



Income Tax Act 2007

2007 CHAPTER 3

PART 13

TAX AVOIDANCE

CHAPTER 4

SALES OF OCCUPATION INCOME

Introduction

773 Overview of Chapter

- (1) This Chapter imposes a charge to income tax—
 - (a) on individuals to whom income is treated as arising under section 778 (income arising where capital amount other than derivative property or right obtained), and
 - (b) on individuals to whom income is treated as arising under section 779 (income arising where derivative property or right obtained).
- (2) Income is treated as arising under those sections only if—
 - (a) transactions are effected or arrangements made to exploit the earning capacity of an individual in an occupation, and
 - (b) the main object or one of the main objects of the transactions or arrangements is the avoidance or reduction of liability to income tax.

774 Meaning of “occupation”

In this Chapter references to an occupation, in relation to an individual, are references to any activities of a kind undertaken in a profession or vocation, regardless of whether the individual—

- (a) is carrying on a profession or vocation on the individual’s own account, or

Status: This is the original version (as it was originally enacted).

- (b) is an employee or office-holder.

775 Priority of other tax provisions

This Chapter has effect subject to—

- (a) Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor), and
- (b) any other provision of the Tax Acts treating income as belonging to a particular person.

Charge on sale of occupation income

776 Charge to tax on sale of occupation income

- (1) Income tax is charged on income treated as arising under—
 - (a) section 778 (income arising where capital amount other than derivative property or right obtained), or
 - (b) section 779 (income arising where derivative property or right obtained).
- (2) Tax is charged under this section on the full amount of income treated as arising in the tax year.
- (3) The person liable for any tax charged under this section is the individual to whom the income is treated as arising.
- (4) This section is subject to section 784 (exemption for sales of going concerns).

777 Conditions for sections 778 and 779 to apply

- (1) Sections 778 and 779 apply only if conditions A to C are met in respect of an individual.
- (2) Condition A is that the individual carries on an occupation wholly or partly in the United Kingdom.
- (3) Condition B is that transactions are effected or arrangements made to exploit the individual's earning capacity in the occupation by putting another person (see section 782) in a position to enjoy—
 - (a) all or part of the income or receipts derived from the individual's activities in the occupation, or
 - (b) anything derived directly or indirectly from such income or receipts.
- (4) The reference in subsection (3) to income or receipts derived from the individual's activities includes a reference to payments for any description of copyright or licence or franchise or other right deriving its value from the individual's activities (including past activities).
- (5) Condition C is that as part of, or in connection with, or in consequence of, the transactions or arrangements a capital amount is obtained by the individual for the individual or another person.
- (6) For the purposes of subsection (5), the cases where an individual ("A") obtains a capital amount for another person ("B") include cases where A has put B in a position

to receive the capital amount by providing B with something of value derived, directly or indirectly, from A's activities in the occupation.

- (7) In this Chapter “capital amount” means an amount in money or money's worth which does not fall to be included in a calculation of income for income tax purposes apart from this Chapter.

778 Income arising where capital amount other than derivative property or right obtained

- (1) This section applies if the capital amount obtained as mentioned in section 777(5) does not consist of—
- (a) property which derives substantially the whole of its value from the individual's activities, or
 - (b) a right which does so.
- (2) The capital amount is treated for income tax purposes as income arising to the individual.
- (3) The income is treated as arising in the tax year in which the capital amount is receivable.
- (4) A capital amount is not regarded as having become receivable by a person for the purposes of this section until the person can effectively enjoy or dispose of it.

779 Income arising where derivative property or right obtained

- (1) This section applies if—
- (a) the capital amount obtained as mentioned in section 777(5) consists of—
 - (i) property which derives substantially the whole of its value from the activities of an individual, or
 - (ii) a right which does so, and
 - (b) the property or right is sold or otherwise realised.
- (2) For the purposes of subsection (1), it does not matter whether the capital amount is obtained on one occasion or on two or more occasions (for example, because the individual acquires a stock option and subsequently exercises it).
- (3) Income of an amount equal to the proceeds of sale or the realised value is treated for income tax purposes as income arising to the individual.
- (4) The income is treated as arising in the tax year in which the property or right is sold or otherwise realised.

Further provisions relevant to the charge

780 Transactions, arrangements, sales and realisations relevant for Chapter

- (1) For the purposes of this Chapter, account is to be taken of any method, however indirect, by which—
- (a) any property or right is transferred or transmitted, or
 - (b) the value of any property or right is enhanced or diminished.

Status: This is the original version (as it was originally enacted).

- (2) Accordingly—
- (a) the occasion of the transfer or transmission of any property or right however indirect, and
 - (b) the occasion when the value of any property or right is enhanced,
- may be an occasion when tax is charged under this Chapter.
- (3) Subsections (1) and (2) apply in particular—
- (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
 - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning—
 - (i) share capital or other rights in a company,
 - (ii) rights in a partnership, or
 - (iii) an interest in settled property,
 - (c) to the creation of an option and the giving of consideration for granting it,
 - (d) to the creation of a requirement for consent and the giving of consideration for granting it,
 - (e) to the creation of an embargo affecting the disposition of any property or right and the giving of consideration for releasing it, and
 - (f) to the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

781 Tracing value

- (1) This section applies if it is necessary to determine the extent to which the value of any property or right is derived from any other property or right for the purposes of this Chapter.
- (2) Value may be traced through any number of companies, partnerships and trusts.
- (3) The property held by a company, partnership or trust must be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.

782 Meaning of “other person”

- (1) For the purposes of this Chapter references to other persons are to be read in accordance with subsections (2) to (4).
- (2) A partnership or partners in a partnership may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.
- (3) The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being trustees.
- (4) Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.

783 Valuations and apportionments

- (1) All such valuations are to be made as are appropriate to give effect to this Chapter.

- (2) For the purposes of this Chapter, any expenditure, receipt, consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances.

Exemption for sales of going concerns

784 Exemption for sales of going concerns

- (1) This section applies if a capital amount is obtained from the disposal—
- (a) of assets (including any goodwill) of a profession or vocation,
 - (b) of a share in a partnership which is carrying on a profession or vocation, or
 - (c) of shares in a company.
- (2) An individual is not liable to income tax under this Chapter in respect of the capital amount so far as the going concern condition is met (see subsections (4) and (5)).
- (3) Subsection (2) is subject to section 785 (restriction on exemption: sales of future earnings).
- (4) In the case of a disposal within subsection (1)(a) or (b), the going concern condition is that the value of what is disposed of at the time of disposal is attributable to the value of the profession or vocation as a going concern.
- (5) In the case of a disposal within subsection (1)(c), the going concern condition is that the value of what is disposed of at the time of disposal is attributable to the value of the company's business as a going concern.
- (6) In subsection (5) the reference to the company's business includes a reference to the business of any other company in which it holds shares directly or indirectly.

785 Restriction on exemption: sales of future earnings

- (1) This section applies if the value as a going concern mentioned in section 784(4) or (5) is derived to a material extent from prospective income or receipts derived directly or indirectly from the individual's activities in the occupation.
- (2) The exemption under section 784 applies to the value so derived only if the future earnings condition is met.
- (3) The future earnings condition is met if, ignoring all capital amounts, the individual will receive full consideration for the prospective income or receipts, whether as a partner in a partnership or as an employee or otherwise.
- (4) The references in subsections (1) and (3) to income or receipts include references to payments for any description of copyright, licence, franchise or other right deriving its value from the individual's activities (including past activities).

Recovery of tax

786 Recovery of tax where consideration receivable by person not assessed

- (1) This section applies if a person ("A") is assessed to tax under this Chapter in respect of consideration receivable by another person ("B").

Status: This is the original version (as it was originally enacted).

- (2) Consideration is not regarded as having become receivable by B for this purpose until B can effectively enjoy or dispose of it.
- (3) A is entitled to recover from B any part of the tax which A has paid.
- (4) If any part of the tax remains unpaid at the end of the period of 6 months beginning with the date when it became due and payable, it is recoverable from B as if B were the person assessed.
- (5) Subsection (4) does not affect the right to recover the tax from A.
- (6) For the purposes of this section, any income which an individual is treated as having as a result of this Chapter (the “occupation income”) is treated as the highest part of the individual’s total income.
- (7) But if in the tax year—
 - (a) more than one capital amount is treated as the individual’s occupation income, or
 - (b) the individual is also treated as having income as a result of Chapter 3 (transactions in land),
 only a just and reasonable proportion of each capital amount treated as occupation income is to be treated as the highest part of the individual’s total income.
- (8) See section 1012 for the relationship between—
 - (a) the rules in subsections (6) and (7), and
 - (b) other rules requiring particular income to be treated as the highest part of a person’s total income.

787 Recovery of tax: certificates of tax paid etc

- (1) For the purposes of section 786(3), an officer of Revenue and Customs must, if requested to do so, produce a certificate specifying—
 - (a) the amount of income in respect of which tax has been paid, and
 - (b) the amount of tax paid.
- (2) The certificate is conclusive evidence of any facts stated in it.
- (3) See also section 944 (under which directions may be given for payments within this Chapter to non-UK residents to be subject to a duty to deduct income tax).

Power to obtain information

788 Power to obtain information

- (1) An officer of Revenue and Customs may by notice require any person to provide the officer within such period as the officer may direct with such particulars as the officer may reasonably require for the purposes of this Chapter.
- (2) That period must be at least 30 days.
- (3) The particulars which a person must provide under this section, if required to do so by such a notice, include particulars about—

Status: This is the original version (as it was originally enacted).

- (a) transactions or arrangements with respect to which the person is or was acting on behalf of others,
 - (b) transactions or arrangements which in the opinion of the officer should properly be investigated for the purposes of this Chapter, although in the person’s opinion no liability to tax arises under this Chapter, and
 - (c) whether the person has taken or is taking any part and, if so, what part in transactions or arrangements of a description specified in the notice.
- (4) Subsection (3) is subject to subsection (5).
- (5) In relation to anything done by a solicitor on behalf of a client who does not consent to the provision of information required to be provided by a notice under subsection (1), the solicitor may not be compelled under this section to do more than—
- (a) state that the solicitor was acting on behalf of a client, and
 - (b) give the name and address of the client.
- (6) A solicitor is not treated as having taken part in a transaction or arrangement for the purposes of subsection (3)(c) merely because of giving professional advice to a client about it.

Interpretation

789 Minor definitions

In this Chapter—

- “company” includes any body corporate, and
- “share” includes stock.