



Income Tax Act 2007

2007 CHAPTER 3

PART 13

TAX AVOIDANCE

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—
- individuals to whom income is treated as arising under section 721 (individuals with power to enjoy income as a result of relevant transactions),
 - individuals to whom income is treated as arising under section 728 (individuals receiving capital sums as a result of relevant transactions), and
 - 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.

Status: Point in time view as at 19/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2. (See end of Document for details)

(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

(1) In this Chapter “person abroad” means a person who is resident or domiciled outside the United Kingdom.

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

- (a) a UK resident body corporate that is incorporated outside the United Kingdom,
- (b) the person treated as neither UK resident nor ordinarily UK resident under section 475(3) (trustees of settlements), and

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- (c) persons treated as non-UK resident under section 834(4) (personal representatives).

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 ordinarily 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.
- (4) But see section 724 (special rules where benefit provided out of income of person abroad) [^{F1}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 742 (exemptions where no tax avoidance purpose or genuine commercial transaction).

Textual Amendments

- F1** 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](#)

Status: Point in time view as at 19/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2. (See end of Document for details)

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 conditions A and B 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 would be chargeable to income tax if it were the individual's and received by the individual in the United Kingdom.
- (4) For the purposes of subsection (2), it does not matter whether the income may be enjoyed immediately or only later.
- (5) It does not matter for the purposes of this section—
 - (a) whether the income would be chargeable to income tax apart from section 720,
 - (b) whether the individual is ordinarily UK resident at the time when the relevant transfer is made, 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.

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

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- (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.

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 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 on which the individual has already been charged to income tax for that tax year or a previous tax year.

725 Reduction in amount charged where controlled foreign company involved

- [^{F2}(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, and
 - (b) apart from this section, the amount of income treated as arising to an individual under section 721 for a tax year would be or include a sum forming part of the CFC's chargeable profits for that accounting period.]
- (2) The amount of income so treated is reduced by—

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

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where—

S is the sum forming part of the [^{F3}CFC's] chargeable profits for that accounting period, CA is the [^{F4}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 [^{F3}CFC's] chargeable profits for that accounting period.

[^{F5}(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

- F2** S. 725(1) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 22\(2\)](#) (with [Sch. 20 para. 50\(9\)](#))
- F3** 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\(9\)](#))
- F4** 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\(9\)](#))
- F5** S. 725(3) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 22\(4\)](#) (with [Sch. 20 para. 50\(9\)](#))

[^{F6}726 Non-UK domiciled individuals to whom remittance basis applies

- (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—
 - (a) section 809B, 809D or 809E (remittance basis) applies to the individual for the year, and
 - (b) the individual is not domiciled in the United Kingdom in the year.
- (2) For the purposes of this section the deemed income is “foreign” if (and to the 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.]

Textual Amendments

- F6** 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](#)

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 ordinarily UK resident by means of relevant transfers.

Status: Point in time view as at 19/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2. (See end of Document for details)

- (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.
- [^{F7}(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 742 (exemptions where no tax avoidance purpose or genuine commercial transaction).
- (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

- F7** 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](#)

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, and
 - (b) the capital receipt conditions are met in respect of the individual in the tax year (see section 729).
- (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 it applies for determining the amount so treated under section 721(1).
- (3) It does not matter for the purposes of this section—
 - (a) whether the income would be chargeable to income tax apart from section 727,
 - (b) whether the individual is ordinarily UK resident at the time when the relevant transfer abroad is made, or
 - (c) whether the avoiding of liability to income tax is a purpose for which that transfer is effected.

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—

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- (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.
- (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.

[^{F8}730 Non-UK domiciled individuals to whom remittance basis applies

- (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—
- (a) section 809B, 809D or 809E (remittance basis) applies to the individual for the year, and
 - (b) the individual is not domiciled in the United Kingdom in the year.
- (2) For the purposes of this section the deemed income is “foreign” if (and to the 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.]

Textual Amendments

F8 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](#)

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 (non-transferors receiving a benefit as a result of relevant transactions).

Status: Point in time view as at 19/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2. (See end of Document for details)

(2) Tax is charged under this section on the amount of income treated as arising for the tax year.

[^{F9}(2A) But see section 735 (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.

(4) For exemptions from the charge under this section, see sections 736 to 742 (exemptions where no tax avoidance purpose or genuine commercial transaction).

Textual Amendments

F9 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](#)

732 Non-transferors receiving a benefit as a result of relevant transactions

- (1) This section applies if—
- (a) a relevant transfer occurs,
 - (b) an individual who is ordinarily UK resident receives a benefit,
 - (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,
 - (d) the individual is not liable to income tax under section 720 or 727 by reference to the transfer and would not be so liable if the effect of sections 726 and 730 were ignored, and
 - (e) the individual is not liable to income tax on the amount or value of the benefit (apart from section 731).
- (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.

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

Status: Point in time view as at 19/07/2012.

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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”.

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).

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,

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- (b) for that tax year the whole or part of any benefits so provided is a capital payment to which section 87 or 89(2) of, or paragraph 8 of Schedule 4C to, TCGA 1992 applies (chargeable gains: gains attributed to beneficiaries),
 - (c) it is such a payment because the total untaxed benefits exceed the available relevant income (see Step 6 in section 733(1)) and so it is not treated as income arising to the individual under section 732(2), and
 - (d) because of that capital payment chargeable gains are treated as accruing to the individual in that or a subsequent tax year under any of the provisions referred to in paragraph (b).
- (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.
- (4) In this section “the total untaxed benefits” and “the available relevant income” have the same meaning as in section 733(1) (see Steps 2 and 5).
- [^{F10}(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 [^{F11}regulations 20 and 22 to 24 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001)]).]

Textual Amendments

F10 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](#)

F11 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\(5\)](#)

[^{F12}735 Non-UK domiciled individuals to whom remittance basis applies

- (1) This section applies if—
 - (a) income is treated under section 732 as arising to an individual in a tax year (“the deemed income”),
 - (b) section 809B, 809D or 809E (remittance basis) applies to the individual for the year, and
 - (c) the individual is not domiciled in the United Kingdom in the 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.

Status: Point in time view as at 19/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2. (See end of Document for details)

Textual Amendments

F12 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](#)

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.

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.

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- (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 has been charged to income tax under section 731 by reason of the income.]

Textual Amendments

F12 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](#)

Exemptions: no tax avoidance purpose or genuine commercial transaction

736 Exemptions: introduction

- (1) Sections 737 to 742 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).
- (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
 - “pre-5 December 2005 transaction” means a relevant transaction effected before 5 December 2005.

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

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- (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—
 - (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.

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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—
 - (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

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- (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.
- (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.

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

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- (b) if more than one, in such respective proportions as appears to the officer to be just and reasonable.
- (3) For the meaning of references in subsections (1) and (2) to an amount of income taken into account in charging tax, see section 744.
- (4) If income treated as arising to an individual is charged to income tax under section 720 or 727 and the individual subsequently receives that income, it is treated as not being the individual's income again for income tax purposes.

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

- (1) References in section 743(1) and (2) (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 or value of the benefit charged, and
 - (b) otherwise they are references to the amount of income charged.
- (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 that income.
- (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.

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

- (1) Income tax at the basic rate, the [^{F13}starting rate for savings] or the dividend ordinary rate is not charged under section 720 or 727 in respect of any income so far as it has borne tax at that rate by deduction or otherwise.
- (2) Subsection (1) does not affect the tax charged if section 724(2) applies (benefit provided out of income of person abroad charged in year of receipt).
- (3) Subsection (4) applies to any income that—
 - (a) is treated as arising to an individual under section 721 or 728, and
 - (b) apart from this Chapter is dividend income,so far as subsection (1) does not apply to the income.
- (4) The charge to income tax under section 720 or, as the case may be, section 727 operates by treating the income as if it were income within section 19(2) (meaning of “dividend income”).

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2. (See end of Document for details)

Textual Amendments

F13 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](#)

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.
- (2) The same deductions and reliefs are allowed as would have been allowed if the income treated as arising to the individual under section 721 or 728 had actually been received by the individual.

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.
- (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

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- (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
 - (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 ^{F14}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.

^{F15}(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 ^{F16}relevant lawyers]),
 - and
 - section 750 (restrictions on particulars to be provided by banks).

Textual Amendments

F14 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)

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- F15** 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)
- F16** 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 ^{F17}relevant lawyers]

- (1) In relation to anything done by a ^{F18}relevant lawyer] on behalf of a client who does not consent to the information otherwise required from the ^{F18}relevant lawyer] under section 748 being provided, the ^{F18}relevant lawyer] may not be compelled under that section to do more than—
 - (a) state that the ^{F18}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 ^{F18}relevant lawyer] in connection with the transfer of any asset by or to an individual who is ordinarily 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 ^{F18}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 ^{F18}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 ^{F18}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.
 - (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.
- ^{F19}(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.

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2. (See end of Document for details)

Textual Amendments

- F17** 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)
- F18** 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)
- F19** 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.

751 ^[F20]The tribunal’s] jurisdiction on appeals

^[F21]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),
- (e) section 743(2) (no duplication of charges: choice of persons in relation to whom income is taken into account).

Textual Amendments

- F20** 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\(2\)](#)

Status: Point in time view as at 19/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2. (See end of Document for details)

F21 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)**

Status:

Point in time view as at 19/07/2012.

Changes to legislation:

There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2.