
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, Cross
Heading: New special rule: distributions to participators in close companies etc. (See end of Document for details)

SCHEDULES

SCHEDULE 45

STATUTORY RESIDENCE TEST

PART 4

ANTI-AVOIDANCE

New special rule: distributions to participators in close companies etc

- 131 Part 4 of ITTOIA 2005 (savings and investment income) is amended as follows.
132 In Chapter 1 (introduction), after section 368 insert—

“368A Interpretation of special rules for temporary non-residents

- (1) This section concerns provisions of this Part that are expressed to apply if an individual is “temporarily non-resident” (“TNR provisions”).
 - (2) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains for the purposes of TNR provisions—
 - (a) when an individual is to be regarded as “temporarily non-resident”, and
 - (b) what the following terms mean—
 - (i) “the temporary period of non-residence”,
 - (ii) “the year of departure”, and
 - (iii) “the period of return”.
 - (3) A reference in TNR provisions to “the year of return” is to the tax year consisting of or including the period of return.
 - (4) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax by virtue of any TNR provisions (or as preventing a charge to that tax from arising as a result).
 - (5) In this section and in TNR provisions, “double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010.”
- 133 In Chapter 3 (dividends etc from UK resident companies and tax credits etc in respect of certain distributions), after section 401B insert—

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“Anti-avoidance

401C Temporary non-residents

- (1) This section applies if—
 - (a) an individual is temporarily non-resident,
 - (b) a relevant distribution is made or treated as made to the individual in the temporary period of non-residence,
 - (c) the tax year in which it is made or treated as made (“the distribution year”) is a tax year for which the individual is UK resident, and
 - (d) the amount of income tax charged on the distribution under this Chapter is less than it would have been if the existence of double taxation relief arrangements were disregarded.
- (2) Subsections (3) and (4) have effect in cases where the distribution year is not the year of return.
- (3) The total income (see Step 1 of the calculation in section 23 of ITA 2007) on which the individual is charged to income tax for the year of return is to be increased by an amount equal to the amount on which tax would be charged under this Chapter in respect of the distribution disregarding any double taxation relief arrangements.
- (4) But the notional UK tax on that distribution is to be allowed as a credit against the individual's liability to income tax for the year of return under Step 6 of the calculation in section 23.
- (5) If the distribution year is the year of return, the tax charged under this Chapter in respect of the relevant distribution is to be charged and assessed without regard to the existence of double taxation relief arrangements.
- (6) For the purposes of this section, a dividend or other distribution is a “relevant distribution” if—
 - (a) it is a dividend or other distribution of a close company, and
 - (b) it is made or treated as made to the individual because the individual was at a relevant time—
 - (i) a material participator in the company, or
 - (ii) an associate of a material participator in the company.
- (7) But a dividend or other distribution within subsection (6) in the form of a cash dividend is not a “relevant distribution” to the extent that the dividend is paid in respect of post-departure trade profits.
- (8) “Post-departure trade profits” are—
 - (a) trade profits of the close company arising in an accounting period that begins after the start of the temporary period of non-residence, and
 - (b) so much of any trade profits of the close company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.

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- (9) The extent to which a dividend is paid in respect of post-departure trade profits is to be determined on a just and reasonable basis.
- (10) The “notional UK tax” on the relevant distribution is so much of the income tax paid by the individual for the distribution year as is attributable on a just and reasonable basis to the relevant distribution.
- (11) If section 393 applies, references in this section to a distribution being made to the individual are to a cash dividend being paid over to the individual.
- (12) In this section—
 - “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454);
 - “material participator” means a participator who has a material interest in the company, as defined in section 457 of that Act;
 - “relevant time” means—
 - (a) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
 - (b) any time in one or more of the 3 tax years preceding that year;
 - “trade profits of the close company” means the profits of any trade carried on by the close company, as calculated in accordance with Part 3 of CTA 2009 (trading income).”

134 In Chapter 4 (dividends from non-UK resident companies), after section 408 insert—

“Anti-avoidance

408A Temporary non-residents

- (1) This section applies if an individual is temporarily non-resident.
- (2) Dividends within subsection (3) are to be treated for the purposes of this Chapter as if they were received by the individual, or as if the individual became entitled to them, in the period of return.
- (3) A dividend is within this subsection if—
 - (a) the individual receives or becomes entitled to it in the temporary period of non-residence,
 - (b) it is a dividend of a company that would be a close company if the company were UK resident,
 - (c) the individual receives or becomes entitled to it by virtue of being at a relevant time—
 - (i) a material participator in the company, or
 - (ii) an associate of a material participator in the company, and
 - (d) ignoring this section, the individual—
 - (i) is not liable for tax under this Chapter in respect of the dividend, but
 - (ii) would have been so liable if the individual had received the dividend, or become entitled to it, in the period of return.
- (4) For the purposes of subsection (3)—

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- (a) “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454),
 - (b) a “material participator” is a participator who has a material interest in the company, as defined in section 457 of that Act,
 - (c) “relevant time” means—
 - (i) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
 - (ii) any time in one or more of the 3 tax years preceding that year, and
 - (d) paragraph (d)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.
- (5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the year of return, any dividend within subsection (3) that was remitted to the United Kingdom in the temporary period of non-residence is to be treated as remitted to the United Kingdom in the period of return.
- (6) This section does not apply to a dividend within subsection (3) to the extent that it is paid in respect of post-departure trade profits.
- (7) “Post-departure trade profits” are—
- (a) trade profits of the company arising in an accounting period that begins after the start of the temporary period of non-residence, and
 - (b) so much of any trade profits of the company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.
- (8) The extent to which a dividend is paid in respect of post-departure trade profits is to be determined on a just and reasonable basis.
- (9) If section 406 or 407 applies, references in this section to a dividend being received by the individual are to a cash dividend being paid over to the individual or (as the case may be) a dividend being treated as paid to the individual.
- (10) In this section—
- “remitted to the United Kingdom” has the meaning given in Chapter A1 of Part 14 of ITA 2007;
 - “trade profits of the company” means the profits of any trade carried on by the company, as they would be calculated in accordance with Part 3 of CTA 2009 (trading income) if the company were UK resident.”
- 135 In Chapter 5 (stock dividends from UK resident companies), after section 413 insert—

“413A Temporary non-residents

- (1) This section applies if—

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- (a) an individual is temporarily non-resident,
 - (b) relevant stock dividend income is treated under this Chapter as arising to the individual in the temporary period of non-residence,
 - (c) the tax year in which it is treated as arising (“the arising year”) is a tax year for which the individual is UK resident, and
 - (d) the amount of income tax charged on the relevant stock dividend income under this Chapter is less than it would have been if the existence of double taxation relief arrangements were disregarded.
- (2) Subsections (3) and (4) have effect in cases where the arising year is not the year of return.
- (3) The total income (see Step 1 of the calculation in section 23 of ITA 2007) on which the individual is charged to income tax for the year of return is to be increased by an amount equal to the amount on which tax would be charged under this Chapter in respect of the relevant stock dividend income disregarding any double taxation relief arrangements.
- (4) But the notional UK tax on that relevant stock dividend income is to be allowed as a credit against the individual's liability to income tax for the year of return under Step 6 of the calculation in section 23.
- (5) If the arising year is the year of return, the tax charged under this Chapter in respect of the relevant stock dividend income is to be charged and assessed without regard to the existence of double taxation relief arrangements.
- (6) Stock dividend income is “relevant stock dividend income” if—
 - (a) the UK resident company that issues the share capital or bonus share capital is a close company, and
 - (b) the individual is beneficially entitled to that share capital or bonus share capital by virtue of being at a relevant time—
 - (i) a material participator in the company, or
 - (ii) an associate of a material participator in the company.
- (7) But stock dividend income within subsection (6) is not “relevant stock dividend income” to the extent that the share capital or bonus share capital is issued in respect of post-departure trade profits.
- (8) “Post-departure trade profits” are—
 - (a) trade profits of the close company arising in an accounting period that begins after the start of the temporary period of non-residence, and
 - (b) so much of any trade profits of the close company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.
- (9) The extent to which share capital or bonus share capital is issued in respect of post-departure trade profits is to be determined on a just and reasonable basis.
- (10) The “notional UK tax” on the relevant stock dividend income is so much of the income tax paid by the individual for the arising year as is attributable on a just and reasonable basis to that income.

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(11) In this section—

“associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454);

“material participator” means a participator who has a material interest in the company, as defined in section 457 of that Act;

“relevant time” means—

(a) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or

(b) any time in one or more of the 3 tax years preceding that year;

“trade profits of the close company” means the profits of any trade carried on by the close company, as calculated in accordance with Part 3 of CTA 2009 (trading income).”

136 In Chapter 6 (release of loan to participator in close company), after section 420 insert—

“420A Temporary non-residents

(1) This section applies if an individual is temporarily non-resident.

(2) Debts within subsection (3) are to be treated for the purposes of this Chapter as if they had been released or written off in the period of return.

(3) A debt is within this subsection if—

(a) it is the debt, or a part of the debt, in respect of a loan or advance made by a company to the individual,

(b) it is released or written off in the temporary period of non-residence, and

(c) ignoring this section, the individual—

(i) is not liable for tax under this Chapter in respect of the release or write-off, but

(ii) would have been so liable, had the release or write-off taken place in the period of return.

(4) Subsection (3)(c)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.”

137 In Chapter 8 of Part 5 of that Act (income not otherwise charged), after section 689 insert—

“689A Temporary non-residents

(1) This section applies if an individual is temporarily non-resident.

(2) Distributions within subsection (3) are to be treated for the purposes of this Chapter as if they had been received by the individual, or as if the individual had become entitled to them, in the period of return.

(3) A distribution is within this subsection if—

(a) the individual receives or becomes entitled to it in the temporary period of non-residence,

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- (b) it is a distribution of a company that is a close company or that would be a close company if the company were UK resident,
 - (c) the individual receives or becomes entitled to the distribution by virtue of being at a relevant time—
 - (i) a material participator in the company, or
 - (ii) an associate of a material participator in the company, and
 - (d) ignoring this section, the individual—
 - (i) is not liable for tax under this Chapter in respect of the distribution, but
 - (ii) would have been so liable if the individual had received the distribution, or become entitled to it, in the period of return.
- (4) For the purposes of subsection (3)—
- (a) “associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454),
 - (b) a “material participator” is a participator who has a material interest in the company, as defined in section 457 of that Act,
 - (c) “relevant time” means—
 - (i) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
 - (ii) any time in one or more of the 3 tax years preceding that year, and
 - (d) paragraph (d)(i) includes a case where the individual could be relieved of liability on the making of a claim under section 6 of TIOPA 2010 (double taxation relief), even if no claim is in fact made.
- (5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for the year of return, any distribution within subsection (3) that is relevant foreign income and is remitted to the United Kingdom in the temporary period of non-residence is to be treated as remitted to the United Kingdom in the period of return.
- (6) In this section, “remitted to the United Kingdom” has the meaning given in Chapter A1 of Part 14 of ITA 2007.”
- 138 In Chapter 1 of Part 14 of ITA 2007 (limits on liability to income tax of non-UK residents), after section 812 insert—

“812A Temporary non-residents

- (1) This section applies if—
- (a) an individual is temporarily non-resident,
 - (b) the individual's liability to income tax for a tax year is limited under section 811,
 - (c) that tax year (“the non-resident year”) falls within the temporary period of non-residence, and
 - (d) the individual's income for that tax year includes relevant investment income.

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- (2) The total income (see Step 1 of the calculation in section 23) on which the individual is charged to income tax for the year of return is to be increased by an amount equal to the amount of that relevant investment income.
- (3) But the notional UK tax on that relevant investment income is to be allowed as a credit against the individual's liability to income tax for the year of return under Step 6 of the calculation in section 23.
- (4) Income is “relevant investment income” if—
 - (a) it is chargeable under Chapter 3 or 5 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies and stock dividends from UK resident companies),
 - (b) the distributing company is a close company, and
 - (c) the income arises or is treated as arising to the individual because the individual was at a relevant time—
 - (i) a material participator in that company, or
 - (ii) an associate of a material participator in the company.
- (5) But income within subsection (4) in the form of a cash or stock dividend is not “relevant investment income” to the extent that the dividend is paid, or the share capital is issued, in respect of post-departure trade profits.
- (6) “Post-departure trade profits” are—
 - (a) trade profits of the distributing company arising in an accounting period that begins after the start of the temporary period of non-residence, and
 - (b) so much of any trade profits of the distributing company arising in an accounting period that straddles the start of that temporary period as is attributable (on a just and reasonable basis) to a time after the start of that temporary period.
- (7) The “notional UK tax” on relevant investment income is—
 - (a) the total of any sums in respect of that income that were included within amount A in determining the limit under section 811, less
 - (b) any credit for foreign tax paid in respect of that income that was allowed under Chapter 2 of Part 2 of TIOPA 2010 against the individual's liability to income tax for the non-resident year.
- (8) The following matters are to be determined on a just and reasonable basis—
 - (a) the extent to which a dividend is paid, or share capital is issued, in respect of post-departure trade profits, and
 - (b) the extent to which a sum included within amount A is a sum in respect of relevant investment income.
- (9) Nothing in any double taxation arrangements is to be read as preventing the individual from being chargeable to income tax by virtue of this section (or as preventing a charge to that tax from arising as a result).
- (10) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
 - (a) when an individual is to be regarded as “temporarily non-resident”, and

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- (b) what “the temporary period of non-residence”, “the year of departure” and “the period of return” mean.

(11) In this section—

“associate” and “participator” have the same meanings as in Part 10 of CTA 2010 (see sections 448 and 454);

“the distributing company” means the UK resident company mentioned in section 383(1) or, as the case may be, 410(1) of ITTOIA 2005;

“material participator” means a participator who has a material interest in the company, as defined in section 457 of CTA 2010;

“relevant time” means—

- (a) any time in the year of departure or, if the year of departure is a split year as respects the individual, the UK part of that year, or
(b) any time in one or more of the 3 tax years preceding that year;

“trade profits of the distributing company” means the profits of any trade carried on by the distributing company, as calculated in accordance with Part 3 of CTA 2009 (trading income);

“year of return” means the tax year consisting of or including the period of return.”

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