



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 13

#### TAX AVOIDANCE

### CHAPTER 2

#### TRANSFER OF ASSETS ABROAD

#### *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 <sup>F1</sup>... 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.

[<sup>F2</sup>(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 [<sup>F3</sup>742A] (exemptions where no tax avoidance purpose or genuine commercial transaction [<sup>F4</sup>, etc]).

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- (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

- F1** 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](#))
- F2** 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](#)
- F3** 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\(a\)](#)
- F4** 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,<sup>F5</sup>...
  - (b) the capital receipt conditions are met in respect of the individual in the tax year (see section 729) [<sup>F6</sup>, and
  - (c) the individual is UK resident for the tax year].

[<sup>F7</sup>(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 [<sup>F8</sup>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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[<sup>F9</sup>(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—

- <sup>F10</sup>(a) . . . . .
- [<sup>F11</sup>(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

- F5** 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](#))
- F6** 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](#))
- F7** 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](#)
- F8** 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\(3\)](#)
- F9** 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\(4\)](#)
- F10** 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\(5\)](#)
- F11** 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.

**[<sup>F12</sup>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

- F12** 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](#)

#### [<sup>F13</sup>730 Non-UK domiciled individuals to whom remittance basis applies

- [<sup>F14</sup>(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 [<sup>F15</sup>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.
  - [<sup>F16</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).]
  - [<sup>F17</sup>(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**

- F13** 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](#)
- F14** 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](#))
- F15** 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](#)
- F16** 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\(3\)](#)
- F17** 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](#)

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