

*These notes refer to the Income Tax Act 2007 (c.3)
which received Royal Assent on 20 March 2007*

INCOME TAX ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 13: Tax avoidance

Overview

Chapter 2: Transfer of assets abroad

Overview

2125. This Chapter contains provisions directed against tax avoidance by means of transfers of assets.

2126. The sections of this Chapter are arranged in the following order:

- Sections 714 to 719 – introduction;
- Sections 720 to 726 – charge where power to enjoy income;
- Sections 727 to 730 – charge where capital sums received;
- Sections 731 to 735 – charge where benefit received;
- Sections 736 to 742 – exemptions: no tax avoidance purpose or genuine commercial transaction;
- Sections 743 to 747 – general;
- Sections 748 to 751 – supplementary.

Section 714: Overview of Chapter

2127. This section provides an overview of the Chapter.

2128. *Subsection (1)* introduces the three charges that are imposed by the Chapter. It is new.

2129. *Subsection (4)* extends references to individuals to include their spouses and their civil partners. It is based on section 742(9) of ICTA.

Section 715: Meaning of “relevant transaction”

2130. This section defines the expression “relevant transaction”. It is based on section 741B(2) of ICTA.

2131. Either a “relevant transfer” or an “associated operation” may be a “relevant transaction”, and the convenient new label “relevant transaction” is used extensively in this Chapter.

2132. The expressions “relevant transfer” and “associated operation” are defined in sections 716 and 719, to which *subsection (2)* provides signposts.

Section 716: Meaning of “relevant transfer” and “transfer”

2133. This section defines “relevant transfer” and “transfer” for the purposes of this Chapter. It is based on sections 739(1), 740(1) and 742(1A) and (9) of ICTA.

Section 717: Meaning of “assets” etc

2134. This section non-exhaustively defines the term “assets” and makes provision about the interpretation of references to assets representing assets, income or accumulations of income. It is based on section 742(9) of ICTA.

Section 718: Meaning of “person abroad” etc

2135. This section introduces the term “person abroad”, meaning a person who is resident or domiciled outside the United Kingdom. It is based on sections 739(1) to (3), 740(1) and (3), 742(2), (4), (8) and (9A) and 745(3) of ICTA and section 111(1) of FA 1989.

2136. *Subsection (2)* provides that a UK resident body corporate that is incorporated outside the United Kingdom is treated as if it were resident outside the United Kingdom. It forestalls arguments that a non-UK incorporated but UK resident body corporate is somehow domiciled in a part of the United Kingdom and therefore not a person abroad.

2137. *Subsection (2)* also provides that a person treated as neither UK resident nor ordinarily UK resident under section 475(3) (trustees of settlements) and persons treated as non-UK resident under section 834(4) (personal representatives) are treated as resident outside the United Kingdom (and thus persons abroad).

Section 719: Meaning of “associated operation”

2138. This section defines the term “associated operation”. It is based on section 742(1) of ICTA.

2139. This section includes a minor change in the law relating to the references to “assets” in section 742(1) of ICTA. See *Change 110* in Annex 1.

Section 720: Charge to tax on income treated as arising under section 721

2140. This section imposes the charge to income tax on individuals with power to enjoy income as a result of relevant transactions and indicates the measure of income and the person liable. It is based on sections 739(1), (2) and 743(1) of ICTA. It is the first of a sequence of sections (sections 720 to 726) which deal with this charge.

2141. *Subsection (5)* provides that the individual to whom income is treated as arising is the person liable. This person is defined in section 721.

2142. This section also provides signposts to other sections detailing how the income charged is calculated and when exemption is due.

Section 721: Individuals with power to enjoy income as a result of relevant transactions

2143. This section describes the individual to whom income is treated as arising and the circumstances in which it is treated as arising. It is based on sections 739(1) to (2) and 742(1B) of ICTA.

2144. Sections 739(2) and (3) of ICTA indicate the person liable by using the expression “such an individual” – but do not make it clear how much of section 739(1) is implied by that expression. This section and section 728, which are based on section 739(2) and (3), reproduce the expression “such an individual”, which has been the subject of case law: see, in particular, *Vestey v CIR* (1979), 54 TC 503 HL¹.

¹ [1980] STC 10.

Section 722: When an individual has power to enjoy income of person abroad

2145. This section defines in general terms when an individual has power to enjoy income of a person abroad. It is based on section 742(2) and (3) of ICTA. One of the conditions for liability under section 720 is that the individual has “power to enjoy” income of a person abroad: section 721(2).
2146. *Subsection (1)* introduces the concept of the enjoyment conditions. *Subsection (2)* provides a link to section 723, which sets out those conditions.

Section 723: The enjoyment conditions

2147. This section continues the definition of when an individual has power to enjoy income of a person abroad, by detailing “the enjoyment conditions”. It is based on section 742(2) of ICTA.

Section 724: Special rules where benefit provided out of income of person abroad

2148. This section deals with the quantum of charge where:
- the enjoyment condition is the receipt of a benefit provided out of the income of the person abroad or related money; and
 - the individual has not been charged previously to income tax on that income.

It is based on section 743(5) of ICTA.

Section 725: Reduction in amount charged where controlled foreign company involved

2149. This section gives apportionment under the controlled foreign company (CFC) rules in Chapter 4 of Part 17 of ICTA priority over the income treated as arising under section 721. It is based on section 747(4) of ICTA.
2150. The CFC rules address a similar mischief to the transfer of assets abroad legislation (avoidance by companies rather than individuals), but in a different way. This section prevents double taxation and determines which branch of anti-avoidance legislation takes priority.

Section 726: Non-domiciled individuals

2151. This section provides that an individual is not chargeable to tax under section 720 in respect of income treated as arising to the individual under section 721 if two conditions are met. It is based on section 743(3) of ICTA.
2152. This section is similar to sections 831 and 832 of ITTOIA 2005 (claims by non-domiciled individuals for relevant foreign income to be charged on the remittance basis).

Section 727: Charge to tax on income treated as arising under section 728

2153. This section imposes the charge to income tax, on individuals receiving capital sums as a result of relevant transactions, which was previously imposed by section 739(3) of ICTA. It indicates the measure of income and the person liable. It is based on sections 739 and 743 of ICTA. It is one of a sequence of sections (sections 727 to 730) which are based on the former charge under section 739(3).
2154. **Sections 727 to 730** defeat schemes designed to avoid liability under sections 720 to 726.

Section 728: Individuals receiving capital sums as a result of relevant transactions

2155. This section largely replicates section 721. It is based on sections 739(1), (1A) and (3), 742(1A) and 747(4) of ICTA.

Section 729: The capital receipt conditions

2156. This section is concerned with the expression “receives or is entitled to receive any capital sum”. It is based on section 739(3) to (6) of ICTA.

2157. This section also makes it clear that where liability arises because an individual has only an entitlement to receive a capital sum, rather than actual receipt, then liability under section 727 continues only for as long as the entitlement to receive a capital sum exists. See *Change 111* in Annex 1.

2158. If the entitlement to the capital sum ceases because the capital sum is actually paid to the transferor (either in whole or in part), then the receipt of the capital sum does result in continuing liability under this section; *subsection (1)* reflects this.

2159. *Subsection (2)* makes an exception to this rule. If a sum is received by way of loan, this does not give rise to liability if the loan is wholly repaid before the tax year begins. *Subsection (2)* is based on section 739(6) of ICTA.

2160. *Subsection (4)* comments on the expression “receives or is entitled to receive” in *subsection (1)*.

Section 730: Non-domiciled individuals

2161. This section is the equivalent, for this sequence of sections, of section 726. It is based on section 743(3) of ICTA.

Section 731: Charge to tax on income treated as arising under section 732

2162. This section imposes the charge, on non-transferors receiving a benefit as a result of relevant transactions, previously imposed by section 740 of ICTA. It indicates the measure of income and the person liable. It is based on section 740(2). It is one of a sequence of sections (sections 731 to 735) which are based on the former charge under section 740 of ICTA.

2163. *Sections 731 to 735* deem individuals to receive taxable income if (broadly speaking) they receive benefits as a result of transfers of the kind envisaged in sections 720 to 730 but are not liable under those sections.

Section 732: Non-transferors receiving a benefit as a result of relevant transactions

2164. This section sets out the circumstances under which income is treated as arising. It is based on sections 740(1) and (2) and 742(1A) of ICTA.

2165. *Subsection (1)(d)* also makes it clear that persons who are liable to income tax under section 720 or section 727 are not subject to the charge under section 731. See *Change 112* in Annex 1.

Section 733: Income charged under section 731

2166. This section sets out in a method statement the rules for determining the amount (if any) of income treated as arising under section 731. It is based on sections 740(2) and (3) and 741C(7) of ICTA.

2167. It also spells out some implications which involve minor changes to the law. See *Change 113* in Annex 1.

2168. In broad terms, the effect of this section and section 734 is:

*These notes refer to the Income Tax Act 2007 (c.3)
which received Royal Assent on 20 March 2007*

- to tax non-transferors on benefits which they receive (but only on the amount or value of those benefits);
 - to ensure that tax will only be charged on a benefit to an individual if income has arisen by the use of which such benefits could be provided; and
 - to ensure nevertheless that tax will not be avoided merely by conferring the benefit before the “relevant income” is actually available.
2169. The method statement in this section will make no practical difference to taxpayers’ record-keeping obligations.
2170. The method statement makes it clear that “relevant income” in relation to an individual is not actually taxable income of the individual, but is an element in the calculation of taxable income. “Relevant income” is actual income arising to a person abroad; the income charged under section 731 is income treated as arising to the individual in question. This deemed income may be more or less than “the relevant income of the tax year” in relation to the individual and the tax year identified at Step 3.
2171. The Act will have effect for income tax purposes for 2007-08 and later tax years. But the calculation of income charged under section 731 in (for example) 2007-08 will take account of “relevant income” in relation to the individual, not only of 2007-08 but (if the statutory conditions were satisfied) of earlier tax years – whether or not the individual had any liability under section 740 of ICTA for those tax years.

Section 734: Reduction in amount charged: previous capital gains tax charge

2172. This section supplements section 733; it is directed against the same amount being charged to both income tax and capital gains tax. It is based on section 740(6) of ICTA.

Section 735: Non-domiciled individuals

2173. This section gives a measure of relief to non-domiciled individuals. It is based on section 740(5) of ICTA.
2174. *Subsection (1)* lays down the conditions for this section to apply. If an individual receives a benefit which would otherwise be chargeable to income tax under section 731, this section applies if conditions A to C are met. These conditions are set out in subsections (2), (3) and (4).
2175. If this section applies, *subsection (5)* provides that the benefit does not give rise to an income tax charge on the individual, to the extent that the chargeable amount of this benefit is determined by reference to the relevant income to which condition C applies.
2176. This section is similar to sections 831 and 832 of ITTOIA 2005 (claims by non-domiciled individuals for relevant foreign income to be charged on the remittance basis).

Section 736: Exemptions: introduction

2177. This section introduces sections 737 to 742, a sequence of sections giving exemption from liability under this Chapter. It is based on section 741B(2) to (5) of ICTA.
2178. *Subsection (3)* defines the expressions “post-4 December 2005 transaction” and “pre-5 December 2005 transaction”, which are used extensively in this sequence of sections.

Section 737: Exemption: all relevant transactions post-4 December 2005 transactions

2179. This section sets the purpose test which applies if all the relevant transactions are post-4 December 2005 transactions. It is based on section 741A(1) to (4), (7) and (8) and section 741B(4) of ICTA.

Section 738: Meaning of “commercial transaction”

2180. This section defines the expression “commercial transaction”, which is used in Condition B in section 737(4). It is based on section 741A(5) to (7) of ICTA.

Section 739: Exemption: all relevant transactions pre-5 December 2005 transactions

2181. This section sets the purpose test which applies if all the relevant transactions are pre-5 December 2005 transactions. It is based on sections 741(1) and 741B(3) of ICTA.

2182. This section replaces references to “the Board” with references to “an officer of Revenue and Customs” (namely, the officer dealing with the case). See *Change 5* in Annex 1.

2183. HMRC’s internal procedures restrict the exercise of the Commissioners for Her Majesty’s Revenue and Customs’ functions under section 741 of ICTA to a small group of specialist officers. *Change 5* will have no effect on this practice.

2184. This section continues to use the source legislation’s word “taxation”, which has been the subject of case law. For example, *Sassoon v CIR* (1943), 25 TC 154 CA indicates that “taxation” in this context is not restricted to income tax.

Section 740: Exemption: relevant transactions include both pre-5 December 2005 and post-4 December 2005 transactions

2185. This section lays down how the purpose tests are to be applied if the relevant transactions include both pre-5 December transactions and post-4 December transactions. It is based on sections 741B(5) and 741C(1) to (6) and (8) of ICTA..

Section 741: Application of section 742 (partial exemption)

2186. This section lays down the conditions for section 742 (partial exemption where later associated operations fail conditions) to apply. It is based on section 741D(1) to (5) and (9) of ICTA.

2187. In summary, this section applies if an arrangement originally satisfies the purpose tests but is tainted by later associated operations.

Section 742: Partial exemption where later associated operations fail conditions

2188. This section restricts the income in respect of which the individual is liable to tax under this Chapter. It is based on section 741D(6) and (7) of ICTA.

Section 743: No duplication of charges

2189. This section is directed against multiple taxation. It is based on sections 743(4) and 744(1) of ICTA.

2190. This section replaces references to “the Board” with references to “an officer of Revenue and Customs” (namely, the officer dealing with the case). See *Change 5* in Annex 1.

2191. HMRC's internal procedures restrict the exercise of the Commissioners for Her Majesty's Revenue and Customs' functions under section 744 of ICTA to a small group of specialist officers. *Change 5* will have no effect on this practice.

Section 744: Meaning of taking income into account in charging income tax for section 743

2192. This section relates to the interpretation of section 743. It is based on section 744(2) of ICTA.

Section 745: Rates of tax applicable to income charged under sections 720 and 727 etc

2193. This section deals with rates of tax applicable to income charged under sections 720 and 727. It is based on section 743(1) to (1B) and (5) of ICTA.
2194. *Subsection (1)* retains the expression "by deduction or otherwise", as it has been the subject of judicial comment: see paragraph 53 of the judgment of Lord Scott in *R v Dimsey & Allen* (2001), 74 TC 263 HL² at page 312.

Section 746: Deductions and reliefs where individual charged under section 720 or 727

2195. This section applies for the purposes of calculating an individual's liability to income tax, and is concerned with the availability of deductions and reliefs. It is based on section 743(2) of ICTA.

Section 747: Amounts corresponding to accrued income scheme profits and related interest

2196. This section ensures that any charge made on an individual under this Chapter takes proper account of accrued income when the assets of the person abroad include securities for the purposes of Chapter 2 of Part 12 (accrued income profits). It is based on section 742(4) to (7) of ICTA.
2197. Although section 742(5) of ICTA says "Sections 739 to 741 shall have effect ...", this section works on the basis that the operation of the other sections in Chapter 3 of Part 17 of ICTA is not excluded.
2198. *Subsections (1), (6) and (7)* include by implication a minor change in the law on accrued income profits; see *Change 101* in Annex 1.

Section 748: Power to obtain information

2199. This section enables HMRC to obtain information which is relevant to the operation of this Chapter. It is based on section 745(1) to (3) of ICTA.
2200. *Subsection (1)* includes two minor changes.
2201. First, it refers to "an officer of Revenue and Customs" (namely, the officer dealing with the case) instead of "the Board". See *Change 5* in Annex 1. HMRC's internal procedures restrict the exercise of the Commissioners for Her Majesty's Revenue and Customs' functions under section 745 of ICTA to a small group of specialist officers. *Change 5* will have no effect on this practice.
2202. Second, it expressly restricts the particulars to be provided to those which an officer of Revenue and Customs may reasonably require. See *Change 114* in Annex 1.

*These notes refer to the Income Tax Act 2007 (c.3)
which received Royal Assent on 20 March 2007*

2203. *Subsection (2)* also includes a minor change in the law. It sets the minimum time which HMRC may allow for the particulars to be provided at 30 days rather than 28 days. See *Change 108* in Annex 1.

Section 749: Restrictions on particulars to be provided by solicitors

2204. This section restricts HMRC's power to require solicitors to provide information under section 748. It is based on section 745(3), (4) and (6) of ICTA.

Section 750: Restrictions on particulars to be provided by banks

2205. This section restricts HMRC's power to require banks to provide information under section 748. It is based on section 745(5) to (6) of ICTA.

Section 751: Special Commissioners' jurisdiction on appeals

2206. This section gives the Special Commissioners, on appeal, jurisdiction to affirm or replace officers' decisions in exercise of certain functions under this Chapter. It is based on sections 741(1), 741A(9), 741D(8) and 744(1) of ICTA.
2207. This section replaces references to "the Board" with references to "an officer of Revenue and Customs" (namely, the officer dealing with the case). See *Change 5* in Annex 1.