



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 13

#### TAX AVOIDANCE

### CHAPTER 2

#### TRANSFER OF ASSETS ABROAD

#### *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 ([<sup>F1</sup>individuals] receiving a benefit as a result of relevant transactions).

[<sup>F2</sup>(1A) But where the individual is non-UK resident for the tax year in which a benefit is received, there is a charge to tax under this section on any matched deemed income—

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

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

- (a) “matched deemed income” means income which—
  - (i) is treated by section 732 as arising to the individual, and
  - (ii) would, if section 735A applied also for this purpose, be matched under that section with the benefit, and

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- (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).]
- (2) Tax is charged under this section on the amount of income treated as arising for the tax year.
- [<sup>F3</sup>(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<sup>[F4]</sup>, but this is subject to section 733A.]
- (4) For exemptions from the charge under this section, see sections 736 to [<sup>F5</sup>742A] (exemptions where no tax avoidance purpose or genuine commercial transaction [<sup>F6</sup>, etc]).

#### Textual Amendments

- F1** 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\(2\)](#)
- F2** 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\(3\)](#)
- F3** 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](#)
- F4** 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\(4\)](#)
- F5** 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\(a\)](#)
- F6** 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 [<sup>F7</sup>Individuals] receiving a benefit as a result of relevant transactions

- (1) This section applies if—
- (a) a relevant transfer occurs,
  - (b) an individual [<sup>F8</sup>receives a benefit in a tax year],
  - (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,
  - [<sup>F9</sup>(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 on the amount or value of the benefit (apart from section 731).

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- (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.
- [<sup>F10</sup>(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

- F7** 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\(4\)](#)
- F8** 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\(2\)\(a\)](#)
- F9** 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\(2\)\(b\)](#)
- F10** 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*

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” [<sup>F11</sup>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.

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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).

**Textual Amendments**

**F11** 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)**

**[<sup>F12</sup>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

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- (ii) with a benefit received by the individual at a time when the individual was a close member (see subsection (7)) of the family of the settlor of the settlement concerned,
  - (c) there is no time in the year when the trustees of the settlement are resident in the United Kingdom,
  - (d) there is a time in the year when the settlor is resident in the United Kingdom,
  - (e) there is no time in the year when the settlor is domiciled in the United Kingdom, and
  - (f) there is no time in the year when the settlor is regarded for the purposes of section 718(1)(b) as domiciled in the United Kingdom as a result of section 835BA having effect because of Condition A in that section being met.
- (2) If—
  - (a) the individual is not resident in the United Kingdom at any time in the year, or
  - (b) section 809B, 809D or 809E (remittance basis) applies to the individual for the year and none of the amount mentioned in subsection (1)(a) of this section is remitted to the United Kingdom in the year,the settlor is liable for the tax charged under section 731 on that amount as if that amount were income arising to the settlor in the year (and the individual is not liable in any later year for income tax on that amount).
- (3) If—
  - (a) section 809B, 809D or 809E (remittance basis) applies to the individual for the year, and
  - (b) part only of the amount mentioned in subsection (1)(a) of this section is remitted to the United Kingdom in the year,the settlor is liable for the tax charged under section 731 on the remainder of that amount as if that remainder were income arising to the settlor in the year (and the individual is not liable in any later year for income tax on that remainder).
- (4) The amount mentioned in subsection (1)(a) may be the whole, or part only, of the amount treated as arising to the individual under section 732 for the year in the case of the relevant transfer and its associated operations.
- (5) Where any tax for which the settlor is liable as a result of subsection (2) or (3) is paid, the settlor is entitled to recover the amount of the tax from the individual.
- (6) For the purpose of recovering that amount, the settlor is entitled to require an officer of Revenue and Customs to give the settlor a certificate specifying—
  - (a) the amount of the income concerned, and
  - (b) the amount of tax paid,and any such certificate is conclusive evidence of the facts stated in it.
- (7) For the purposes of subsection (1)(b)(ii), a person is a close member of the family of the settlor if the person is—
  - (a) the settlor's spouse or civil partner, or
  - (b) a child of the settlor, or of a person within paragraph (a), if the child has not reached the age of 18.
- (8) For the purposes of subsection (7)—
  - (a) two people living together as if they were spouses of each other are treated as if they were spouses of each other, and

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- (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

- F12** 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](#)

### 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,
  - (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).
- [<sup>F13</sup>(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 [<sup>F14</sup>regulations 20 and 22 to 24 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001)]).]

#### Textual Amendments

- F13** 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](#)
- F14** 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\(5\)](#)

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### [<sup>F15</sup>735 Non-UK domiciled individuals to whom remittance basis applies

[<sup>F16</sup>(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.

[<sup>F17</sup>(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

**F15** 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](#)

**F16** 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](#))

**F17** 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<sup>[F18]</sup>, 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**

**F15** 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](#)

**F18** 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](#)

**[F19]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).]

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**Textual Amendments**

**F19** 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](#)

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