



# Income and Corporation Taxes Act 1970

## 1970 CHAPTER 10

### PART XVII

#### TAX AVOIDANCE

### CHAPTER III

#### TRANSFER OF ASSETS ABROAD

#### **478 Provisions for preventing avoidance of income tax by transactions resulting in the transfer of income to persons abroad**

For the purpose of preventing the avoiding by individuals ordinarily resident in the United Kingdom of liability to income tax by means of transfers of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled out of the United Kingdom, it is hereby enacted as follows:—

- (1) Where by virtue or in consequence of any such transfer, either alone or in conjunction with associated operations, such an individual has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a person resident or domiciled out of the United Kingdom which, if it were income of that individual received by him in the United Kingdom, would be chargeable to income tax by deduction or otherwise, that income shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be income of that individual for all the purposes of the Income Tax Acts .
- (2) Where, whether before or after any such transfer, such an individual receives or is entitled to receive any capital sum the payment whereof is in any way connected with the transfer or any associated operation, any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a person resident or domiciled out of the United Kingdom shall, whether it would or would not have been chargeable to income tax apart from

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the provisions of this section, be deemed to be the income of that individual for all the purposes of the Income Tax Acts.

In this subsection, " 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 otherwise than as income, being a sum which is not paid or payable for full consideration in money or money's worth.
- (3) Subsections (1) and (2) of this section shall not apply if the individual shows in writing or otherwise to the satisfaction of the Board either—
- (a) that the purpose of avoiding liability to taxation was not the purpose or one of the purposes for which the transfer or associated operations or any of them were effected; or
  - (b) that the transfer and any associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation.

The jurisdiction of the Special Commissioners on any appeal shall include jurisdiction to review any relevant decision taken by the Board in exercise of their functions under this subsection.

- (4) For the purposes of this section, " an associated operation " means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing, whether directly or indirectly, any of the assets transferred, or to the income arising from any such assets, or to any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets.
- (5) An individual shall, for the purposes of this section, be deemed to have power to enjoy income of a person resident or domiciled out of the United Kingdom if—
- (a) the income is in fact so dealt with by any person as to be calculated, at some point of time, and whether in the form of income or not, to enure for the benefit of the individual, or
  - (b) the receipt or accrual of the income operates to increase the value to the individual of any assets held by him or for his benefit, or
  - (c) the individual receives or is entitled to receive, at any time, any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which directly or indirectly represent that income, or
  - (d) the individual has power, by means of the exercise of any power of appointment or power of revocation or otherwise, to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or may, in the event of the exercise of any power vested in any other person, become entitled to the beneficial enjoyment of the income, or
  - (e) the individual is able in any manner whatsoever, and whether directly or indirectly, to control the application of the income.
- (6) In determining whether an individual has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to the individual (whether or not he has rights at law or in equity in or to those benefits)

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as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

- (7) For the purposes of this section, any body corporate incorporated outside the United Kingdom shall be treated as if it were resident out of the United Kingdom whether it is so resident or not.
- (8) For the purposes of this section—
- (a) a reference to an individual shall be deemed to include the wife or husband of the individual,
  - (b) " assets" includes property or rights of any kind and " transfer", in relation to rights, includes the creation of those rights,
  - (c) " benefit " includes a payment of any kind,
  - (d) references to income of a person resident or domiciled out of the United Kingdom shall, where the amount of the income of a company for any year or period has been apportioned under section 296 of this Act, include references to so much of the income of the company for that year or period as is equal to the amount so apportioned to that person,
  - (e) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligations of any other person to whom, those assets, that income or those accumulations are or have been transferred,

and for the purpose of applying this Chapter in relation to Case VII of Schedule D references to income in this Chapter shall apply in the case of gains accruing from the acquisition and disposal of chargeable assets as they would apply if the gains were profits from a trade of dealing in the assets, and any such gains shall be treated as payable in the first instance to the person to whom they accrue.