



Income Tax Act 2007

2007 CHAPTER 3

PART 13 U.K.

TAX AVOIDANCE

CHAPTER 2 U.K.

TRANSFER OF ASSETS ABROAD

Exemptions: no tax avoidance purpose or genuine commercial transaction

736 Exemptions: introduction U.K.

- (1) Sections 737 to ^[F1]742A] deal with exemptions from liability under this Chapter.
- (2) Some exemptions apply according to whether the relevant transactions are all pre-5 December 2005 transactions or all post-4 December 2005 transactions or include both (see sections 737, 739 and 740).

^[F2](2A) The exemption given by section 742A applies only in the case of a relevant transaction effected on or after 6 April 2012.]

- (3) In this section and sections 737 to 742—
 - “post-4 December 2005 transaction” means a relevant transaction effected on or after 5 December 2005, and
 - “pre-5 December 2005 transaction” means a relevant transaction effected before 5 December 2005.

Textual Amendments

- F1** Word in s. 736(1) substituted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 6\(2\)](#)

Status: Point in time view as at 17/07/2013.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Cross Heading:
Exemptions: no tax avoidance purpose or genuine commercial transaction. (See end of Document for details)

F2 S. 736(2A) inserted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by
 Finance Act 2013 (c. 29), **Sch. 10 para. 6(3)**

737 Exemption: all relevant transactions post-4 December 2005 transactions U.K.

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

“revenue” includes taxes, duties and national insurance contributions,
 “taxation” includes any revenue for whose collection and management the Commissioners for Her Majesty’s Revenue and Customs are responsible.
- (8) If—
 - (a) apart from this subsection, an associated operation would not be taken into account for the purposes of this section, and
 - (b) the conditions in subsections (2) to (4) are not met if it is taken into account, because of—
 - (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.

Status: Point in time view as at 17/07/2013.

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738 Meaning of “commercial transaction” U.K.

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

739 Exemption: all relevant transactions pre-5 December 2005 transactions U.K.

- (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 U.K.

- (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.

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- (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) U.K.

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

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742 Partial exemption where later associated operations fail conditions **U.K.**

- (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.

[^{F3}742A Post-5 April 2012 transactions: exemption for genuine transactions **U.K.**

- (1) Subsection (2) applies for the purpose of determining the liability of an individual to tax under this Chapter by reference to a relevant transaction if—
 - (a) the transaction is effected on or after 6 April 2012, and
 - (b) conditions A and B are met.
- (2) Income is to be left out of account so far as the individual satisfies an officer of Revenue and Customs that it is attributable to the transaction.
- (3) Condition A is that—
 - (a) were, viewed objectively, the transaction to be considered to be a genuine transaction having regard to any arrangements under which it is effected and any other relevant circumstances, and
 - (b) were the individual to be liable to tax under this Chapter by reference to the transaction,
the individual's liability to tax would, in contravention of a relevant treaty provision, constitute an unjustified and disproportionate restriction on a freedom protected under that relevant treaty provision.
- (4) In subsection (3) “relevant treaty provision” means—
 - (a) Title II or IV of Part Three of the Treaty on the Functioning of the European Union,
 - (b) Part II or III of the EEA agreement, or
 - (c) the provision of any subsequent treaty replacing a provision mentioned in paragraph (a) or (b).
- (5) Condition B is that the individual satisfies an officer of Revenue and Customs that, viewed objectively, the transaction must be considered to be a genuine transaction having regard to any arrangements under which it is effected and any other relevant circumstances.
- (6) Without prejudice to the generality of subsection (3)(a) or (5), in order for the transaction to be considered to be a genuine transaction the transaction must not—
 - (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,

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having regard to any arrangements under which the transaction is effected and any other relevant circumstances.

- (7) Subsection (8) applies if any asset or income falling within subsection (12) is used for the purposes of, or is received in the course of, activities carried on in a territory outside the United Kingdom by a person (“the relevant person”) through a business establishment which the relevant person has in that territory.
- (8) Without prejudice to the generality of subsection (3)(a) or (5), in order for the transaction to be considered to be a genuine transaction the activities mentioned in subsection (7) must consist of the provision by the relevant person of goods or services to others on a commercial basis and involve—
- (a) the use of staff in numbers, and with competence and authority,
 - (b) the use of premises and equipment, and
 - (c) the addition of economic value, by the relevant person, to those to whom the goods or services are provided,
- commensurate with the size and nature of those activities.
- (9) In subsection (8)(a) “staff” means employees, agents or contractors of the relevant person.
- (10) To determine if a person has a “business establishment” in a territory outside the United Kingdom, apply sections 1141, 1142(1) and 1143 of CTA 2010 as if in those provisions—
- (a) references to a company were to a person, and
 - (b) references to a permanent establishment were to a business establishment.
- (11) Subsection (6) does not apply if—
- (a) the relevant transfer is made by an individual who makes it wholly—
 - (i) for personal reasons (and not commercial reasons), and
 - (ii) for the personal benefit (and not the commercial benefit) of other individuals, and
 - (b) no consideration is given (directly or indirectly) for the relevant transfer or otherwise for any benefit received by any individual mentioned in paragraph (a)(ii),
- and all assets and income falling within subsection (12) are dealt with accordingly.
- (12) The assets and income falling within this subsection are—
- (a) any of the assets transferred by the relevant transfer;
 - (b) any assets directly or indirectly representing any of the assets transferred;
 - (c) any income arising from any assets within paragraph (a) or (b);
 - (d) any assets directly or indirectly representing the accumulations of income arising from any assets within paragraph (a) or (b).
- (13) In subsections (11) and (12) references to the relevant transfer are to—
- (a) if the transaction mentioned in subsection (1) is a relevant transfer, the transfer, or
 - (b) if the transaction so mentioned is an associated operation, the relevant transfer to which it relates.
- (14) Subsection (15) applies if—

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

Textual Amendments

- F3** S. 742A inserted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 7](#)

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