to income tax (“the transferor”) and another person (“the transferee”)—
 - (a) there is, or is in substance, a disposal of a right to relevant receipts by the transferor to the transferee,
 - (b) the disposal is effected (wholly or partly) by or through a partnership (“the relevant partnership”),
 - (c) at any time—
 - (i) the transferor is a member of the relevant partnership or of a partnership associated with the relevant partnership, and
 - (ii) the transferee is a member of the relevant partnership or of a partnership associated with the relevant partnership, and

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (d) the main purpose, or one of the main purposes, of one or more steps taken in effecting the disposal is the obtaining of a tax advantage for any person.
- (2) This Chapter does not apply if—
- (a) the transferor is the spouse or civil partner of the transferee and they are living together, or
 - (b) the transferor is a brother, sister, ancestor or lineal descendant of the transferee.
- (3) In subsection (1)(a) the reference to a disposal of a right to relevant receipts includes anything constituting a disposal of such a right for the purposes of TCGA 1992.
- (4) For the purposes of subsection (1)(b) the disposal might, in particular, be effected by an acquisition or disposal of, or an increase or decrease in, an interest in the relevant partnership (including a share of the profits or assets of the relevant partnership or an interest in such a share).
- (5) For the purposes of subsection (1)(c) it does not matter if the transferor and the transferee are not members of a partnership as mentioned at the same time.
- (6) For the purposes of subsection (1)(c) a partnership is “associated” with the relevant partnership if—
- (a) it is a member of the relevant partnership, or
 - (b) it is a member of a partnership which is associated with the relevant partnership (whether by virtue of paragraph (a) or this paragraph).
- (7) In subsections (1)(c) and (5) references to the transferor include a person connected with the transferor and references to the transferee include a person connected with the transferee.
- (8) In this Chapter—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
- “partnership” includes a limited liability partnership whether or not section 863(1) of ITTOIA 2005 applies in relation to it,
- “relevant receipts” means any income—
- (a) which (but for the disposal) would be charged to income tax as income of the transferor (whether directly or as a member of a partnership), or
 - (b) which (but for the disposal) would be brought into account as income in calculating profits of the transferor (whether directly or as a member of a partnership) for income tax purposes, and
- “tax advantage” means a tax advantage, as defined in section 1139 of CTA 2010, in relation to income tax or the charge to corporation tax on income.

809AAZ Relevant amount to be treated as income

- (1) The relevant amount is to be treated as income of the transferor chargeable to income tax in the same way and to the same extent as that in which the relevant receipts—
- (a) would have been chargeable to income tax as income of the transferor, or
 - (b) would have been brought into account as income in calculating profits of the transferor for income tax purposes,
- but for the disposal.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (2) In subsection (1) “the relevant amount” is to be read in accordance with section 809AZB(2) and section 809AZB(3) to (6) applies for the purpose of determining when income under subsection (1) is treated as arising.
- (3) For this purpose, in section 809AZB(2) to (6) references to the transfer of the right are to be read as references to the disposal of the right.
- (4) If, apart from this subsection and section 809DZB(3)—
 - (a) both this Chapter and Chapter 5D would apply in relation to the disposal, and
 - (b) Chapter 5D would give a greater amount of income of the transferor chargeable to income tax,this Chapter is not to apply in relation to the disposal.]

[^{F169}CHAPTER 5B

FINANCE ARRANGEMENTS

Textual Amendments

F169 Pt. 13 Ch. 5B inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 5 para. 2** (with [Sch. 9 paras. 1-9, 22](#))

Modifications etc. (not altering text)

- C5** Pt. 13 Ch. 5B restricted by 2004 s. 12 s. 196I(5)(6) (as inserted 17.7.2012 (with effect in accordance with [Sch. 13 para. 17](#) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 13 para. 15** (with [Sch. 13 Pt. 4](#)))
- C6** Pt. 13 Ch. 5B restricted by 2004 c. 12, s. 196G(2)(3) (as inserted 17.7.2012 (with effect in accordance with [Sch. 13 para. 3](#) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 13 para. 1** (with [Sch. 13 Pt. 2](#)))

Type 1 arrangements

809BZAType 1 finance arrangement defined

- (1) For the purposes of this Chapter an arrangement is a type 1 finance arrangement if conditions A and B are met.
- (2) Condition A is that under the arrangement—
 - (a) a person (“the borrower”) receives money or another asset (“the advance”) from another person (“the lender”),
 - (b) the borrower or a person connected with the borrower makes a disposal of an asset (“the security”) to or for the benefit of the lender or a person connected with the lender, and
 - (c) the lender or a person connected with the lender is entitled to payments in respect of the security.

[For the purposes of subsection (2)(c) it does not matter if an entitlement of the lender ^{F170}(2A) or a person connected with the lender is subject to any condition.]

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (3) Condition B is that in accordance with generally accepted accounting practice—
 - (a) the borrower's accounts for the period in which the advance is received record a financial liability in respect of it, and
 - (b) the payments reduce the amount of the financial liability.
- (4) If the borrower is a partnership the reference to the borrower's accounts includes a reference to the accounts of any member of the partnership.
- (5) For the purposes of this section the borrower and the lender are not connected with one another.

Textual Amendments

F170 S. 809BZA(2A) inserted (17.7.2012) (with effect in accordance with Sch. 13 para. 42 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 33](#)

809BZB Certain tax consequences not to have effect

- (1) This section applies if a type 1 finance arrangement would have the relevant effect (ignoring this section).
- (2) The arrangement is not to have that effect.
- (3) The relevant effect is that—
 - (a) an amount of income on which the borrower or a person connected with the borrower would otherwise have been charged to income tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for income tax purposes any income of the borrower or of a person connected with the borrower is not so brought into account, or
 - (c) the borrower or a person connected with the borrower becomes entitled to an income deduction.
- (4) But if the borrower is a partnership the relevant effect is that—
 - (a) an amount of income on which a member of the partnership would otherwise have been charged to income tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for income tax purposes any income of a member of the partnership is not so brought into account, or
 - (c) a member of the partnership becomes entitled to an income deduction.
- (5) For the purposes of this section the borrower and the lender are not connected with one another.
- (6) An income deduction is—
 - (a) a deduction in calculating income for income tax purposes, or
 - (b) a deduction from total income.

809BZC Payments treated as borrower's income

- (1) This section applies if—

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (a) a type 1 finance arrangement would not have the relevant effect (ignoring section 809BZB(2)),
 - (b) that arrangement would not have the corresponding corporation-tax effect (ignoring section 759(2) of CTA 2010), and
 - (c) the borrower is—
 - (i) within the charge to income tax, or
 - (ii) a partnership at least one member of which is within the charge to income tax.
- (2) The payments mentioned in section 809BZA(2)(c) must be treated for income tax purposes as income of the borrower payable in respect of the security.
- (3) Subsection (2) applies whether or not the payments are also the income of another person for tax purposes.
- (4) Subsections (3) to (6) of section 809BZB (meaning of relevant effect) apply for the purposes of this section as for those of that.
- (5) In subsection (1)(b) “the corresponding corporation-tax effect” means the relevant effect as defined by section 759(3) to (6) of CTA 2010 (provision for corporation tax corresponding to section 809BZB(3) to (6)).

809BZD Deemed interest if borrower is not a partnership

- (1) This section applies if—
- (a) there is a type 1 finance arrangement,
 - (b) the borrower is not a partnership,
 - (c) the arrangement is prevented by section 809BZB from having the relevant effect in relation to the borrower, or section 809BZC applies to the borrower, and
 - (d) in accordance with generally accepted accounting practice the borrower's accounts record an amount as a finance charge in respect of the advance.
- (2) For income tax purposes the borrower may treat the amount as interest payable on a loan.
- (3) If an amount is treated as interest (“deemed interest”) under subsection (2), to find out when it is paid—
- (a) treat the payments mentioned in section 809BZA(2)(c) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,
 - (b) treat the interest elements of the payments as paid when the payments are paid, and
 - (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

809BZE Deemed interest if borrower is a partnership

- (1) This section applies if each of conditions A to C is met.
- (2) Condition A is that—
- (a) there is a type 1 finance arrangement, and

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (b) the borrower is a partnership.
- (3) Condition B is that—
 - (a) the arrangement is prevented by section 809BZB from having the relevant effect in relation to a person who is a member of the partnership, or
 - (b) section 809BZC applies to the partnership (in which event “the person” in subsections (4) and (5) means the person within the charge to income tax who is a member of the partnership).
- (4) Condition C is that in accordance with generally accepted accounting practice the person's accounts, or the partnership's accounts, record an amount as a finance charge in respect of the advance.
- (5) For income tax purposes the person may treat the amount as interest payable by the partnership on a loan.
- (6) If an amount is treated as interest (“deemed interest”) under subsection (5), to find out when it is paid—
 - (a) treat the payments mentioned in section 809BZA(2)(c) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,
 - (b) treat the interest elements of the payments as paid when the payments are paid, and
 - (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.]

[^{F171}Type 2 arrangements

Textual Amendments

F171 Ss. 809BZF-809BZI and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 5 para. 3](#) (with [Sch. 9 paras. 1-9, 22](#))

809BZF Type 2 finance arrangement defined

- (1) For the purposes of this Chapter an arrangement is a type 2 finance arrangement if conditions A and B are met.
- (2) Condition A is that—
 - (a) under the arrangement a person (“the transferor”) makes a disposal of an asset (“the security”) to a partnership,
 - (b) the transferor [^{F172}or a person connected with the transferor] is a member of the partnership immediately after the disposal (whether or not a member immediately before it),
 - (c) under the arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
 - (d) there is a relevant change in relation to the partnership (see section 809BZG), and

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (e) under the arrangement the share in the partnership's profits of the person involved in the change is determined by reference (wholly or partly) to payments in respect of the security.

^{F173} [For the purposes of subsection (2)(e) it does not matter if any determination of the (2A) share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.]

- (3) Condition B is that in accordance with generally accepted accounting practice—
 - (a) the partnership's accounts for the period in which the advance is received record a financial liability in respect of it, and
 - (b) the payments reduce the amount of the financial liability.
- (4) The reference to the partnership's accounts includes a reference to the transferor's accounts.

Textual Amendments

F172 Words in s. 809BZF(2)(b) inserted (17.7.2012) (with effect in accordance with Sch. 13 para. 42 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 34\(2\)](#)

F173 S. 809BZF(2A) inserted (17.7.2012) (with effect in accordance with Sch. 13 para. 42 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 34\(3\)](#)

809BZG Relevant change in relation to partnership

- (1) For the purposes of this Chapter there is a relevant change in relation to a partnership if condition A or condition B is met.
- (2) Condition A is that in connection with the arrangement the lender or a person connected with the lender becomes a member of the partnership at any time.
- (3) Condition B is that—
 - (a) in connection with the arrangement there is at any time a change in a member's share in the partnership's profits, and
 - (b) the member is the lender or a person connected with the lender or a person who in connection with the arrangement becomes at any time connected with the lender.
- (4) An event occurs in connection with the arrangement if it occurs directly or indirectly in consequence of it or otherwise in connection with it.
- (5) If there is a relevant change in relation to a partnership, a reference in this Chapter to the person involved in the change is—
 - (a) if it is condition A that is met, to the person who becomes a member of the partnership, and
 - (b) if it is condition B that is met, to the member of the partnership in whose share in the partnership's profits there is a change.

809BZH Certain tax consequences not to have effect

- (1) This section applies if—
 - (a) there is a type 2 finance arrangement, and

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this section).
- (2) In such a case—
- (a) Part 9 of ITTOIA 2005 (partnerships) is to have effect in relation to the transferor [^{F174}or the person connected with the transferor] as if the relevant change in relation to the partnership had not occurred, and
 - (b) accordingly the finance arrangement is not to have the relevant effect.
- (3) The relevant effect is that—
- (a) an amount of income on which the transferor [^{F174}or the person connected with the transferor] would otherwise have been charged to income tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for income tax purposes any income of the transferor [^{F174}or the person connected with the transferor] is not so brought into account, or
 - (c) the transferor [^{F174}or the person connected with the transferor] becomes entitled to an income deduction.
- (4) In deciding whether subsection (1)(b) is met assume that amounts of income equal to the payments mentioned in section 809BZF(2)(e) were payable to the partnership before the relevant change in relation to it occurred.
- (5) An income deduction is—
- (a) a deduction in calculating income for income tax purposes, or
 - (b) a deduction from total income.

Textual Amendments

F174 Words in s. 809BZH inserted (17.7.2012) (with effect in accordance with Sch. 13 para. 42 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 35](#)

809BZI Deemed interest

- (1) This section applies if—
- (a) there is a type 2 finance arrangement,
 - (b) the transferor is a person within the charge to income tax, and
 - (c) in accordance with generally accepted accounting practice the partnership's accounts record an amount as a finance charge in respect of the advance.
- (2) For income tax purposes the transferor may treat the amount as interest payable by the transferor on a loan.
- (3) The reference in subsection (1) to the partnership's accounts includes a reference to the transferor's accounts.
- (4) If an amount is treated as interest (“deemed interest”) under subsection (2), to find out when it is paid—
- (a) treat the payments mentioned in section 809BZF(2)(e) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (b) treat the interest elements of the payments as paid when the payments are paid, and
- (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.]

F175 Type 3 arrangements

Textual Amendments

F175 Ss. 809BZJ-809BZL and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 5 para. 4](#) (with [Sch. 9 paras. 1-9, 22](#))

809BZJ Type 3 finance arrangement defined

- (1) For the purposes of this Chapter an arrangement is a type 3 finance arrangement if conditions A and B are met.
- (2) Condition A is that—
 - (a) a partnership holds an asset (“the security”) as a partnership asset at any time before the arrangement is made,
 - (b) under the arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
 - (c) there is a relevant change in relation to the partnership (see section 809BZG), and
 - (d) under the arrangement the share in the partnership's profits of the person involved in the change is determined by reference (wholly or partly) to payments in respect of the security.

[For the purposes of subsection (2)(d) it does not matter if any determination of the ^{F176}(2A) share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.]

- (3) Condition B is that in accordance with generally accepted accounting practice—
 - (a) the partnership's accounts for the period in which the advance is received record a financial liability in respect of it, and
 - (b) the payments reduce the amount of the financial liability.
- (4) The reference to the partnership's accounts includes a reference to the accounts of any person who is a member of the partnership immediately before the arrangement is made.

Textual Amendments

F176 S. 809BZJ(2A) inserted (17.7.2012) (with effect in accordance with Sch. 13 para. 42 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 36](#)

809BZK Certain tax consequences not to have effect

- (1) This section applies if—

Status: Point in time view as at 06/04/2019.

*Changes to legislation: There are currently no known outstanding effects
for the Income Tax Act 2007, Part 13. (See end of Document for details)*

- (a) there is a type 3 finance arrangement, and
 - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this section).
- (2) The relevant effect is that—
- (a) an amount of income on which a relevant member would otherwise have been charged to income tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for income tax purposes any income of a relevant member is not so brought into account, or
 - (c) a relevant member becomes entitled to an income deduction.
- (3) A relevant member is a person who—
- (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
 - (b) is not the lender.
- (4) If this section applies—
- (a) Part 9 of ITTOIA 2005 (partnerships) is to have effect in relation to any relevant member as if the relevant change in relation to the partnership had not occurred, and
 - (b) accordingly the finance arrangement is not to have the relevant effect.
- (5) In deciding whether subsection (1)(b) is met assume that amounts of income equal to the payments mentioned in section 809BZJ(2)(d) were payable to the partnership before the relevant change in relation to it occurred.
- (6) An income deduction is—
- (a) a deduction in calculating income for income tax purposes, or
 - (b) a deduction from total income.

809BZL Deemed interest

- (1) This section applies if—
- (a) there is a type 3 finance arrangement,
 - (b) a relevant member is a person within the charge to income tax, and
 - (c) in accordance with generally accepted accounting practice the partnership's accounts record an amount as a finance charge in respect of the advance.
- (2) For income tax purposes the relevant member may treat the amount as interest payable by the partnership on a loan.
- (3) The reference in subsection (1) to the partnership's accounts includes a reference to the accounts of any relevant member.
- (4) If an amount is treated as interest (“deemed interest”) under subsection (2), to find out when it is paid—
- (a) treat the payments mentioned in section 809BZJ(2)(d) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,
 - (b) treat the interest elements of the payments as paid when the payments are paid, and

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.
- (5) A relevant member is a person who—
 - (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
 - (b) is not the lender.]

[^{F177}Exceptions

Textual Amendments

F177 Ss. 809BZM-809BZP and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 5 para. 5](#) (with [Sch. 9 paras. 1-9, 22](#))

809BZMExceptions: preliminary

- (1) Sections 809BZN to 809BZP make provision for finance arrangement codes not to apply in certain circumstances.
- (2) For the purposes of those sections each of the following groups of provisions is a finance arrangement code—
 - (a) sections 809BZA to 809BZE (type 1 arrangements),
 - (b) sections 809BZF to 809BZI (type 2 arrangements), and
 - (c) sections 809BZJ to 809BZL (type 3 arrangements).

809BZNEExceptions

- (1) A finance arrangement code does not apply if the whole of the advance under the arrangement—
 - (a) is charged to tax on a relevant person as an amount of income,
 - (b) is brought into account in calculating for tax purposes any income of a relevant person, or
 - (c) is brought into account for the purposes of any provision of CAA 2001 as a disposal receipt, or proceeds from a balancing event or disposal event, of a relevant person.
- (2) Treat subsection (1)(c) as not met if—
 - (a) the receipt gives rise, or proceeds give rise, to a balancing charge, and
 - (b) the amount of the balancing charge is limited by any provision of CAA 2001.
- (3) A finance arrangement code does not apply if at all times the whole of the advance under the arrangement—
 - (a) is a debtor relationship of a relevant person for the purposes of Part 5 of CTA 2009 (loan relationships), or
 - (b) would be a debtor relationship of a relevant person for those purposes if that person were a company within the charge to corporation tax.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (4) In subsection (3) references to a debtor relationship do not include references to a relationship to which Chapter 2 of Part 6 of CTA 2009 applies (relevant non-lending relationships).
- (5) A finance arrangement code does not apply so far as—
- (a) section 263A of TCGA 1992 applies in relation to the arrangement (agreements for sale and repurchase of securities), or
 - (b) Schedule 13 to FA 2007 or Chapter 10 of Part 6 of CTA 2009 applies in relation to the arrangement (sale and repurchase of securities, and repos).
- (6) A finance arrangement code does not apply so far as Part 10A of this Act, Chapter 4 of Part 4 of TCGA 1992 or Chapter 6 of Part 6 of CTA 2009 has effect in relation to the arrangement (alternative finance arrangements).
- (7) A finance arrangement code does not apply so far as the security is plant or machinery which is the subject of a sale and finance leaseback.
- (8) For the purposes of subsection (7) apply section 221 of CAA 2001 to determine whether plant or machinery is the subject of a sale and finance leaseback.
- (9) A finance arrangement code does not apply so far as sections 228B and 228C of CAA 2001 (finance leaseback) apply in relation to the arrangement.
- [A finance arrangement code does not apply if the arrangement is a right-of-use lease—
- ^{F178}(9A) (a) under which the relevant person is a lessee, and
- (b) which, were that person required under generally accepted accounting practice to determine whether the lease falls to be treated in the accounts of that person as a finance lease or loan, would not fall to be so treated.
- (9B) In subsection (9A) “right-of-use lease” has the same meaning as in Part 2 of CAA 2001 (see section 70YI(1) of that Act).]
- (10) Section 809BZO defines a relevant person for the purposes of this section.

Textual Amendments

F178 S. 809BZN(9A)(9B) inserted (with effect in accordance with Sch. 14 para. 6(1) of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 14 para. 3](#)

809BZO Exceptions: relevant person

- (1) This section defines a relevant person for the purposes of section 809BZN.
- (2) If (apart from sections 809BZN and 809BZP) sections 809BZA to 809BZE would apply, each of the following is a relevant person—
 - (a) the borrower, and
 - (b) a person connected with the borrower or (if the borrower is a partnership) a member of the partnership.
- (3) If (apart from sections 809BZN and 809BZP) sections 809BZF to 809BZI would apply, the transferor is a relevant person.
- (4) If (apart from sections 809BZN and 809BZP) sections 809BZJ to 809BZL would apply, a relevant member as there defined is a relevant person.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (5) For the purposes of subsection (2)(b) the persons connected with the borrower include any persons who under section 993 (meaning of “connected”) are connected with the borrower.

809BZP Power to make further exceptions

- (1) The Treasury may make regulations prescribing other circumstances in which a finance arrangement code is not to apply.
- (2) The regulations may amend sections 809BZN and 809BZO.
- (3) The power to make regulations includes—
- (a) power to make provision that has effect in relation to times before the making of the regulations (but not times before 6 June 2006),
 - (b) power to make different provision for different cases or different purposes, and
 - (c) power to make incidental, supplemental, consequential and transitional provision and savings.]

[^{F179}Supplementary

Textual Amendments

F179 Ss. 809BZQ-809BZS and cross-heading inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 5 para. 6](#) (with [Sch. 9 paras. 1-9, 22](#))

809BZQ Accounts

- (1) This section applies for the purposes of this Chapter.
- (2) A reference to the accounts of a person includes (if the person is a company) a reference to the consolidated group accounts of a group of companies of which it is a member.
- (3) In determining whether accounts record an amount as a financial liability in respect of an advance, assume that the period in which the advance is received ended immediately after the receipt of the advance.
- (4) If a person does not draw up accounts in accordance with generally accepted accounting practice, assume that the person drew up the accounts in accordance with that practice.

809BZR Arrangements

A reference in this Chapter to an arrangement includes a reference to an agreement or understanding (whether or not legally enforceable).

809BZS Assets

- (1) This section applies for the purposes of this Chapter.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (2) A reference to a person receiving an asset includes—
 - (a) a reference to the person obtaining (directly or indirectly) the value of an asset or otherwise deriving (directly or indirectly) a benefit from it, and
 - (b) a reference to the discharge (in whole or part) of a liability of the person.
- (3) A reference to a disposal of an asset includes a reference to anything constituting a disposal of it for the purposes of TCGA 1992.
- (4) A reference to payments in respect of an asset includes—
 - (a) a reference to payments in respect of another asset substituted for it under the arrangement, and
 - (b) a reference to obtaining (directly or indirectly) the value of an asset or otherwise deriving (directly or indirectly) a benefit from it.]

[^{F180}CHAPTER 5C

LOAN OR CREDIT TRANSACTIONS

Textual Amendments

F180 Pt. 13 Ch. 5C inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 5 para. 7](#) (with [Sch. 9 paras. 1-9, 22](#))

809CZALoan or credit transaction defined

- (1) This section defines a loan or credit transaction for the purposes of sections 809CZB and 809CZC.
- (2) A transaction is a loan or credit transaction if it is—
 - (a) effected with reference to the lending of money or the varying of the terms on which money is lent, or
 - (b) effected with a view to enabling or facilitating an arrangement concerning the lending of money or the varying of the terms on which money is lent.
- (3) A transaction is a loan or credit transaction if it is—
 - (a) effected with reference to the giving of credit or the varying of the terms on which credit is given, or
 - (b) effected with a view to enabling or facilitating an arrangement concerning the giving of credit or the varying of the terms on which credit is given.
- (4) Subsection (2) has effect whether the transaction is effected—
 - (a) between the lender and borrower,
 - (b) between either of them and a person connected with the other, or
 - (c) between a person connected with one and a person connected with the other.
- (5) Subsection (3) has effect whether the transaction is effected—
 - (a) between the creditor and debtor,
 - (b) between either of them and a person connected with the other, or
 - (c) between a person connected with one and a person connected with the other.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

809CZBCertain payments treated as yearly interest

- (1) This section applies if a loan or credit transaction provides for a payment which is not interest but is—
 - (a) an annuity or other annual payment falling within Part 5 of ITTOIA 2005 and chargeable to income tax otherwise than as relevant foreign income, or
 - (b) an annuity or other annual payment which is from a source in the United Kingdom and chargeable to corporation tax under [^{F181}Chapter 7 of Part 10 of CTA 2009 (annual payments not otherwise charged) or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013].
- (2) The payment must be treated for the purposes of the Income Tax Acts as if it were a payment of yearly interest (see, in particular, section 874).

Textual Amendments

F181 Words in s. 809CZB(1)(b) substituted (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **37(8)** (with reg. 32)

809CZCTax charged on income transferred

- (1) This section applies if—
 - (a) under a loan or credit transaction a person transfers income arising from property,
 - (b) the person is not, as a result of Chapter 5B (finance arrangements), chargeable to income tax on the income transferred, and
 - (c) the person is within the charge to income tax.
- (2) In such a case—
 - (a) income tax is charged under this section,
 - (b) the tax is charged on an amount equal to the full amount of the income transferred,
 - (c) the tax is charged for the tax year in which the transfer takes place, and
 - (d) the person who transfers the income is liable for the tax.
- (3) This section does not prejudice the liability of any other person to tax.
- (4) For the purposes of this section a person transfers income if the person surrenders, waives or forgoes it.
- (5) Subsection (6) applies for the purposes of this section if—
 - (a) credit is given for the purchase price of property, and
 - (b) the rights attaching to the property are such that the buyer's rights to income from the property are suspended or restricted during the life of the debt.
- (6) The buyer must be treated as surrendering income of an amount equal to the income the buyer in effect forgoes by obtaining the credit.
- (7) For the purposes of this section an amount of income payable subject to deduction of income tax must be taken as the amount before deduction of tax.]

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

[^{F182}CHAPTER 5D

DISPOSALS OF ASSETS THROUGH PARTNERSHIPS

Textual Amendments

F182 Pt. 13 Ch. 5D inserted (with effect in accordance with Sch. 17 para. 25(2) of the amending Act) by Finance Act 2014 (c. 26), **Sch. 17 para. 25(1)**

809DZA Application of Chapter

- (1) This Chapter applies if conditions A and B are met.
- (2) Condition A is (subject to subsection (3)) that directly or indirectly in consequence of, or otherwise in connection with, arrangements involving a person within the charge to income tax (“the transferor”) and another person (“the transferee”)—
 - (a) there is, or is in substance, a disposal of an asset (“the transferred asset”) by the transferor to the transferee,
 - (b) the disposal is effected (wholly or partly) by or through a partnership (“the relevant partnership”),
 - (c) at any time—
 - (i) the transferor is a member of the relevant partnership or of a partnership associated with the relevant partnership, and
 - (ii) the transferee is a member of the relevant partnership or of a partnership associated with the relevant partnership, and
 - (d) the main purpose, or one of the main purposes, of one or more steps taken in effecting the disposal is the obtaining of a tax advantage for any person.
- (3) Condition A is not met if—
 - (a) the transferor is the spouse or civil partner of the transferee and they are living together, or
 - (b) the transferor is a brother, sister, ancestor or lineal descendant of the transferee.
- (4) In subsection (2)(a) the reference to a disposal of an asset includes anything constituting a disposal of an asset for the purposes of TCGA 1992.
- (5) For the purposes of subsection (2)(b) the disposal might, in particular, be effected by an acquisition or disposal of, or an increase or decrease in, an interest in the relevant partnership (including a share of the profits or assets of the relevant partnership or an interest in such a share).
- (6) For the purposes of subsection (2)(c) it does not matter if the transferor and the transferee are not members of a partnership as mentioned at the same time.
- (7) For the purposes of subsection (2)(c) a partnership is “associated” with the relevant partnership if—
 - (a) it is a member of the relevant partnership, or
 - (b) it is a member of a partnership which is associated with the relevant partnership (whether by virtue of paragraph (a) or this paragraph).

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (8) In subsections (2)(c) and (6) references to the transferor include a person connected with the transferor and references to the transferee include a person connected with the transferee.
- (9) Condition B is that it is reasonable to assume that, had the transferred asset instead been disposed of directly by the transferor to the transferee, the relevant amount (or any part of it)—
- (a) would have been chargeable to income tax as income of the transferor, or
 - (b) would have been brought into account as income in calculating profits of the transferor for income tax purposes.
- (10) In this Chapter “the relevant amount” means the amount of the consideration received by the transferor for the disposal.
- (11) If the transferor receives—
- (a) no consideration for the disposal, or
 - (b) consideration which is substantially less than the market value of the transferred asset,
- assume for the purposes of subsection (10) that the transferor receives consideration of an amount equal to the market value of the transferred asset.
- (12) In subsection (11) references to the market value of the transferred asset are to that value at the time of the disposal.
- (13) In this Chapter—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
 - “partnership” includes a limited liability partnership whether or not section 863(1) of ITTOIA 2005 applies in relation to it, and
 - “tax advantage” means a tax advantage, as defined in section 1139 of CTA 2010, in relation to income tax or the charge to corporation tax on income.

809DZB Relevant amount to be treated as income

- (1) The relevant amount is to be treated as income of the transferor chargeable to income tax in the same way and to the same extent as that in which it—
- (a) would have been chargeable to income tax as income of the transferor, or
 - (b) would have been brought into account as income in calculating profits of the transferor for income tax purposes,
- as mentioned in section 809DZA(9).
- (2) Section 809AZB(3) to (6) applies for the purpose of determining when income under subsection (1) is treated as arising (reading references to the transfer of the right as references to the disposal of the transferred asset).
- (3) If, apart from this subsection and section 809AAZB(4)—
- (a) both this Chapter and Chapter 5AA would apply in relation to the disposal, and
 - (b) Chapter 5AA would give the same amount, or a greater amount, of income of the transferor chargeable to income tax,
- this Chapter is not to apply in relation to the disposal.]

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

[^{F183}CHAPTER 5E

DISGUISED INVESTMENT MANAGEMENT FEES

Textual Amendments

F183 Pt. 13 Ch. 5E inserted (with effect in accordance with s. 21(4) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 21\(1\)](#)

809EZADisguised investment management fees: charge to income tax

- (1) Where one or more disguised fees arise to an individual in a tax year from one or more investment schemes (whether or not by virtue of the same arrangements), the individual is liable for income tax for the tax year in respect of the disguised fee or fees as if—
- (a) the individual were carrying on a trade for the tax year,
 - (b) the disguised fee or fees were the profits of the trade of the tax year, and
 - (c) the individual were the person receiving or entitled to those profits.
- (2) For the purposes of subsection (1) the trade is treated as carried on—
- (a) in the United Kingdom, to the extent that the individual performs the relevant services in the United Kingdom;
 - (b) outside the United Kingdom, to the extent that the individual performs the relevant services outside the United Kingdom;
- and for this purpose “the relevant services” means the investment management services by virtue of which the disguised fee or fees arise to the individual in the tax year.

[Subsection (2B) applies instead of subsections (1) and (2) where—

- ^{F184}(2A) (a) one or more disguised fees arise to an individual in a tax year (“the relevant tax year”) from one or more investment schemes (whether or not by virtue of the same arrangements),
- (b) the disguised fees consist of carried interest which is income-based carried interest,
 - (c) the individual is UK resident in the relevant tax year,
 - (d) before the relevant tax year, the individual was not UK resident for a period of at least five consecutive tax years (“the period of non-residence”), and
 - (e) either—
 - (i) the relevant tax year is the first tax year immediately after the end of the period of non-residence, or
 - (ii) the relevant tax year is the second, third, or fourth tax year after the end of that period and the individual has been UK resident in all the intervening tax years.

(2B) To the extent that the income-based carried interest arises by virtue of pre-arrival services, the individual is liable for income tax for the relevant tax year in respect of it as if—

- (a) in relation to pre-arrival services performed in the United Kingdom—
 - (i) the individual were carrying on a trade for the relevant year consisting of the performance of those services,

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- (ii) the income-based carried interest, so far as arising by virtue of those services, were profits of that trade, and
 - (iii) the individual were the person receiving or entitled to those profits, and
 - (b) in relation to pre-arrival services performed outside the United Kingdom—
 - (i) the individual were carrying on a trade for the relevant tax year consisting of the performance of those services,
 - (ii) the income-based carried interest, so far as arising by virtue of those services, were profits of that trade, and
 - (iii) the individual were the person receiving or entitled to those profits.
- (2C) In subsection (2B) “pre-arrival services” means investment management services performed before the end of the period of non-residence.]
- (3) For the purposes of this Chapter a “disguised fee” arises to an individual in a tax year from an investment scheme if—
 - (a) the individual [^{F185}at any time performs or is to perform] investment management services directly or indirectly in respect of the scheme under any arrangements,
 - ^{F186}(b)
 - (c) under the arrangements, a management fee arises to the individual ^{F187}... from [^{F188}an investment scheme] in the tax year (see section 809EZB), and
 - (d) some or all of the management fee is untaxed;and the amount of the disguised fee is so much of the management fee as is untaxed.
- (4) For the purposes of subsection (3) the management fee is “untaxed” if and to the extent that the fee would not (apart from this section)—
 - (a) be charged to tax under ITEPA 2003 as employment income of the individual for any tax year, or
 - (b) be brought into account in calculating the profits of a trade of the individual for the purposes of income tax for any tax year.
- (5) In subsection (4) “trade” includes profession or vocation.
- (6) In this Chapter “investment scheme” means—
 - (a) a collective investment scheme, or
 - (b) an investment trust.
- [The reference in subsection (6)(a) to a collective investment scheme includes—
 - ^{F189}(7) (a) arrangements which permit an external investor to participate in investments acquired by the collective investment scheme without participating in the scheme itself, and
 - (b) arrangements under which sums arise to an individual performing investment management services in respect of the collective investment scheme without those sums arising from the scheme itself.]

Textual Amendments

F184 S. 809EZA(2A)-(2C) inserted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 38\(1\)](#)

F185 Words in s. 809EZA(3)(a) substituted (with effect in accordance with s. 36(5) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 36\(2\)\(a\)](#)

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- F186** S. 809EZA(3)(b) omitted (with effect in accordance with s. 36(5) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 36(2)(b)
- F187** Words in s. 809EZA(3)(c) omitted (with effect in accordance with s. 45(3) of the amending Act) by virtue of Finance (No. 2) Act 2015 (c. 33), s. 45(2)
- F188** Words in s. 809EZA(3)(c) substituted (with effect in accordance with s. 36(5) of the amending Act) by Finance Act 2016 (c. 24), s. 36(2)(c)
- F189** S. 809EZA(7) inserted (with effect in accordance with s. 36(5) of the amending Act) by Finance Act 2016 (c. 24), s. 36(3)

809EZB Meaning of “management fee” in section 809EZA

- (1) Subject as follows, for the purposes of section 809EZA “management fee” means any sum (including a sum in the form of a loan or advance or an allocation of profits) except so far as the sum constitutes—
- (a) a repayment (in whole or part) of an investment made directly or indirectly by the individual in the scheme,
 - (b) an arm's length return on an investment made directly or indirectly by the individual in the scheme, or
 - [^{F190}(c) carried interest which is not income-based carried interest (see sections 809EZC and 809EZD for carried interest, and Chapter 5F for income-based carried interest).]
- (2) For the purposes of subsection (1)(b) a return on an investment is “an arm's length return” if—
- (a) the return is on an investment which is of the same kind as investments in the scheme made by external investors,
 - (b) the return on the investment is reasonably comparable to the return to external investors on those investments, and
 - (c) the terms governing the return on the investment are reasonably comparable to the terms governing the return to external investors on those investments.
- [For the purposes of subsection (2)(b), the return on the investment is reasonably ^{F191}(2A) comparable to the return to external investors on the investments referred to in subsection (2)(a) if (and only if)—
- (a) the rate of return on the investment is reasonably comparable to the rate of return to external investors on those investments, and
 - (b) any other factors relevant to determining the size of the return on the investment are reasonably comparable to the factors determining the size of the return to external investors on those investments.]
- (3) In this Chapter “sum” includes any money or money's worth (and other expressions are to be construed accordingly).
- (4) Where—
- (a) a sum in the form of money's worth arises to the individual from the scheme in the ordinary course of the scheme's business, and
 - (b) the individual gives the scheme money in exchange for the sum,
- the sum constitutes a “management fee” only to the extent that its market value at the time it arises exceeds the amount of the money given by the individual.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

Textual Amendments

F190 S. 809EZB(1)(c) substituted (with effect in accordance with s. 37(4) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 37\(1\)](#)

F191 S. 809EZB(2A) inserted (with effect in accordance with s. 44(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\), s. 44\(1\)](#)

809EZC Meaning of “carried interest” in section 809EZB

- (1) For the purposes of section 809EZB “carried interest” means a sum which arises to the individual under the arrangements by way of profit-related return.

This is subject to subsections (3) to (8) (sums where no significant risk of not arising); and see also section 809EZD (sums treated as carried interest).

- (2) A sum which arises to the individual under the arrangements does so by way of “profit-related return” if under the arrangements—

- (a) the sum is to, or may, arise only if—
- (i) there are profits for a period on the investments, or on particular investments, made for the purposes of the scheme, or
 - (ii) there are profits arising from a disposal of the investments, or of particular investments, made for those purposes,
- (b) the amount of the sum which is to, or may, arise is variable, to a substantial extent, by reference to those profits, and
- (c) returns to external investors are also determined by reference to those profits; but where any part of the sum does not meet these conditions, that part is not to be regarded as arising by way of “profit-related return”.

- (3) Where—

- (a) one or more sums (“actual sums”) arise to the individual under the arrangements by way of profit-related return in a tax year, and
- (b) there was no significant risk that a sum of at least a certain amount (“the minimum amount”) would not arise to the individual,

so much of the actual sum, or of the aggregate of the actual sums, as is equal to the minimum amount is not “carried interest”.

(See subsections (7) and (8) as to how the minimum amount is to be apportioned between the actual sums where more than one actual sum arises in the tax year.)

- (4) For the purposes of subsection (3)(b) assess the risk both—

- (a) in relation to each actual sum (and the investments to which it relates) individually, taking into account also any other sums that might have arisen to the individual under the arrangements instead of that sum, and
- (b) in relation to the actual sum or sums and any other sums that might have arisen to the individual under the arrangements by way of profit-related return in the tax year (and the investments to which all those sums relate) taken as a whole;

(so that, in a particular case, some of the minimum amount may arise by assessing the risk in accordance with paragraph (a) and some by assessing it in accordance with paragraph (b)).

- (5) For the purposes of subsection (3)(b) assess the risk as at the latest of—

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- (a) the time when the individual becomes party to the arrangements,
 - (b) the time when the individual begins to perform investment management services directly or indirectly in respect of the scheme under the arrangements, and
 - (c) the time when a material change is made to the arrangements so far as relating to the sums which are to, or may, arise to the individual.
- (6) For the purposes of subsection (3)(b) ignore any risk that a sum is prevented from arising to the individual (by reason of insolvency or otherwise).
- (7) Where more than one actual sum arises in the tax year, the minimum amount is to be apportioned between the actual sums as follows for the purposes of subsection (3)—
- (a) so much of the minimum amount as is attributable to a particular actual sum is to be apportioned to that actual sum, and
 - (b) so much of the minimum amount as is not attributable to any particular actual sum is to be apportioned between the actual sums on a just and reasonable basis.
- (8) For the purpose of subsection (7) any part of the minimum amount is attributable to a particular actual sum to the extent that there was no significant risk that that part would not arise to the individual in relation to that actual sum, assessing the risk in accordance with subsection (4)(a).

809EZDSums treated as “carried interest” for purposes of section 809EZB

- (1) A sum falling within subsection (2) or (3)—
- (a) is to be assumed to meet the requirements of section 809EZC, and
 - (b) accordingly, is to be treated as constituting “carried interest” for the purposes of section 809EZB.
- (2) A sum falls within this subsection if, under the arrangements, it is to, or may, arise to the individual out of profits on the investments made for the purposes of the scheme, but only after—
- (a) all, or substantially all, of the investments in the scheme made by the participants have been repaid to the participants, and
 - (b) each external investor has received a preferred return on all, or substantially all, of the investor's investments in the scheme.
- (3) A sum falls within this subsection if, under the arrangements, it is to, or may, arise to the individual out of profits on a particular investment made for the purposes of the scheme, but only after—
- (a) all, or substantially all, of the relevant investments made by participants have been repaid to those participants, and
 - (b) each of those participants who is an external investor has received a preferred return on all, or substantially all, of the investor's relevant investments;
- and for this purpose “relevant investments” means those investments in the scheme to which the particular investment made for the purposes of the scheme is attributable.
- (4) In this section “preferred return” means a return of not less than the amount that would be payable on the investment by way of interest if—
- (a) compound interest were payable on the investment for the whole of the period during which it was invested in the scheme, and

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- (b) the interest were calculated at a rate of 6% per annum, with annual rests.

Sums arising to connected persons other than companies

F192 809EZDA

- (1) This section applies in relation to an individual (“A”) if—
- (a) a sum arises to a person (“B”) who is connected with A,
 - (b) B is not a company,
 - (c) income tax is not charged on B in respect of the sum by virtue of this Chapter,
 - (d) capital gains tax is not charged on B in respect of the sum by virtue of Chapter 5 of Part 3 of TCGA 1992, and
 - (e) the sum does not arise to A apart from this section.
- (2) The sum referred to in subsection (1)(a) arises to A for the purposes of this Chapter.
- (3) Where a sum arises to A by virtue of this section, it arises to A at the time the sum referred to in subsection (1)(a) arises to B.
- (4) Section 993 (meaning of “connected”) applies for the purposes of this section, but as if—
- (a) subsection (4) of that section were omitted, and
 - (b) partners in a partnership in which A is also a partner were not “associates” of A for the purposes of sections 450 and 451 of CTA 2010 (“control”).

Textual Amendments

F192 Ss. 809EZDA, 809EZDB inserted (with effect in accordance with s. 45(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\), s. 45\(1\)](#)

809EZDB Sums arising to connected company or unconnected person

- (1) This section applies in relation to an individual (“A”) if—
- (a) a sum arises to—
 - (i) a company connected with A, or
 - (ii) a person not connected with A,
 - (b) any of the enjoyment conditions is met, and
 - (c) the sum does not arise to A apart from this section.
- (2) The enjoyment conditions are—
- (a) the sum, or part of the sum, is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of A or a person connected with A;
 - (b) the arising of the sum operates to increase the value to A or a person connected with A of any assets which—
 - (i) A or the connected person holds, or
 - (ii) are held for the benefit of A or the connected person;
 - (c) A or a person connected with A receives or is entitled to receive at any time any benefit provided or to be provided out of the sum or part of the sum;
 - (d) A or a person connected with A may become entitled to the beneficial enjoyment of the sum or part of the sum if one or more powers are exercised or successively exercised (and for these purposes it does not matter who

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may exercise the powers or whether they are exercisable with or without the consent of another person);

- (e) A or a person connected with A is able in any manner to control directly or indirectly the application of the sum or part of the sum.

In this subsection, in a case where the sum referred to in subsection (1)(a) arises to a company connected with A, references to a person connected with A do not include that company.

- (3) There arises to A for the purposes of this Chapter—
 - (a) the sum referred to in subsection (1)(a), or
 - (b) if the enjoyment condition in subsection (2)(a), (c), (d) or (e) is met in relation to part of the sum, that part of that sum, or
 - (c) if the enjoyment condition in subsection (2)(b) is met, such part of that sum as is equal to the amount by which the value of the assets referred to in that condition is increased.
- (4) Where a sum (or part of a sum) arises to A by virtue of this section, it arises to A at the time it arises to the person referred to in subsection (1)(a)(i) or (ii) (whether the enjoyment condition was met at that time or at a later date).
- (5) In determining whether any of the enjoyment conditions is met in relation to a sum or part of a sum—
 - (a) regard must be had to the substantial result and effect of all the relevant circumstances, and
 - (b) all benefits which may at any time accrue to a person as a result of the sum arising as specified in subsection (1)(a) must be taken into account, irrespective of—
 - (i) the nature or form of the benefits, or
 - (ii) whether the person has legal or equitable rights in respect of the benefits.
- (6) The enjoyment condition in subsection (2)(b), (c) or (d) is to be treated as not met if it would be met only by reason of A holding shares or an interest in shares in a company.
- (7) The enjoyment condition in subsection (2)(a) or (e) is to be treated as not met if the sum referred to in subsection (1)(a) arises to a company connected with A and—
 - (a) the company is liable to pay corporation tax in respect of its profits and the sum is included in the computation of those profits, or
 - (b) paragraph (a) does not apply but—
 - (i) the company is a CFC and the exemption in Chapter 14 of Part 9A of TIOPA 2010 applies for the accounting period in which the sum arises, or
 - (ii) the company is not a CFC but, if it were, that exemption would apply for that period.

In this subsection “CFC” has the same meaning as in Part 9A of TIOPA 2010.

- (8) But subsections (6) and (7) do not apply if the sum referred to in subsection (1)(a) arises to the company referred to in subsection (1)(a)(i) or the person referred to in subsection (1)(a)(ii) as part of arrangements where—
 - (a) it is reasonable to assume that in the absence of the arrangements the sum or part of the sum would have arisen to A or an individual connected with A, and

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- (b) it is reasonable to assume that the arrangements have as their main purpose, or one of their main purposes, the avoidance of a liability to pay income tax, capital gains tax, inheritance tax or corporation tax.
- (9) The condition in subsection (8)(b) is to be regarded as met in a case where the sum is applied directly or indirectly as an investment in a collective investment scheme.
- (10) Section 993 (meaning of “connected”) applies for the purposes of this section, but as if—
 - (a) subsection (4) of that section were omitted, and
 - (b) partners in a partnership in which A is also a partner were not “associates” of A for the purposes of sections 450 and 451 of CTA 2010 (“control”).]

Textual Amendments

F192 Ss. 809EZDA, 809EZDB inserted (with effect in accordance with s. 45(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\), s. 45\(1\)](#)

Modifications etc. (not altering text)

C7 S. 89EZDB excluded by [1992 c. 12, s. 103KG\(2\)\(4\)](#) (as inserted (with effect in accordance with [s. 43\(2\)-\(4\)](#) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\), s. 43\(1\)](#))

809EZE Interpretation of Chapter

(1) In this Chapter—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

“collective investment scheme” has the meaning given by section 235 of FISMA 2000;

“external investor”, in relation to an investment scheme and any arrangements, means a participant in the scheme other than—

- (a) an individual who [^{F193}at any time performs or is to perform] investment management services directly or indirectly in respect of the scheme, or
- (b) a person through whom sums are to, or may, arise directly or indirectly to such an individual from the scheme under the arrangements;

“investment management services”, in relation to an investment scheme, includes—

- (a) seeking funds for the purposes of the scheme from participants or potential participants,
- (b) researching potential investments to be made for the purposes of the scheme,
- (c) acquiring, managing or disposing of property for the purposes of the scheme, and
- (d) acting for the purposes of the scheme with a view to assisting a body in which the scheme has made an investment to raise funds;

“investment trust” means a company in relation to which conditions A to C in section 1158 of CTA 2010 are met (or treated as met); and for this purpose “company” has the meaning given by section 1121 of CTA 2010;

“market value” has the same meaning as in TCGA 1992 (see sections 272 and 273 of that Act);

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“participant”—

- (a) in relation to a collective investment scheme, is construed in accordance with section 235 of FISMA 2000;
- (b) in relation to an investment trust, means a member of the investment trust;

“profits”, in relation to an investment made for the purposes of an investment scheme, means profits (including unrealised profits) arising from the acquisition, holding, management or disposal of the investment (taking into account items of a revenue nature and items of a capital nature).

- (2) In this Chapter a reference to an investment made by a person in an investment scheme is a reference to a contribution by the person (whether by way of capital, loan or otherwise) towards the property subject to the scheme (but does not include a sum committed but not yet invested).
- (3) For the purposes of subsection (2) a person who holds a share in an investment scheme which is a company limited by shares and who acquired the share from a person other than the scheme is to be taken to have made a contribution towards the property subject to the scheme equal to—
 - (a) the consideration given by the person for the acquisition of the share, or
 - (b) if less, the market value of the share at the time of the acquisition.
- (4) In this Chapter, in relation to an investment scheme which is a company limited by shares—
 - (a) references to a repayment of, or a return on, an investment in the scheme include a repayment of, or a return on, an investment represented by a share in the scheme resulting from—
 - (i) the purchase of the share by the scheme,
 - (ii) the redemption of the share by the scheme,
 - (iii) the distribution of assets in respect of the share on the winding up of the scheme, or
 - (iv) any similar process;
 - (b) references to a return on an investment in the scheme include a dividend or similar distribution in respect of a share in the scheme representing the investment.

Textual Amendments

F193 Words in s. 809EZE(1) substituted (with effect in accordance with s. 36(5) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 36\(4\)](#)

809EZF Disguised investment management fees: anti-avoidance

In determining whether section 809EZA applies in relation to an individual, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that that section does not apply in relation to—

- (a) the individual, or
- (b) the individual and one or more other individuals.

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809EZG Disguised investment management fees: avoidance of double taxation

- (1) This section applies where—
 - (a) income tax is charged on an individual by virtue of section 809EZA in respect of a disguised fee, and
 - (b) at any time, a tax (whether income tax or another tax) is charged on the individual [^{F194}or another person] otherwise than by virtue of section 809EZA in relation to the disguised fee.
- (2) This section also applies where—
 - (a) income tax is charged on an individual by virtue of section 809EZA in respect of a disguised fee which arises to the individual under the arrangements by way of a loan or advance,
 - (b) at any time, a tax (whether income tax or another tax) is charged on the individual in relation to another sum which arises to the individual under the arrangements, and
 - (c) some or all of the loan or advance has to be repaid as a result of the other sum having arisen to the individual.
- (3) In order to avoid a double charge to tax, the individual may make a claim for one or more consequential adjustments to be made in respect of the tax charged as mentioned in subsection (1)(b) or (2)(b).
- (4) On a claim under this section an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.
- (5) The value of any consequential adjustments must not exceed the lesser of the income tax charged on the individual as mentioned in subsection (1)(a) or (2)(a) and—
 - (a) where subsection (1) applies, the tax charged as mentioned in subsection (1)(b);
 - (b) where subsection (2) applies, the tax charged as mentioned in subsection (2)(b) in relation to so much of the other sum as does not exceed the amount of the loan or advance that has to be repaid as mentioned in subsection (2)(c).
- (6) Consequential adjustments may be made—
 - (a) in respect of any period,
 - (b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and
 - (c) despite any time limit imposed by or under any enactment.

Textual Amendments

F194 Words in s. 809EZG(1)(b) inserted (with effect in accordance with s. 44(3) of the amending Act) by Finance (No. 2) Act 2015 (c. 33), s. 44(2)

809EZHPowers to amend Chapter

- (1) The Treasury may by regulations amend this Chapter—
 - (a) so as to change the definition of “investment scheme” for the purposes of this Chapter;
 - (b) so as to change the definition of “participant” for those purposes;
 - (c) so as to change what is “carried interest” for the purposes of section 809EZB.

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- (2) Regulations under this section may—
 - (a) make different provision for different purposes, and
 - (b) contain incidental, supplemental, consequential and transitional provision and savings.
- (3) A statutory instrument containing regulations under this section to which subsection (4) applies may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (4) This subsection applies if the regulations contain any provision which has or may have the effect of increasing any person's liability to tax.
- (5) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.]

[^{F195}CHAPTER 5F

INCOME-BASED CARRIED INTEREST

Textual Amendments

F195 Pt. 13 Ch. 5F inserted (with effect in accordance with s. 37(4) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 37\(2\)](#)

Income-based carried interest

809FZA Overview

- (1) This Chapter determines when carried interest arising to an individual from an investment scheme is “income-based carried interest” for the purposes of Chapter 5E (and, in particular, section 809EZB(1)(c)).
- (2) Section 809FZB contains the general rule, under which the extent to which carried interest is income-based carried interest depends on the average holding period of the investment scheme.
- (3) Sections 809FZC to 809FZP contain further provision relating to average holding periods.
- (4) Sections 809FZQ and 809FZR contain a particular rule for direct lending funds.
- (5) Sections 809FZS and 809FZT contain an exception to the general rule for carried interest which is conditionally exempt from income tax.
- (6) Sections 809FZU to 809FZZ contain supplementary and interpretative provision.
- (7) Nothing in this Chapter affects the liability to any tax of—
 - (a) the investment scheme, or
 - (b) external investors in the investment scheme.

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809FZB Income-based carried interest: general rule

- (1) “Income-based carried interest” is the relevant proportion of a sum of carried interest arising to an individual from an investment scheme.
- (2) The relevant proportion is determined by reference to the investment scheme's average holding period as follows.

<i>Average holding period</i>	<i>Relevant proportion</i>
Less than 36 months	100%
At least 36 months but less than 37 months	80%
At least 37 months but less than 38 months	60%
At least 38 months but less than 39 months	40%
At least 39 months but less than 40 months	20%
40 months or more	0%

- (3) This section is subject to the following provisions of this Chapter.

Average holding period

809FZC Average holding period

- (1) The average holding period of an investment scheme, in relation to a sum of carried interest, is the average length of time for which relevant investments have been held for the purposes of the scheme.
- (2) In this section, “relevant investments” means investments—
 - (a) which are made for the purposes of the scheme, and
 - (b) by reference to which the carried interest is calculated.
- (3) The average holding period is calculated by reference to the time the carried interest arises.
- (4) It is calculated as follows.
 - Step 1* For each relevant investment, multiply the value invested at the time the investment was made by the length of time for which the investment has been held.
 - Step 2* Add together the amounts produced under *step 1* in respect of all relevant investments.
 - Step 3* Divide the amount produced under *step 2* by the total value invested in all relevant investments.
- (5) Disregard intermediate holdings or intermediate holding structures (including intermediate investment schemes) by or through which investments are made or held—
 - (a) when identifying, for the purpose of determining the average holding period of an investment scheme, what relevant investments are held for the purposes of an investment scheme, and
 - (b) for any other purpose relating to the determination of the average holding period.

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This is subject to the following provisions of this Chapter.

- (6) In this section, references to the length of time for which a relevant investment has been held are—
- (a) in the case of an investment which has been disposed of before the carried interest arises, references to the time for which it was held before being disposed of, and
 - (b) in any other case, references to the time for which it has been held up to the time the carried interest arises.
- (7) For the purposes of this Chapter, carried interest which is deferred carried interest in relation to a person within the meaning of section 103KG of TCGA 1992 is to be treated as arising to that person at the time it would have arisen had it not been deferred as specified in section 103KG(3)(a) or (b) of that Act.
- (8) Sections 809FZD to 809FZP apply for the purposes of determining the average holding period of an investment scheme.

Average holding period: disposals

809FZD Disposals

- (1) An investment or part of an investment is disposed of where—
- (a) there is a disposal of the investment or the part of the investment for the purposes of the investment scheme,
 - (b) there is a disposal for the purposes of the investment scheme of an intermediate holding or intermediate holding structure (including an intermediate investment scheme) by or through which the investment is held, or
 - (c) in any other case, there is a deemed disposal under subsection (2).
- (2) There is a deemed disposal of an investment or part of an investment under this subsection where—
- (a) under any arrangements—
 - (i) the scheme in substance closes its position on the investment or the part of the investment, or
 - (ii) the scheme ceases to be exposed to risks and rewards in the respect of the investment or the part of the investment, and
 - (b) it is reasonable to suppose that the arrangements were designed to secure that result.
- (3) In the case of a disposal of part of a holding of securities in a company which are of the same class, suppose for the purposes of determining which investments have been disposed of that the disposal affects the securities in the order in which they were acquired (that is, on a first in first out basis).
- (4) The references in subsection (1)(a) and (b) to a disposal are to something which is a disposal for the purposes of TCGA 1992; but for the purposes of subsection (1)(a) disregard section 116 of TCGA 1992 (which disapplies sections 127 to 130 of that Act in relation to qualifying corporate bonds).

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809FZE Part disposals

- (1) Where there is a disposal of part of an investment, the part disposed of and the part not disposed of are to be treated as two separate investments which were made at the same time.
- (2) The value of each of those two separate investments is the appropriate proportion of the value first invested in the whole investment.
- (3) The appropriate proportion is the proportion of the value of the part in question to the value of the whole investment at the time of the disposal.
- (4) The disposal of part of an asset includes the disposal of an interest in or right over the asset (and “part disposed of” is to be construed accordingly).

809FZF Unwanted short-term investments

- (1) The making and disposal of an investment for the purposes of an investment scheme are to be disregarded if—
 - (a) the investment is an unwanted short-term investment, and
 - (b) the unwanted short-term investment is excludable.
- (2) An investment is an unwanted short-term investment where—
 - (a) the investment is made as part of a transaction under which one or more other investments are made for the purposes of the scheme,
 - (b) the value of the investment does not exceed that of the other investments taken together,
 - (c) it is reasonable to suppose that the investment had to be made in order for the other investments to be made,
 - (d) at the time the investment is made, managers of the scheme have a firm, settled and evidenced intention to dispose of the investment for the purposes of the scheme within the relevant period,
 - (e) the investment is disposed of for the purposes of the scheme within the relevant period, and
 - (f) any profit resulting from the disposal has no bearing on whether a sum of carried interest arises or on the amount of any sum of carried interest which does arise.
- (3) An unwanted short-term investment is excludable if it constitutes—
 - (a) an investment in land,
 - (b) an investment in securities in an unlisted company,
 - (c) the making of a direct loan where the other investments specified in subsection (2)(b) are shares or other securities in an unlisted company, or
 - (d) the making of a direct loan which is a qualifying loan within the meaning given by section 809FZR(2).
- (4) In subsection (2)(e) “relevant period” means—
 - (a) for an investment within subsection (3)(a), 12 months;
 - (b) for an investment within subsection (3)(b) or (c), 6 months;
 - (c) for an investment within subsection (3)(d), 120 days.
- (5) But if at any time it becomes reasonable to suppose that, when the scheme ceases to invest, 25% or more of the capital of the investment scheme will have been invested in

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unwanted short-term investments which are excludable, subsection (1) does not apply to any investment made subsequently for the purposes of the scheme.

Average holding period: derivatives and hedging

809FZG Derivatives

- (1) A derivative contract entered into for the purposes of an investment scheme is an investment, subject to the following provisions of this section.
- (2) The value invested in the derivative contract is—
 - (a) where the contract is an option, the cost of acquiring the option (whether from the grantor or another person),
 - (b) where the contract is a future, the price specified in the contract for the underlying subject matter, or
 - (c) where the contract is a contract for differences, the notional principal of the contract.
- (3) But where entering into a derivative contract constitutes a deemed disposal of an investment or part of an investment by virtue of section 809FZD(2)(a)(ii)—
 - (a) the derivative contract is not an investment, and
 - (b) the subsequent disposal of the derivative contract without a corresponding disposal of the investment or part investment is to be regarded as the making of a new investment to the extent that the scheme becomes materially exposed to risks and rewards in respect of the investment or part investment.
- (4) For the purposes of this Chapter, references to disposal, in the case of a derivative contract, include any of the following events (to the extent that the event is not otherwise a disposal under section 809FZD(1) or (2))—
 - (a) the expiry of the contract,
 - (b) the termination of the contract (whether or not in accordance with its terms),
 - (c) the disposal, substantial variation, loss or cancellation of the investment scheme's rights under the contract, and
 - (d) in the case of a derivative contract which is an option, the exercise of the option,

but do not include the renewal of the contract with the same counterparty on substantially the same terms.
- (5) The substantial variation of an investment scheme's rights under a derivative contract constitutes (in addition to the disposal of the contract as originally entered into (see subsection (4)(c)) a new investment consisting of the contract as varied.

809FZH Hedging: exchange gains and losses

- (1) This section applies where—
 - (a) an investment scheme has a hedging relationship between a relevant instrument and a relevant investment, and
 - (b) the hedging relationship relates to exchange gains or losses.
- (2) In this section—

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- “relevant instrument” means a derivative contract or a liability representing a loan relationship, and
- “relevant investment” means—
- (a) where the relevant instrument is a derivative contract, an investment made for the purposes of the scheme or a liability representing a loan relationship;
 - (b) where the relevant instrument is a liability representing a loan relationship, an investment made for the purposes of the scheme.
- (3) An investment scheme has a hedging relationship between a relevant instrument and a relevant investment if or to the extent that—
- (a) the instrument and the investment are designated by the scheme as a hedge, or
 - (b) in any other case, the instrument is intended to act as a hedge of exposure to—
 - (i) changes in fair value of the investment or an identified portion of the investment, or
 - (ii) variability in cash flows,where the exposure is attributable to exchange gains or losses and could affect profit or loss of the investment scheme.
- (4) Entering into the hedging relationship is not a deemed disposal of the relevant investment under section 809FZD(2).
- (5) The relevant instrument is not an investment for the purposes of the investment scheme to the extent that the conditions in subsection (3)(a) and (b) are met.
- (6) But the termination of the hedging relationship is the making of an investment constituting the relevant instrument if or to the extent that that instrument continues to subsist.

809FZI Hedging: interest rates

- (1) This section applies where an investment scheme has a hedging relationship between—
 - (a) an interest rate contract, and
 - (b) a qualifying investment held for the purposes of the fund.
- (2) An investment scheme has a hedging relationship between an interest rate contract and a qualifying investment if or to the extent that—
 - (a) the interest rate contract and the investment are designated by the scheme as a hedge, or
 - (b) in any other case, the interest rate contract is intended to act as a hedge of exposure to—
 - (i) changes in fair value of the investment or an identified portion of the investment, or
 - (ii) variability in cash flows,where the exposure is attributable to interest rates and could affect profit or loss of the investment scheme.
- (3) Entering into the hedging relationship is not a deemed disposal of the relevant investment under section 809FZD(2).

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- (4) The interest rate contract is not an investment for the purposes of the investment scheme to the extent that the conditions in subsection (2)(a) and (b) are met.
- (5) But the termination of the hedging relationship is the making of an investment constituting the interest rate contract if or to the extent that the interest rate contract continues to subsist.
- (6) In this section “qualifying investment” means—
 - (a) money placed at interest,
 - (b) securities (excluding shares issued by companies),
 - (c) alternative finance arrangements, and
 - (d) a liability representing a loan relationship.

Average holding period: aggregation of acquisitions and disposals

809FZJ Significant interests

- (1) Where an investment scheme has a controlling interest in a trading company or the holding company of a trading group—
 - (a) any investment made for the purposes of the scheme in that company after the time when the controlling interest was acquired is to be regarded as having been made at that time, and
 - (b) any disposal for the purposes of the scheme of an investment in the company after the time the controlling interest was acquired is to be regarded as not being made until a relevant disposal is made.
- (2) In subsection (1)(b) “relevant disposal”, in relation to a company, means a disposal which (apart from subsection (1)) has the effect that the investment scheme ceases to have a 40% interest in the company.
- (3) For the purposes of this section, in determining whether an investment scheme has a controlling interest or a 40% interest in a company, any share capital of the company which is held for the purposes of an associated investment scheme is to be regarded as held for the purposes of the investment scheme.

809FZK Venture capital funds

- (1) Where a venture capital fund has a relevant interest in a trading company or the holding company of a trading group—
 - (a) any venture capital investment made for the purposes of the scheme in the company after the time the relevant interest was acquired (and before a relevant disposal) is to be regarded as having been made at the time the relevant interest was acquired, and
 - (b) any disposal for the purposes of the scheme of a venture capital investment in the company after that time is to be regarded as not being made until—
 - (i) a relevant disposal is made, or
 - (ii) the scheme director condition ceases to be met.
- (2) For the purposes of subsection (1) a venture capital fund has a relevant interest in a company if—

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- (a) by virtue of its venture capital investments the fund has at least a 5% interest in the company, or
 - (b) venture capital investments held for the purposes of the scheme in the company have a value of more than £1 million.
- (3) For the purposes of subsection (1) “relevant disposal” means a disposal which (apart from subsection (1)) has the effect that the venture capital fund has disposed of more than 80% of the greatest amount invested at any one time in the company for the purposes of the fund.
- (4) In this Chapter, “venture capital fund” means an investment scheme in relation to which the condition in subsection (5) is met.
- (5) The condition is that when the scheme starts to invest it is reasonable to suppose that over the investing life of the scheme—
- (a) at least two-thirds of the total value invested for the purposes of the scheme will be invested in venture capital investments, and
 - (b) at least two-thirds of the total value invested for the purposes of the scheme will be invested in investments which are held for 40 months or more.
- (6) In determining whether subsection (5)(b) is met in relation to an investment scheme, apply the rule in subsection (1) to the scheme.
- (7) In this section, “venture capital investment”, in relation to an investment scheme, means an investment in a trading company or the holding company of a trading group where—
- (a) at the time the investment is made the company is unlisted and is likely to remain so,
 - (b) at least 75% of the total value of the investment is invested in—
 - (i) newly issued shares or
 - (ii) newly issued securities convertible into shares,
 - (c) the investment is used in a trade carried on by the trading company or the trading group—
 - (i) to support its growth, or
 - (ii) for the development of new products or services,and is not used directly or indirectly to acquire shares in the company which are not newly issued,
 - (d) if the investment is the first investment made in the company for the purposes of the scheme, the trading company or group has not carried on that trade for more than 7 years, and
 - (e) the scheme director condition is met.
- (8) In this Chapter, the scheme director condition, in relation to an investment scheme and a company, is that—
- (a) the scheme (or the scheme and one or more investment schemes acting together) are entitled to appoint a director (“the scheme director”) of—
 - (i) the company, or
 - (ii) a company which controls the company, and
 - (b) the scheme director is entitled to exercise rights within subsection (9).
- (9) Those rights are rights which—
- (a) are rights conferred under contractual arrangements—

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- (i) to which some or all of the investors in the company are parties, and
 - (ii) which it would be reasonable to suppose would not otherwise be capable of being exercised by the scheme director,
 - (b) relate to the conduct of the business and affairs of the company, and
 - (c) are at least equivalent to the rights which it is reasonable to suppose a prudent investor would have obtained on making an investment in the company at arm's length of the same size and nature as that held in the company for the purposes of the investment scheme.
- (10) In determining whether the condition in subsection (2)(a) or (b) is met in relation to a venture capital fund, any share capital of a company which is held for the purposes of an associated investment scheme is to be regarded as held for the purposes of the venture capital fund.

809FZL Significant equity stake funds

- (1) Where a significant equity stake fund has a significant equity stake investment in a trading company or the holding company of a trading group—
- (a) any investment made for the purposes of the fund in that company made after the time the significant equity stake investment was acquired is to be regarded as having been made at that time, and
 - (b) any disposal for the purposes of the fund of an investment in the company after that time is to be regarded as not being made until—
 - (i) a relevant disposal is made, or
 - (ii) the scheme director condition ceases to be met.
- (2) In subsection (1)(b) “relevant disposal” means a disposal which (apart from subsection (1)) has the effect that the significant equity stake fund ceases to have a 15% interest in the company.
- (3) In this Chapter, “significant equity stake fund” means an investment scheme—
- (a) which is not a venture capital fund, and
 - (b) in relation to which the condition in subsection (4) is met.
- (4) The condition is that when the scheme starts to invest it is reasonable to suppose that over the investing life of the scheme—
- (a) more than 50% of the total value invested for the purposes of the scheme will be invested in investments which are significant equity stake investments, and
 - (b) more than 50% of that value will be invested in investments which are held for 40 months or more.
- (5) In determining whether subsection (4)(b) is met in relation to an investment scheme, apply the rule in subsection (1) to the scheme.
- (6) In this section, “significant equity stake investment”, in relation to an investment scheme, means an investment in a trading company or the holding company of a trading group where—
- (a) at the time the investment is made, the company is unlisted and likely to remain so,
 - (b) by virtue of the investment (on its own or with other investments) the scheme has a 20% interest in the company, and
 - (c) the scheme director condition is met.

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- (7) For the purposes of this section, in determining whether a significant equity stake fund has an interest of a particular percentage in a company, any share capital of the company which is held for the purposes of an associated investment scheme is to be regarded as held for the purposes of the significant equity stake fund.

809FZM Controlling equity stake funds

- (1) Where a controlling equity stake fund has a 25% interest in a trading company or the holding company of a trading group—
- (a) any investment made for the purposes of the controlling equity stake fund in the company after the time the 25% interest was acquired is to be regarded as having been made at that time, and
 - (b) any disposal for the purposes of the controlling equity stake fund of an investment in the company after that time is to be regarded as not being made until a relevant disposal is made.
- (2) In subsection (1)(b), “relevant disposal”, in relation to a company, means a disposal which (apart from subsection (1)) has the effect that the controlling equity stake fund ceases to have a 25% interest in the company.
- (3) In this Chapter, “controlling equity stake fund” means an investment scheme—
- (a) which is not a venture capital fund or significant equity stake fund, and
 - (b) in relation to which the condition in subsection (4) is met.
- (4) The condition is that when the scheme starts to invest it is reasonable to suppose that, over the investing life of the scheme—
- (a) more than 50% of the total value invested for the purposes of the scheme will be invested in investments which are controlling interests in trading companies or holding companies of trading groups, and
 - (b) more than 50% of the total value invested for the purposes of the scheme will be invested in investments which are held for 40 months or more.
- (5) In determining whether subsection (4)(b) is met in relation to an investment scheme, apply the rule in subsection (1) to the scheme.
- (6) For the purposes of this section, in determining whether a controlling equity stake fund has a controlling interest or an interest of a particular percentage in a company, any share capital of the company which is held for the purposes of an associated investment scheme is to be regarded as held for the purposes of the controlling equity stake fund.

809FZN Real estate funds

- (1) Where a real estate fund has a major interest in any land—
- (a) any investment made for the purposes of the fund in that land after the time the major interest was acquired is to be regarded as having been made at that time, and
 - (b) any disposal for the purposes of the fund of an investment in the land after that time is to be regarded as not being made until a relevant disposal is made.
- (2) In subsection (1)(b) “relevant disposal” means a disposal which (apart from subsection (1)) has the effect that the real estate fund has disposed of more than 50%

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of the greatest amount invested at any one time in the land for the purposes of the real estate fund.

- (3) Where a real estate fund has a major interest in any land (“the original land”) and subsequently acquires a major interest in any adjacent land—
 - (a) the acquisition is an investment in the original land for the purposes of subsection (1)(a), and
 - (b) after the acquisition, the adjacent land is to be regarded as part of the original land for the purposes of subsections (1) and (2).
- (4) In this Chapter, “real estate fund” means an investment scheme—
 - (a) which is not a venture capital fund, significant equity stake fund or controlling equity stake fund, and
 - (b) in relation to which the condition in subsection (5) is met.
- (5) The condition is that when the scheme starts to invest it is reasonable to suppose that over the investing life of the scheme—
 - (a) more than 50% of the total value invested for the purposes of the scheme will be invested in land, and
 - (b) more than 50% of the total value invested for the purposes of the scheme will be invested in investments which are held for 40 months or more.
- (6) In determining whether subsection (5)(b) is met in relation to an investment scheme, apply the rule in subsection (1) to the scheme.

809FZO Funds of funds

- (1) Section 809FZC(5) (disregard of intermediate holdings and holding structures) does not apply to an investment made for the purposes of a fund of funds in a collective investment scheme (and, accordingly, such an investment is regarded as an investment in the collective investment scheme itself).
- (2) Subsection (1) does not apply in relation to a fund of funds in relation to a collective investment scheme if it is reasonable to suppose that the main purpose or one of the main purposes of the making of any investment in any collective investment scheme for the purposes of the fund of funds is to reduce the proportion of carried interest arising to any person which is income-based carried interest.
- (3) Where by virtue of subsection (1) a fund of funds has a significant investment in a collective investment scheme (“the underlying scheme”)—
 - (a) any qualifying investment made for the purposes of the fund in the underlying scheme after the time the significant investment was acquired is to be regarded as having been made at that time, and
 - (b) any disposal for the purposes of the fund of a qualifying investment in the underlying scheme after that time is to be regarded as not being made until a relevant disposal is made.
- (4) In subsection (3)(b) “relevant disposal”, in relation to an underlying scheme, means a disposal which (apart from subsection (3)) has the effect that—
 - (a) the fund of funds has (by virtue of disposals of its interest in the underlying scheme) disposed of at least 50% of the greatest amount invested for its purposes at any one time in the underlying scheme, or

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- (b) the fund of fund's investment in the underlying scheme is worth less than whichever is the greater of—
 - (i) £1 million, or
 - (ii) 5% of the total value of the investments made before the disposal for the purposes of the fund of funds in the underlying scheme.
- (5) In this Chapter, “fund of funds” means an investment scheme in relation to which the condition in subsection (6) is met.
- (6) The condition is that when the scheme starts to invest it is reasonable to suppose that over the investing life of the scheme—
 - (a) substantially all of the total value invested for the purposes of the scheme will be invested in collective investment schemes of which the scheme holds less than 50% by value,
 - (b) more than 50% of the total value invested for the purposes of the scheme will be invested in investments which are held for 40 months or more, and
 - (c) more than 75% of the total value invested in the scheme will be invested by external investors.
- (7) In determining whether subsection (6)(b) is met in relation to an investment scheme, apply the rule in subsection (3) to the scheme.
- (8) In this section, “significant investment”, in relation to a collective investment scheme, means—
 - (a) an investment of a least £1 million in the scheme, or
 - (b) an investment of at least 5% of the total amounts raised or to be raised from external investors in the scheme.
- (9) In this section, “qualifying investment” means an investment made for the purposes of an investment scheme in a collective investment scheme (“the underlying scheme”) where—
 - (a) the investment is held on the same terms as other investments made by external investors in the underlying scheme,
 - (b) the fund of funds, together with any connected funds, does not hold more than 30% by value of the underlying scheme,
 - (c) the underlying scheme has not made an investment in the fund of funds,
 - (d) no person providing investment management services to the underlying scheme provides investment management services to the fund of funds, and
 - (e) it is reasonable to suppose that the investment in the underlying scheme is not part of arrangements the main purpose or one of the main purposes of which is to reward any person involved in providing investment management services to the underlying scheme or a scheme connected with that underlying scheme.

809FZP Secondary funds

- (1) Section 809FZC(5) (disregard of intermediate holdings and holding structures) does not apply to investments acquired for the purposes of a secondary fund in a collective investment scheme (and, accordingly, such an investment is regarded as an investment in the collective investment scheme itself).
- (2) Subsection (1) does not apply in relation to a secondary fund in relation to a collective investment scheme if it is reasonable to suppose that the main purpose or one of the

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main purposes of the making of any investment in any collective investment scheme for the purposes of the secondary fund is to reduce the proportion of carried interest arising to any person which is income-based carried interest.

- (3) Where by virtue of subsection (1) a secondary fund has a significant investment in a collective investment scheme (“the underlying scheme”)—
- (a) any qualifying investment acquired for the purposes of the fund in the underlying scheme after the time when the significant investment is acquired is to be regarded as having been made at that time, and
 - (b) any disposal for the purposes of the fund of a qualifying investment in the underlying scheme after that time is to be regarded as not being made until a relevant disposal is made.
- (4) In subsection (3)(b) “relevant disposal” means a disposal which (apart from subsection (3)) has the effect that—
- (a) the secondary fund has (by virtue of disposals of its interest in the underlying scheme) disposed of at least 50% of the greatest amount invested for its purposes at any one time in the underlying scheme, or
 - (b) the secondary fund's investment in the underlying scheme is worth less than whichever is the greater of—
 - (i) £1 million, or
 - (ii) 5% of the total value of the investments held immediately before the disposal for the purposes of the secondary fund in the underlying scheme.
- (5) In this Chapter, “secondary fund” means an investment scheme in relation to which the condition in subsection (6) is met.
- (6) The condition is that when the scheme starts to invest it is reasonable to suppose that over the investing life of the scheme—
- (a) substantially all of the total value invested for the purposes of the scheme will be in the acquisition of investments in, or the acquisition of portfolios of investments from, unconnected collective investment schemes,
 - (b) more than 50% of the total value invested for the purposes of the scheme will be invested in investments which are held for 40 months or more, and
 - (c) more than 75% of the total amount invested in the scheme will be invested by external investors.
- (7) In determining whether subsection (6)(b) is met in relation to an investment scheme, apply the rule in subsection (3) to the scheme.
- (8) In this section, “significant interest”, in relation to a collective investment scheme, means—
- (a) an investment of at least £1 million in the scheme, or
 - (b) an investment of at least 5% of the total amounts raised or to be raised from external investors in the scheme.
- (9) In this section, “qualifying investment” means an investment in a collective investment scheme (“the underlying scheme”) acquired for the purposes of a secondary fund where—
- (a) the investment acquired was originally made on the same terms as investments in the underlying scheme made by external investors,

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- (b) the terms on which the investment was acquired or investments made in the underlying scheme were made by external investors have not significantly changed since the investment was acquired,
- (c) the secondary fund, together with any connected funds, does not hold more than 30% by value of the underlying scheme,
- (d) no person providing investment management services to the underlying scheme provides investment management services to the secondary fund, and
- (e) it is reasonable to suppose that the investment in the underlying scheme is not part of arrangements the main purpose or one of the main purposes of which is to reward any person involved in providing investment management services to the underlying scheme or a scheme connected with that underlying scheme.

Direct lending funds

809FZQ Direct lending funds

- (1) Carried interest arising from an investment scheme which is a direct lending fund is income-based carried interest in its entirety.

Subsections (2) to (4) apply for the purposes of this Chapter.

- (2) A direct lending fund is an investment scheme—
- (a) which is not a venture capital fund, significant equity stake fund, controlling equity stake fund or real estate fund, and
 - (b) in relation to which it is reasonable to suppose that, when the scheme ceases to invest, a majority of the investments made for the purposes of the scheme (calculated by reference to value invested) will have been direct loans made by the scheme.
- (3) An investment scheme makes a direct loan if for the purposes of the scheme money is advanced at interest or for any other return determined by reference to the time value of money.
- (4) The acquisition of a direct loan is to be regarded as the making of a direct loan if the loan is acquired within the period of 120 days beginning with the day on which the money is first advanced.

809FZR Direct lending funds: exception

- (1) Section 809FZQ does not apply to carried interest arising from a direct lending fund if—
- (a) the fund is a limited partnership,
 - (b) the carried interest is a sum falling within section 809Ezd(2) or (3), and
 - (c) it is reasonable to suppose that, when investments cease to be made for the purposes of the fund, at least 75% of the direct loans made by the fund (calculated by reference to value advanced) will have been qualifying loans.
- (2) In this section “qualifying loan” means a direct loan made by an investment scheme where—
- (a) the borrower is not connected with the investment scheme,
 - (b) the money is advanced under a genuine commercial loan agreement negotiated at arm's length,

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- (c) repayments are fixed and determinable,
 - (d) maturity is fixed,
 - (e) the scheme has the positive intention and ability to hold the loan to maturity, and
 - (f) the relevant term of the loan is at least four years.
- (3) In this section “relevant term”, in relation to a loan, means the period which—
- (a) begins with the time when the money is advanced, and
 - (b) ends with the time by which, under the terms of the loan, at least 75% of the principal due under the loan must be repaid.
- (4) For the purposes of determining the average holding period of a scheme, where—
- (a) a qualifying loan made by an investment scheme is repaid by the borrower to any extent before the end of 40 months from the time the loan is made, and
 - (b) it is reasonable to suppose that the borrower's decision to repay was not affected by considerations relating to the application of this Chapter,
- the loan is, to the extent it is repaid by the borrower before the end of 40 months from the time it is made, to be treated as held for 40 months.
- (5) In determining for the purposes of subsection (1)(b) whether a sum falls within section 809EZD(2) or (3), read section 809EZD(4)(b) as if the reference to 6% were to 4%.
- (6) Section 809FZB applies to carried interest to which, by virtue of subsection (1), section 809FZQ does not apply.

Conditionally exempt carried interest

809FZS Conditionally exempt carried interest

- (1) Carried interest which—
- (a) arises to an individual from an investment scheme, and
 - (b) is conditionally exempt from income tax,
- is to be treated as if it were not income-based carried interest to any extent.
- (2) Carried interest is conditionally exempt from income tax if Conditions A to D are met.
- (3) Condition A is that the carried interest arises to the individual in the period of—
- (a) four years beginning with the day on which the scheme starts to invest, or
 - (b) ten years beginning with that day if the carried interest is calculated on the realisation model.
- (4) Condition B is that the carried interest would, apart from this section, be income-based carried interest to any extent.
- (5) Condition C is that it is reasonable to suppose that, were the carried interest to arise to the individual at the relevant time (but by reference to the same relevant investments), it would not be income-based carried interest to any extent.
- (6) The “relevant time” is whichever is the earliest of—
- (a) the time when it is reasonable to suppose that the investment scheme will be wound up;

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- (b) the end of the period of four years beginning with the time when it is reasonable to suppose that the scheme will cease to invest;
 - (c) the end of the period of—
 - (i) four years beginning with the day on which the sum of carried interest arises to the individual, or
 - (ii) ten years beginning with that day if the carried interest was calculated on the realisation model;
 - (d) the end of the period of four years beginning with the end of the period by reference to which the amount of the carried interest was determined.
- (7) Subsection (5) does not affect what would otherwise be the time at which an investment is disposed of for the purposes of this Chapter.
- (8) Condition D is that the individual makes a claim under this section for the carried interest to be conditionally exempt from income tax.

809FZT Carried interest which ceases to be conditionally exempt

- (1) Carried interest which is conditionally exempt from income tax ceases to be conditionally exempt from income tax at whichever is the earliest of—
- (a) the time when the investment scheme is wound up;
 - (b) the end of the period of four years beginning with the time the scheme ceases to invest;
 - (c) the end of the period of—
 - (i) four years beginning with the day on which the sum of carried interest arises to the individual, or
 - (ii) ten years beginning with that day if the carried interest was calculated on the realisation model;
 - (d) the end of the period of four years beginning with the end of the period by reference to which the amount of the carried interest is determined;
 - (e) the time at which Condition C in section 809FZS(5) ceases to be met.
- (2) Carried interest which ceases to be conditionally exempt from income tax is to be treated as having been income-based carried interest at the time it arose to the individual if or to the extent that, had it arisen to the individual at the time it ceased to be conditionally exempt (but in relation to the same relevant investments) it would have been income-based carried interest.
- (3) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (2).
- (4) Any amount paid by way of capital gains tax in respect of carried interest which is conditionally exempt from income tax is to be treated as if it had been paid in respect of any income tax liability arising under subsection (2).

Supplementary

809FZU Employment-related securities

This Chapter does not apply in relation to carried interest arising to an individual in respect of employment-related securities as defined by section 421B(8) of ITEPA 2003.

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809FZV“Loan to own” investments

- (1) This section applies where—
 - (a) an investment scheme acquires a debt,
 - (b) the debt is to any extent uncollectable or otherwise impaired,
 - (c) the debt is acquired at a discount with a view to securing direct or indirect ownership of any assets which are—
 - (i) owned by a company which is the debtor in respect of the debt, or
 - (ii) subject to a security interest in respect of the debt, and
 - (d) the fund acquires ownership of the assets within three months of the acquisition of the debt.
- (2) For the purposes of this Chapter—
 - (a) the debt and the assets are to be treated as a single investment, and
 - (b) the value invested in that single investment is the amount paid for the debt.
- (3) In this section “security interest” means an interest or right (other than a rentcharge) held for the purpose of securing the payment of money or the performance of any obligation.

809FZWAnti-avoidance

- (1) For the purposes mentioned in subsection (2), no regard is to be had to any arrangements the main purpose of which, or one of the main purposes of which, is to reduce the proportion of carried interest which is income-based carried interest.
- (2) The purposes referred to in subsection (1) are—
 - (a) determining the average holding period, or
 - (b) determining whether an investment scheme is a venture capital fund, significant equity stake fund, controlling equity stake fund, real estate fund, fund of funds or secondary fund.
- (3) In determining to what extent carried interest is income-based carried interest, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that section 809EZA(1) (charge to income tax) does not apply in relation to some or all of the carried interest.

809FZXTreasury regulations

- (1) The Treasury may by regulations make—
 - (a) provision relating to the calculation of the average holding period in some or all cases;
 - (b) provision repealing, or restricting the application of, section 809FZU (employment-related securities).
- (2) The provision referred to in subsection (1)(a) includes in particular—
 - (a) provision for a method of calculating that period which is different from that in section 809FZC;
 - (b) provision as to what is and is not to be regarded as an investment;
 - (c) provision as to when an investment is to be regarded as made or disposed of;
 - (d) anti-avoidance provision.

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- (3) Regulations under this section may—
- (a) amend this Chapter;
 - (b) make different provision for different purposes;
 - (c) contain incidental, supplemental, consequential and transitional provision and savings.

809FZY “Reasonable to suppose”

- (1) For the purposes of this Chapter, in determining what it is reasonable to suppose in relation to an investment scheme, regard is to be had to all the circumstances.
- (2) Those circumstances include in particular any prospectus or other document which—
- (a) is made available to external investors in the investment scheme, and
 - (b) on which external investors may reasonably be supposed to have relied or been able to rely.

Interpretation

809FZZ Interpretation of Chapter 5F

- (1) In this Chapter—
- “5% interest”, “15% interest”, “20% interest”, “25% interest” and “40% interest” are to be construed in accordance with subsection (4);
- “act together”: two or more investment schemes act together in relation to a company if—
- (a) they enter into contractual arrangements (with or without other persons) in relation to the conduct of the company's affairs,
 - (b) the arrangements are negotiated on arm's length terms, and
 - (c) the investment schemes act together to secure greater control or influence over the company's affairs than they would be able to secure individually;
- “alternative finance arrangements” has the same meaning as in Part 6 of CTA 2009 (see section 501(2) of that Act);
- “arrangements” has the same meaning as in Chapter 5E (see section 809EZE);
- “associated”: two (or more) investment schemes are “associated if—
- (a) the same or substantially the same individuals provide investment management services to both schemes;
 - (b) the investment schemes have the same or substantially the same investments, and
 - (c) the schemes act together in relation to all or substantially all of the investments they acquire;
- “carried interest” has the same meaning as in section 809EZB (see sections 809EZC and 809EZD);
- “collective investment scheme” has the same meaning as in Chapter 5E (see section 809EZE);
- “connected” and “unconnected” are to be construed in accordance with subsections (6) and (7);

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“contract for differences” has the same meaning as in Part 7 of CTA 2009 (see section 582 of that Act);

“controlling equity stake fund” has the meaning given in section 809FZM;

“controlling interest” has the meaning given in subsection (3);

“derivative contract” has the same meaning as in Part 7 of CTA 2009 (but see below);

“designated” has the same meaning as for accounting purposes;

“direct lending fund” and “direct loan” have the meanings given in section 809FZQ;

“exchange gain or loss” is to be construed in accordance with section 475 of CTA 2009;

“external investor” has the same meaning as in Chapter 5E (see section 809EZE);

“fund of funds” has the meaning given in section 809FZO;

“future” has the same meaning as in Part 7 of CTA 2009 (see section 581 of that Act);

“interest rate contract” means—

- (a) a derivative contract whose underlying subject-matter is, or includes, interest rates, or
- (b) a swap contract in which payments fall to be made by reference to a rate of interest;

“investing life” is to be construed in accordance with subsection (2);

“investment” does not include—

- (a) cash awaiting investment, or
- (b) cash representing the proceeds of the disposal of an investment, where the cash is to be distributed as soon as reasonably practicable to investors in the scheme;

“investment scheme” has the same meaning as in Chapter 5E (see section 809EZA(6));

“limited partnership” means—

- (a) a limited partnership registered under the Limited Partnerships Act 1907,
- (b) a limited liability partnership formed under the Limited Liability Partnerships Act 2000 or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c.12 (N.I.)), or
- (c) a firm or entity of a similar character to any of those mentioned in paragraph (a) or (b) formed under the law of a country or territory outside the United Kingdom;

“loan relationship” has the meaning given by section 302 of CTA 2009 (but see below);

“major interest”, in relation to land, has the meaning given by section 96 of the Value Added Tax Act 1994;

“option” has the same meaning as in Part 7 of CTA 2009, disregarding section 580(2) of that Act;

“real estate fund” has the meaning given by section 809FZN;

“realisation model”: a sum of carried interest is calculated on the “realisation model” if it falls within section 809EZD(2) or (3) (disregarding section 809EZD(2)(b) and (3)(b));

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“scheme director condition” has the meaning given by section 809FZK(8) and (9);

“secondary fund” has the meaning given by section 809FZP;

“significant equity stake fund” has the meaning given by section 809FZL;

“sum” has the same meaning as in Chapter 5E (see section 809EZB(3));

“trading company” and “trading group” have the meanings given by paragraphs 20 and 21 of Schedule 7AC to TCGA 1992;

“underlying subject matter” has the same meaning as in Part 7 of CTA 2009;

“unlisted”: a company is unlisted if—

(a) no shares of any class issued by the company are listed on any stock exchange, and

(b) there are no other trading arrangements in place in respect of shares of any class issued by the company;

“venture capital fund” has the meaning given by section 809FZK.

(2) In this Chapter—

(a) references to when a scheme starts or ceases to invest are to the time when investments start or cease to be made for the purposes of the scheme, and

(b) references to the investing life of the scheme are to the time between when a scheme starts and ceases to invest.

(3) For the purposes of this Chapter, an investment scheme has a controlling interest in a company if share capital of the company is held for the purposes of the scheme which—

(a) amounts to more than 50% of the ordinary share capital of the company, and

(b) carries an entitlement to more than 50% of—

(i) voting rights in the company,

(ii) profits available for distribution to shareholders, and

(iii) assets of the company available for distribution to shareholders in a winding-up.

(4) For the purposes of this Chapter, an investment scheme has an interest of a particular percentage in a company (for example, a 40% interest) if share capital of the company is held for the purposes of the scheme which—

(a) amounts to at least that percentage of the ordinary share capital of the company, and

(b) carries an entitlement to at least that percentage of—

(i) voting rights in the company,

(ii) profits available for distribution to shareholders, and

(iii) assets of the company available for distribution to shareholders in a winding-up.

(5) For the purposes of subsections (3) and (4) any share capital held by a company controlled by an investment scheme is to be regarded as held for the purposes of the investment scheme.

(6) For the purposes of this Chapter, an investment scheme (A) is connected with another investment scheme or person (B) if—

(a) A directly or indirectly has control of B, or

(b) the same person, directly or indirectly, has control of A and B.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (7) For the purposes of subsection (6) “control”—
- (a) in the case of control of a company, is to be read in accordance with sections 450 and 451 of CTA 2010;
 - (b) in the case of control of a partnership, has the meaning given in section 995(3);
 - (c) in the case of control of an investment scheme which is not a company or partnership, or of any other person which is not a company or partnership, means the ability to secure that the affairs of that scheme or other person are conducted in accordance with one's wishes.
- (8) For the purposes of the definition of “derivative contract”, read Part 7 of CTA 2009 as if—
- (a) references to a company were references to an investment scheme, and
 - (b) references to a contract of a company were references to a contract for the purposes of an investment scheme.
- (9) For the purposes of the definition of “loan relationship”, read Part 5 of CTA 2009 as if—
- (a) references to a company were references to an investment scheme, and
 - (b) references to a loan relationship of a company were references to a loan relationship for the purposes of an investment scheme.]

[^{F196}CHAPTER 6

AVOIDANCE INVOLVING LEASES OF PLANT AND MACHINERY

Textual Amendments

F196 Pt. 13 Ch. 6 inserted (21.7.2008 with effect in accordance with Sch. 20 para. 2(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 2\(1\)](#) (with [Sch. 20 para. 2\(3\)](#))

809ZA Plant and machinery leases: capital receipts to be treated as income

- (1) This section applies if—
- (a) there is an unconditional obligation, under a lease of plant or machinery or a relevant arrangement, to make a relevant capital payment (at any time), or
 - (b) a relevant capital payment is made under such a lease or arrangement otherwise than in pursuance of such an obligation.
- (2) The lessor is treated for income tax purposes as receiving income attributable to the lease of an amount equal to the amount of the capital payment.
- [^{F197}(3) If subsection (1)(a) applies, the income is treated as income for the period of account in which there is first an obligation of the kind mentioned there.
- (4) If subsection (1)(b) applies, the income is treated as income for the period of account in which the capital payment is made.
- (5) For the meaning of “capital payment” and “relevant capital payment”, see section 809ZE.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (6) For the meaning of other expressions used in this section or section 809ZC, 809ZD or 809ZE, see section 809ZF.]

Textual Amendments

F197 S. 809ZA(3)-(6) substituted for s. 809ZA(3) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 548** (with [Sch. 2](#))

^{F198}809ZB Section 809ZA: interpretation

Textual Amendments

F198 S. 809ZB repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 549**, **Sch. 3 Pt. 1** (with [Sch. 2](#))

809ZC Section 809ZA: lease of plant and machinery and other property

- (1) This section applies if section 809ZA applies in relation to a lease of plant or machinery and other property (see [^{F199}section 809ZF(3)]).
- (2) The relevant capital payment is to be apportioned, on a just and reasonable basis, between—
 - (a) the plant and machinery, and
 - (b) the other property.
- (3) If the income (if any) received by the lessor that is attributable to any of the plant or machinery is chargeable to tax under Part 3 of ITTOIA 2005 (property income), treat that plant or machinery as falling within subsection (2)(b) (and not subsection (2)(a)).
- (4) Section 809ZA(2) has effect as if the reference to the amount of the capital payment were to such amount as is apportioned under subsection (2) in respect of the plant or machinery within subsection (2)(a).

Textual Amendments

F199 Words in s. 809ZC(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 550** (with [Sch. 2](#))

809ZD Section 809ZA: expectation that relevant capital payment will not be paid

- (1) This section applies for income tax purposes if—
 - (a) section 809ZA applies by virtue of subsection (1)(a) of that section, and
 - (b) at any time, the lessor reasonably expects that the relevant capital payment will not be paid (or will not be paid in full).
- (2) For the purposes of calculating the profits of the lessor, a deduction is allowed for the period of account which includes that time.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (3) The amount of the deduction is equal to the amount reasonably expected not to be paid.
- (4) No other deduction is allowed in respect of the matters mentioned in subsection (1).]

[^{F200}809ZE Capital payment”, “relevant capital payment” etc

- (1) This section gives the meaning of “capital payment”, “relevant capital payment” and references to payment for the purposes of sections 809ZA to 809ZD and this section.
- (2) “Capital payment” means any payment except one which, if made to the lessor—
 - (a) would fall to be included in a calculation of the lessor's income for income tax purposes, or
 - (b) would so fall but for section 148A of ITTOIA 2005 (rental earnings under long funding finance lease).
- (3) A capital payment, in relation to a lease or relevant arrangement, is “relevant” if condition A or B is met (but this is subject to subsections (6) and (7)).
- (4) Condition A is that the capital payment is payable (or paid), directly or indirectly, by or on behalf of the lessee to the lessor or another person on the lessor's behalf in connection with—
 - (a) the grant, assignment, novation or termination of the lease, or
 - (b) any provision of the lease or relevant arrangement (including the variation or waiver of any such provision).
- (5) Condition B is that rentals payable under the lease are less than, or payable later than, they might reasonably be expected to be if there were no obligation to make the capital payment and it were not made.
- (6) A capital payment is not “relevant” so far as it—
 - (a) reduces the amount of expenditure incurred by the lessor for the purposes of CAA 2001 in respect of the plant or machinery in question or would reduce it but for section 536 of that Act (contributions not made by public bodies and not eligible for tax relief), or
 - (b) is compensation for loss resulting from damage to, or damage caused by, the plant or machinery in question.
- (7) If—
 - (a) a capital payment is an initial payment under a long funding lease for the purposes of Part 2 of CAA 2001 (see section 70YI of that Act), and
 - (b) under section 61 of that Act (disposal events and disposal values) the commencement of the term of the lease (as defined in section 70YI of that Act) is an event that requires the lessor to bring a disposal value into account, the capital payment is only “relevant” so far as it exceeds the amount that is the disposal value for the purposes of Part 2 of that Act.
- (8) References to payment include the provision of value by any means other than the making of a payment.
- (9) Accordingly—
 - (a) references to the making of a payment include the passing of value by any other means, and
 - (b) references to the amount of the payment include the value passed.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

Textual Amendments

F200 Ss. 809ZE, 809ZF inserted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 551** (with **Sch. 2**)

809ZF Further interpretation of section 809ZA etc

- (1) This section applies for the purposes of sections 809ZA to 809ZE and this section.
- (2) “Lease” includes—
 - (a) a licence, and
 - (b) the letting of a ship or aircraft on charter or the letting of any other asset on hire,and “lessor” and “lessee” must be read accordingly.
- (3) “Lease of plant or machinery” includes a lease of plant or machinery and other property, but does not include a lease to which subsection (4) or (5) applies.
- (4) This subsection applies to a lease if any income attributable to it and received by the lessor would be chargeable to tax under Part 3 of ITTOIA 2005 (property income).
- (5) This subsection applies to a lease of plant or machinery if the lessor has incurred on the plant or machinery what would be qualifying expenditure within the meaning of Part 2 of CAA 2001 but for section 34A of that Act (expenditure on plant or machinery for long funding leasing not qualifying expenditure).
- (6) “Relevant arrangement” means any agreement or arrangement relating to a lease of plant or machinery, including one made before the lease is entered into or after it has ended.
- (7) Accordingly, “lessor” and “lessee” include prospective and former lessors and lessees.]

Textual Amendments

F200 Ss. 809ZE, 809ZF inserted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 551** (with **Sch. 2**)

[^{F201}809ZE] Consideration for taking over payment obligations as lessee treated as income

- (1) This section applies where under any arrangements—
 - (a) a person within the charge to income tax (P) agrees to take over obligations of another person (Q) as lessee under a lease of plant or machinery,
 - (b) as a result of that agreement P, or a person connected with P, becomes entitled to income deductions (whether deductions in calculating income or from total profits), and
 - (c) a payment is payable to P, or a person connected with P, by way of consideration for that agreement.
- (2) The payment is treated for the purposes of income tax as income received by P in the tax year in which P takes over the obligations mentioned in subsection (1)(a).

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (3) Subsection (2) does not apply if and to the extent that the consideration is (apart from this section)—
- (a) charged to tax on P, or a person connected with P, as an amount of income,
 - (b) brought into account in calculating for tax purposes any income of P or a person connected with P, or
 - (c) brought into account for the purposes of any provision of CAA 2001 as a disposal receipt, or proceeds from a balancing event or disposal event, of P or a person connected with P.
- (4) It does not matter how P takes over the obligations of Q (whether by assignment, novation, variation or replacement of the contract, by operation of law or otherwise).
- (5) In this section—
- “arrangements” include any scheme, arrangement, understanding, transaction or series of transactions (whether or not legally enforceable);
- “lease of plant or machinery” means any kind of agreement or arrangement under which sums are paid for the use of, or otherwise in respect of, plant or machinery;
- “payment” includes the provision of any benefit, the assumption of any liability or the transfer of money or money's worth (and “payable” is to be construed accordingly);
- “payment by way of consideration” includes a payment made, directly or indirectly, in consequence of or otherwise in connection with, the agreement mentioned in subsection (1)(a), where it is reasonable to assume the agreement would not have been made unless the arrangements included provision for the payment.
- (6) Any priority rule (other than section 212(1) of FA 2013 (general anti-abuse rule to have priority over other rules)) has effect subject to this section, despite the terms of the priority rule.
- (7) For that purpose “priority rule” is a rule (however expressed) to the effect that particular provisions have effect to the exclusion of, or otherwise in priority to, anything else.
- (8) An example of a priority rule is section 6(1) of TIOPA 2010 (effect to be given to double taxation arrangements despite anything in any enactment).]

Textual Amendments

F201 S. 809ZFA inserted (with application in accordance with s. 68(3) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 68\(2\)](#)

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

[^{F202}CHAPTER 7

AVOIDANCE INVOLVING OBTAINING TAX RELIEF FOR INTEREST

Textual Amendments

F202 Pt. 13 Ch. 7 inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 7 para. 52** (with Sch. 9 paras. 1-9, 22)

809ZG Tax relief schemes and arrangements

- (1) Relief is not to be given under any provision of the Income Tax Acts to a person in respect of a payment of interest if a tax relief scheme has been effected, or tax relief arrangements have been made, in relation to the transaction under which the interest is paid.
- (2) Subsection (1) applies whether the tax relief scheme is effected, or the tax relief arrangements are made, before or after the transaction.
- (3) A scheme is a tax relief scheme in relation to a transaction for the purposes of subsection (1) if it is such that the sole or main benefit that might be expected to accrue to the person from the transaction is the obtaining of a reduction in tax liability by means of relief under the Income Tax Acts.
- (4) Arrangements are tax relief arrangements in relation to a transaction for the purposes of subsection (1) if they are such that the sole or main benefit that might be expected to accrue to the person from the transaction is the obtaining of a reduction in tax liability by means of relief under the Income Tax Acts.
- (5) In this section “relief” means relief by way of—
 - (a) deduction in calculating profits or gains, or
 - (b) deduction or set off against income.]

[^{F203}CHAPTER 8

TAINTED CHARITY DONATIONS

Textual Amendments

F203 Pt. 13 Ch. 8 inserted (19.7.2011) (with effect in accordance with Sch. 3 para. 27 28 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 3 para. 1**

Introduction

809ZH Overview of Chapter

- (1) This Chapter makes provision for removing entitlement to income tax reliefs, and counteracting income tax advantages, where a person makes a relievable charity donation which is a tainted donation.

Status: Point in time view as at 06/04/2019.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (2) See section 257A of TCGA 1992 and Part 21C of CTA 2010 for the removal of entitlement to other reliefs where a person makes a relievable charity donation which is a tainted donation.

809ZI Relievable charity donations

- (1) In this Chapter “relievable charity donation” means a gift or other disposal which—
- (a) is made by a person to a charity, and
 - (b) is eligible for tax relief.
- (2) A gift or other disposal is eligible for tax relief if one or both of the following apply—
- (a) (ignoring the tainted donation provisions) tax relief would be available in respect of it under a relevant relieving provision;
 - (b) the charity is entitled to claim a repayment of tax in respect of it.
- (3) “The tainted donation provisions” are—
- (a) this Chapter,
 - (b) section 257A of TCGA 1992 (tainted charity donations: disapplication of section 257), and
 - (c) Part 21C of CTA 2010 (tainted charity donations: removal of corporation tax reliefs).
- (4) The following are “relevant relieving provisions”—
- (a) section 257 of TCGA 1992 (gifts of chargeable assets),
 - (b) section 63(2)(a), (aa) and (ab) of CAA 2001 (gifts of plant and machinery),
 - (c) Part 12 of ITEPA 2003 (payroll giving),
 - (d) section 108 of ITTOIA 2005 (gifts of trading stock),
 - (e) Chapters 2 and 3 of Part 8 of this Act (gift aid and gifts of shares),
 - (f) section 105 of CTA 2009 (gifts of trading stock), and
 - (g) Part 6 of CTA 2010 (charitable donations relief).
- (5) For the purposes of this Chapter, an amount of income which arises under a UK settlement and to which a charity is entitled under the terms of the settlement is to be regarded as an amount gifted to the charity by the trustees of the settlement.

“UK settlement” has the same meaning as in section 628 of ITTOIA 2005.

Tainted donations

809ZJ Tainted donations

- (1) For the purposes of this Chapter, a relievable charity donation is a tainted donation if (and only if) Conditions A, B and C are met.
- (2) Condition A is that—
- (a) a linked person enters into arrangements (whether before or after the donation is made), and
 - (b) it is reasonable to assume from either or both of—
 - (i) the likely effects of the donation and the arrangements, and

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- (ii) the circumstances in which the donation is made and the circumstances in which the arrangements are entered into, that the donation would not have been made and the arrangements would not have been entered into independently of one another.
- (3) “Linked person” means—
- (a) the person who made the donation (“the donor”), or
 - (b) a person connected with the donor at a relevant time.
- (4) In subsection (3) “relevant time” means a time during the period which begins with the earliest, and ends with the latest, of the following times—
- (a) the time when the arrangements are entered into as mentioned in subsection (2);
 - (b) the time when the relievable charity donation is made;
 - (c) the time when the arrangements are first materially implemented.
- (5) Condition B is that the main purpose, or one of the main purposes, of the linked person in entering into the arrangements is to obtain a financial advantage—
- (a) directly or indirectly from the charity to which the donation is made or a connected charity,
 - (b) for one or more linked persons who are not charities (each of whom is referred to in this Chapter as “a potentially advantaged person”).
- (6) Condition C is that the donor is not—
- (a) a qualifying charity-owned company, or
 - (b) a relevant housing provider linked with the charity to which the donation is made.
- (7) For the purposes of subsection (6)(b) a relevant housing provider is linked with the charity if (and only if)—
- (a) one is wholly owned, or subject to control, by the other, or
 - (b) both are wholly owned, or subject to control, by the same person.
- (8) In this section—
- “qualifying charity-owned company”, in relation to a relievable charity donation, means a company which—
- (a) is wholly owned by one or more charities, at least one of which is the charity to which the donation is made or a connected charity, and
 - (b) has not previously been under the control of, and does not carry on a trade or business previously carried on by, one or more of the following—
 - (i) a potentially advantaged person;
 - (ii) a person (other than a charity) who, at any time within the period of 4 years ending with the day on which paragraph (a) was first satisfied, was connected with a person who is a potentially advantaged person;
- “relevant housing provider” means a body which is—
- (a) a non-profit registered provider of social housing, or
 - (b) entered on a register maintained under section 1 of the Housing Act 1996, section 20 of the Housing (Scotland) Act 2010 (asp 17) or Article

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14 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15)).

(9) Section 200 of CTA 2010 (company wholly owned by a charity) applies for the purposes of subsection (8), and for those purposes references in that section to “charity” include a registered club within the meaning of section 658(6) of that Act.

(10) This section is subject to section 809ZL (certain financial advantages to be ignored).

Modifications etc. (not altering text)

C8 S. 809ZJ(8) modified (temp.) (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), Sch. 3 para. 31(a)

809ZK Circumstances in which financial advantage deemed to be obtained

- (1) This section applies for the purposes of Condition B.
- (2) Subsection (3) applies where the arrangements entered into by the linked person (as mentioned in Condition A) involve a transaction to which—
 - (a) that or any other linked person (“X”), and
 - (b) another person (“Y”),
 are parties.
- (3) X obtains a financial advantage from the charity to which the donation is made or a connected charity if—
 - (a) the terms of the transaction are less beneficial to Y or more beneficial to X (or both) than those which might reasonably be expected in a transaction concluded between parties dealing at arm's length, or
 - (b) the transaction is not of a kind which a person dealing at arm's length and in place of Y might reasonably be expected to make.
- (4) Nothing in this section is intended to limit the circumstances in which a linked person may be regarded as obtaining a financial advantage for the purposes of section 809ZJ.
- (5) In this section—
 - “Condition A” and “Condition B” have the same meaning as in section 809ZJ;
 - “linked person” has the meaning given by section 809ZJ(3);
 - “transaction” includes (for example)—
 - (a) the sale or letting of property,
 - (b) the provision of services,
 - (c) the exchange of property,
 - (d) the provision of a loan or any other form of financial assistance, and
 - (e) investment in a business.

809ZL Certain financial advantages to be ignored

- (1) When determining whether a relievable charity donation is a tainted donation, a financial advantage within subsection (2), (3), (4) or (5) is to be ignored.
- (2) A financial advantage is within this subsection if the person for whom it is obtained applies the advantage for charitable purposes only.

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

- (3) A financial advantage is within this subsection if (ignoring the tainted donation provisions) it is—
- (a) a benefit associated with a gift which is a qualifying donation for the purposes of Chapter 2 of Part 8 (gift aid), or
 - (b) a benefit associated with a payment which is a qualifying payment for the purposes of Chapter 2 of Part 6 of CTA 2010 (charitable donations relief: payments to charity).
- (4) A financial advantage is within this subsection if (ignoring the tainted donation provisions)—
- (a) the relievable charity donation is a disposal in respect of which tax relief would be available under Chapter 3 of Part 8 of this Act (gifts of shares, securities and real property to charities etc) or Chapter 3 of Part 6 of CTA 2010 (charitable donations: certain disposals to charity), and
 - (b) the advantage is a benefit the value of which would be taken into account in determining the relievable amount in respect of the disposal for the purposes of the Chapter in question.
- (5) A financial advantage is within this subsection if (ignoring the tainted donation provisions)—
- (a) the relievable charity donation is a gift in respect of which tax relief would be available under section 108 of ITTOIA 2005 or section 105 of CTA 2009 (gifts of trading stock to charities etc), and
 - (b) the advantage is a benefit attributable to the making of the gift in respect of which an amount would be brought into account under section 109 of ITTOIA 2005 or section 108 of CTA 2009 (receipt of benefits by donor or connected person).
- (6) In this section—
- “benefit associated with a gift” has the meaning given by section 417;
 - “benefit associated with a payment” has the meaning given by section 196 of CTA 2010;
 - “the tainted donation provisions” has the meaning given by section 809ZI(3).

Removal of reliefs and imposition of charge to tax

809ZM Removal of income tax relief in respect of tainted donations etc

- (1) This section applies where a tainted donation is made by a person.
- (2) Where (ignoring this Chapter) income tax relief would be available in respect of the tainted donation, that relief is not available.
- (3) Where—
- (a) (ignoring this Chapter) income tax relief would be available in respect of an associated donation, and
 - (b) entitlement to that relief is not withdrawn by subsection (2),
- that relief is not available.
- (4) In this section—

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“associated donation”, in relation to a tainted donation, means a relievable charity donation made—

- (a) in accordance with the relevant arrangements, and
- (b) by a person, other than—
 - (i) a qualifying charity-owned company in relation to that relievable charity donation, or
 - (ii) a relevant housing provider linked (within the meaning of section 809ZJ(7)) with the charity to which that donation is made;

“income tax relief” means relief under—

- (a) section 63(2)(a), (aa) or (ab) of CAA 2001 (gifts of plant and machinery), so far as it applies in relation to income tax,
- (b) Part 12 of ITEPA 2003 (payroll giving),
- (c) section 108 of ITTOIA 2005 (gifts of trading stock),
- (d) Chapter 2 of Part 8 of this Act (gift aid), or
- (e) Chapter 3 of that Part (gifts of shares etc);

“qualifying charity-owned company” has the meaning given by section 809ZJ(8) (except that paragraph (b) of that definition does not apply);

“relevant housing provider” has the meaning given by section 809ZJ(8);

“the relevant arrangements”, in relation to a tainted donation, means the arrangements by reference to which Conditions A and B in section 809ZJ are met.

- (5) Where entitlement to relief is withdrawn under this section in respect of a donation—
 - (a) subsections (6) and (7) apply if the relief is under Chapter 2 of Part 8 (gift aid), and
 - (b) subsection (8) applies if the relief is under Part 12 of ITEPA 2003 (payroll giving).
- (6) For the purposes of Step 2 in section 58(1), the donation is not a qualifying donation for the purposes of Chapter 2 of Part 8.
- (7) But—
 - (a) the donation remains a qualifying donation for the purposes of—
 - (i) Part 10 (special rules about charitable trusts etc),
 - (ii) section 899(5) (meaning of “qualifying annual payment”),
 - (iii) Chapter 2 of Part 11 of CTA 2010 (charitable companies: gifts and other payments),
 - (iv) section 664 of that Act (community amateur sports clubs: exemption for interest and gift aid income), and
 - (b) accordingly, section 414(2)(a) (donation treated as made after deduction of basic rate income tax) applies for the purposes of section 520(4) (income tax treated as deducted to be treated as income tax paid by charitable trust).
- (8) The donation remains a donation for the purposes of Part 12 of ITEPA 2003 for the purposes of—
 - (a) section 521A (gifts under payroll deduction scheme: income tax liability and exemption), and
 - (b) section 472A of CTA 2010 (gifts under payroll reduction scheme: corporation tax liability and exemption).

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 13. (See end of Document for details)

809ZN Income tax charge where gift aid is withdrawn

- (1) Income tax is charged under this section if—
 - (a) a person makes a tainted donation in a tax year,
 - (b) (ignoring this Chapter) relief would have been available under Chapter 2 of Part 8 in respect of the tainted donation or an associated donation (“the gift aid donation”), and
 - (c) the charity to which the gift aid donation is made is entitled to claim a repayment of tax in respect of that donation.
- (2) The amount of the tax charged under this section is equal to the amount of the repayment of tax which the charity is entitled to claim in respect of the gift aid donation (whether or not such a claim is made).
- (3) Each of the persons mentioned in subsection (4) is liable for any tax charged under this section, and the liability of those persons is joint and several.
- (4) The persons are—
 - (a) the donor in respect of the gift aid donation,
 - (b) if different, the donor in respect of the tainted donation,
 - (c) each potentially advantaged person under the relevant arrangements relating to the tainted donation, and
 - (d) any charity to which the gift aid donation or (if different) the tainted donation is made, or any connected charity, which falls within subsection (5).
- (5) A charity falls within this subsection if the charity—
 - (a) is or was party to the relevant arrangements relating to the tainted donation, and
 - (b) was aware, at the time it entered into those arrangements, that a linked person was entering (or had entered or was likely to enter) into the arrangements in circumstances falling within Condition B in section 809ZJ.
- (6) No liability to income tax arises under this section in respect of a repayment of tax, if (and to the extent that) the repayment is itself repaid to the Commissioners for Her Majesty's Revenue and Customs under any other provision of the Tax Acts.
- (7) In this section—
 - “associated donation” has the same meaning as in section 809ZM;
 - “linked person” has the same meaning as in section 809ZJ;
 - “the relevant arrangements” has the same meaning as in section 809ZM.

809ZO Income tax charge where payment of trust income to charity

- (1) Income tax is charged under this section if—
 - (a) a person makes a tainted donation in a tax year,
 - (b) the tainted donation or an associated donation is a payment by the trustees of a settlement of income arising under the settlement (“the trust donation”), and
 - (c) the charity to which the trust donation is made is entitled to claim a repayment of tax in respect of that donation.
- (2) The amount of the tax charged under this section is equal to the amount of the repayment of tax which the charity is entitled to claim in respect of the trust donation (whether or not such a claim is made).

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- (3) Each of the persons mentioned in subsection (4) is liable for any tax charged under this section, and the liability of those persons is joint and several.
- (4) The persons are—
- (a) the trustees of the settlement who made the trust donation,
 - (b) if different, the donor in respect of the tainted donation,
 - (c) if section 628 or 630 of ITTOIA 2005 (gifts from settlor-interested trusts etc) applies in relation to the income out of which the trust donation is made, the settlor in relation to the settlement,
 - (d) each potentially advantaged person under the relevant arrangements relating to the tainted donation,
 - (e) any beneficiary of the settlement who is party to those arrangements, and
 - (f) any charity to which the trust donation or (if different) the tainted donation is made, or any connected charity, which falls within subsection (5).
- (5) A charity falls within this subsection if—
- (a) the charity is or was party to the relevant arrangements relating to the tainted donation, and
 - (b) the charity was aware, at the time it entered into those arrangements, that a linked person was entering (or had entered or was likely to enter) into the arrangements in circumstances falling within Condition B in section 809ZJ.
- (6) No liability to income tax arises under this section in respect of a repayment of tax if that repayment is itself repaid to the Commissioners for Her Majesty's Revenue and Customs under any other provision of the Tax Acts.
- (7) In this section—
- “associated donation” has the same meaning as in section 809ZM;
 - “linked person” has the same meaning as in section 809ZJ;
 - “the relevant arrangements” has the same meaning as in section 809ZM;
 - “settlement” and “settlor” have the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act).

Supplementary

809ZP Connected charities

For the purposes of this Chapter, a “connected charity” in relation to another charity means a charity which is connected with that other charity in a matter relating to the structure, administration or control of either charity.

809ZQ Connected persons

- (1) Section 993 (meaning of “connected” persons) applies for the purposes of this Chapter—
- (a) subject to section 809ZP, and
 - (b) as if, after subsection (7) there were inserted the provision in subsection (2).
- (2) That provision is—
- “(8) A person who is a beneficiary of a settlement is connected with—

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- (a) a person in the capacity as trustee of the settlement, and
 - (b) the settlor in relation to the settlement.
- (9) For the purposes of this section—
- (a) a man and woman living together as husband and wife are treated as if they were husband and wife,
 - (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, and
 - (c) “close company” includes a company that would be a close company if it were resident in the United Kingdom.”

809ZR Minor definitions

- (1) In this Chapter—
- “arrangements” includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions;
 - “charity” includes a registered club within the meaning of section 658(6) of CTA 2010 (meaning of “community amateur sports club” and “registered club”).
- (2) In this Chapter, in the case of a charitable trust, references to a charity being entitled to a repayment of, or liable to pay, tax are to be read as references to the trustees of the trust being so entitled or liable.]

Status:

Point in time view as at 06/04/2019.

Changes to legislation:

There are currently no known outstanding effects for the Income Tax Act 2007, Part 13.