



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 13

#### TAX AVOIDANCE

### CHAPTER 2

#### TRANSFER OF ASSETS ABROAD

#### *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 <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 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) [<sup>F2</sup>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—

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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 [F3742A] (exemptions where no tax avoidance purpose or genuine commercial transaction [F4 etc]).

#### Textual Amendments

- F1** 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)
- F2** 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
- F3** 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)
- F4** 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 [F5 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 [F6 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.
- [F7(3A) Condition C is that the individual is UK resident for the tax year.]
- [F8][F9(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
  - (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—

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- (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 [<sup>F10</sup>of the person abroad] may be enjoyed immediately or only later.
- (5) It does not matter for the purposes of this section—
- <sup>F11</sup>(a) . . . . .
  - [<sup>F12</sup>(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

- F5** 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](#))
- F6** 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\(2\)](#)
- F7** 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](#))
- F8** 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](#)
- F9** 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\(3\)](#)
- F10** 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\(4\)](#)
- F11** 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\(5\)](#)
- F12** 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](#))

#### [<sup>F13</sup>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

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- (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.
- (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.

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### Textual Amendments

**F13** 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,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—

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- (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.]

#### **Textual Amendments**

**F13** 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.

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- (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.

### **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 [<sup>F14</sup>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 [<sup>F15</sup>by reference to] which the individual has already been charged to income tax for that tax year or a previous tax year [<sup>F16</sup>under this Chapter].

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### Textual Amendments

- F14** 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\(2\)](#)
- F15** 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\(3\)\(a\)](#)
- F16** 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

[<sup>F17</sup>(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,

[<sup>F18</sup>(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 [<sup>F19</sup>CFC's] chargeable profits for that accounting period,

CA is the [<sup>F20</sup>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 [<sup>F19</sup>CFC's] chargeable profits for that accounting period.

[<sup>F21</sup>(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.

(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).]

[<sup>F22</sup>(3) Terms used in this section which are defined in Part 9A of TIOPA 2010 have the same meaning as in that Part.]



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### Textual Amendments

- F17** S. 725(1) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 22\(2\)](#) (with [Sch. 20 para. 50\(9\)](#))
- F18** 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\(4\)\(5\)](#))
- F19** 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\(9\)](#))
- F20** 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\(9\)](#))
- F21** 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\(3\)](#)
- F22** S. 725(3) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 22\(4\)](#) (with [Sch. 20 para. 50\(9\)](#))

### [<sup>F23</sup>726 Non-UK domiciled individuals to whom remittance basis applies

[<sup>F24</sup>(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 [<sup>F25</sup>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.

[<sup>F26</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>F27</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
- (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 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

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(c) has not prior to 6 April 2017 been distributed by the trustees of the settlement concerned.]]

**Textual Amendments**

- F23** 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**
- F24** 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](#))
- F25** 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**
- F26** 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)**
- F27** 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**

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