

*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

2022. This Part contains provisions relating to various types of tax avoidance. The Chapters are arranged as follows:

- Transactions in securities (Chapter 1);
- Transfer of assets abroad (Chapter 2);
- Transactions in land (Chapter 3);
- Sales of occupation income (Chapter 4);
- Avoidance involving trading losses (Chapter 5).

Chapter 1: Transactions in securities

Overview

2023. This Chapter rewrites, for the purposes of income tax, sections 703 to 709 of ICTA.

2024. Sections 703 to 709 of ICTA were enacted as a wide-ranging anti-avoidance rule which would enable the Crown to counter all manner of devices to avoid income tax involving transactions in shares or other securities or the manipulation of a company's assets or both, and to forestall the creation of such devices in future.

2025. The sections of this Chapter are arranged in the following order:

- Sections 682 and 683 – introduction (section 683 defines the central concept of “income tax advantage”);
- Sections 684 and 685 – definition of the person liable to counteraction of income tax advantages;
- Sections 686 to 694 – circumstances in which, if income tax advantages are obtained or obtainable, the Chapter may apply;
- Sections 695 to 700 – procedure for counteraction of income tax advantages;
- Sections 701 to 703 – clearance procedure and information powers;
- Section 704 – how the special tribunal for the purposes of this Chapter is to be constituted;
- Sections 705 to 711 – appeals;
- Sections 712 and 713 – supplementary.

Section 682: Overview of Chapter

2026. This section provides an overview of the Chapter. It is based on section 703(1) of ICTA.
2027. *Subsection (2)* provides a signpost to section 698, which is concerned with the issue of notices counteracting income tax advantages.

Section 683: Meaning of “income tax advantage”

2028. This section defines “income tax advantage” for the purposes of this Chapter. It is based on section 709(1) and (2A) of ICTA.
2029. This Act consequentially amends sections 703 to 709 of ICTA to apply solely for corporation tax purposes. In particular, sections 703 to 709 of ICTA will use the term “corporation tax advantage”.
2030. But the definition of “tax advantage” in section 709(1) of ICTA is used in a large number of other anti-avoidance provisions (such as paragraph 13 of Schedule 9 to FA 1996 (loan relationships: unallowable purposes test)). To ensure that these provisions are not disturbed, this Act inserts a new section 840ZA of ICTA (meaning of “tax advantage”), and consequentially amends those provisions outside Chapter 1 of Part 17 of ICTA which use the section 709(1) definition of “tax advantage”.

Section 684: Person liable to counteraction of income tax advantage

2031. This section defines the person liable to counteraction. It is based on section 703(1) and (2) of ICTA.
2032. *Subsection (1)* sets three positive conditions for this section to apply to a person in respect of a transaction in securities or two or more such transactions.
2033. The first condition, in the opening words of subsection (1), is that the person is in a position to obtain or has obtained an income tax advantage.
2034. The second condition, in subsection (1)(a), is that the person is in a position to obtain or has obtained the income tax advantage in circumstances where any of the specified provisions applies in relation to the person.
2035. The third condition, in subsection (1)(b), is that the person is in a position to obtain or has obtained the income tax advantage in consequence of either the transaction or the combined effect of the transactions.
2036. *Subsection (3)* covers the situation when an income tax advantage is obtained or obtainable by a person in consequence of the combined effect of the transaction or transactions and the liquidation of a company.

Section 685: Exception where no tax avoidance object shown

2037. This section provides an exception to section 684 in certain circumstances. It is based on the escape clause in section 703(1) of ICTA.
2038. *Subsection (1)* provides that a person is taken out of section 684 if that person shows that both conditions A and B are met. These conditions are defined in *subsections (2) and (3)*.
2039. **Section 703(1)** contains a reference to “the transaction or transactions being carried out”. In *Greenberg v CIR* (1971), 47 TC 240 HL (at pages 279 and 283) Lord Guest and Lord Simon of Glaisdale said that “carried out” in section 703(1) of ICTA meant “effected” as in section 707 of ICTA rather than “implemented”. Sections 685(2) and 701 (which is based on section 707 of ICTA) therefore both refer to transactions being “effected”. This is a verbal change to provide consistency. It does not change the law.

Section 686: Abnormal dividends used for exemptions or reliefs (circumstance A)

2040. This section is the first in a sequence of sections in which the sets of circumstances in section 704 of ICTA are laid out and expanded in five separate sections. It is based on sections 704 A and 709(3) of ICTA.
2041. The sequence also includes four interpretative sections based on sections 704 D and 709 of ICTA. The approach here takes account of the comments of Slade J in *CIR v Garvin* (1981), 55 TC 24¹ at page 50:
- “The five circumstances set out in [what is now section 704 of ICTA] are set out in minute detail, not for the assistance of the Crown but for the protection of the subject, in the context of a preceding section of a penal nature.
2042. *Subsection (1)* requires that three conditions set out in subsections (2) to (4) must be satisfied if section 686 is to apply to a person.
2043. *Subsection (3)* lays down what the receipt must be in connection with. The approach taken here differs from that in the source legislation. First, the subsection brings together provisions that were previously drafted in separate subsections. Second, in line with judicial comment on these provisions, it does not treat section 709(3)(a) and (b) as non-exhaustive definitions. The approach taken here is consistent with the case law on these provisions: *CIR v Parker* (1966) 43 TC 396 HL, *CIR v Cleary* (1967) 44 TC 399 HL, *Hague v CIR* (1968) 44 TC 619 CA, *CIR v Horrocks* (1968) 44 TC 645 Ch D and *CIR v Wiggins* (1978) 53 TC 639 Ch D².
2044. *Subsection (4)* prescribes the tax purposes for which the amount received must be taken into account.
2045. **Section 704 A(f)** of ICTA is redundant and, accordingly, is repealed without replacement.

Section 687: Deductions from profits obtained following distribution or dealings (circumstance B)

2046. This section is based on sections 704 B(1) and 709(3) of ICTA.
2047. *Subsection (1)* requires that three conditions set out in subsections (2) to (4) must be satisfied if section 687 is to apply to a person.
2048. *Subsection (2)* provides that the person must become entitled to a deduction in calculating profits or gains in respect of securities.
2049. *Subsection (3)* prescribes what the person’s entitlement must arise in connection with. See also the commentary on section 686(3).
2050. This section does not rewrite section 704 B(2), which is corporation tax specific.

Section 688: Receipt of consideration representing company’s assets, future receipts or trading stock (circumstance C)

2051. This section is based on sections 704 B, 704 C and 709 of ICTA.
2052. *Subsection (1)* requires that three conditions set out in subsections (2), (3) and (6) must be satisfied if section 688 is to apply to a person (A).
2053. *Subsection (2)* is about the receipt of consideration. It prescribes what the consideration must be if section 688 is to apply to A.

1 [1981] STC 344.
2 [1979] STC 244.

2054. *Subsection (3)* requires that, if section 688 is to apply to a receipt, it must be in consequence of a transaction whereby another person (B) – to summarise – either receives an abnormal amount by way of dividend or becomes entitled to a deduction in calculating profits or gains in respect of B’s securities. Subsection (3) retains the source legislation’s connective “whereby”, which has been the subject of judicial comment.
2055. *Subsection (4)* prescribes what B’s entitlement (in subsection (3)) must arise in connection with. On the rewrite of section 709(3)(a) and (b) in this context, see the comment on section 686(3).
2056. Section 709(3)(c) of ICTA (meaning of “consideration”) is rewritten for the purposes of section 688 in *subsection (8)*. Subsection (8) extends “consideration” to include non-contractual receipts of money or money’s worth.

Section 689: Receipt of consideration in connection with relevant company distribution (circumstance D)

2057. This section is based on sections 704 C, 704 D and 709 of ICTA.
2058. *Subsection (1)* requires that three conditions set out in subsections (2) to (4) must be satisfied if section 689 is to apply to a person.
2059. *Subsection (2)* is concerned with the receipt of consideration. It prescribes what the receipt must be in connection with if section 689 is to apply to the person in question. It is based on sections 704 D(1) and 709(3)(a) and (b) of ICTA.
2060. On the rewrite of section 709(3)(a) and (b) in this context, see the comment on section 686(3).
2061. *Subsection (6)* is concerned with “consideration”. It is based on section 709(3)(c) of ICTA. It extends “consideration” to include non-contractual receipts of money or money’s worth.

Section 690: Receipt of assets of relevant company (circumstance E)

2062. This section is based on section 704 E and 709(3) of ICTA.
2063. *Subsection (1)* requires that four conditions set out in subsections (2) to (4) and (7) must be satisfied if section 690 is to apply to a person.
2064. *Subsection (8)* defines “security” and (non-exhaustively) “consideration” and “share” in section 690. It extends “consideration” to include non-contractual receipts of money or money’s worth.

Section 691: Meaning of “relevant company” in sections 689 and 690

2065. This section defines the term “relevant company”, which is used in sections 689 and 690. It is based on section 704 D of ICTA.

Section 692: Abnormal dividends: general

2066. This section is the first of three interpretative sections about abnormal dividends. It is based on section 709(4) of ICTA.
2067. *Subsection (1)* provides that a dividend is abnormal if “the appropriate authority” is satisfied either that “the excessive return condition” is met or that “the excessive accrual condition” is met. Signposts are provided to sections 693 and 694, where these conditions are defined.
2068. *Subsection (2)* defines “the appropriate authority”. It replaces the reference to “the Board” with a reference to “an officer of Revenue and Customs” (namely, the officer dealing with the case). See *Change 5* in Annex 1.

2069. HMRC's internal procedures restrict the exercise of the Commissioners for Revenue and Customs' functions under Chapter 1 of Part 17 of ICTA to a small group of specialist officers. *Change 5* will have no effect on this practice.

Section 693: Abnormal dividends: the excessive return condition

2070. This section defines the excessive return condition. It is based on section 709(4) and (6) of ICTA.

Section 694: Abnormal dividends: the excessive accrual condition

2071. This section defines the excessive accrual condition. It is based on section 709(4) and (5) of ICTA.

Section 695: Preliminary notification that section 684 may apply

2072. This section is concerned with preliminary notification that section 684 (person liable to counteraction of income tax advantages) may apply. It is based on section 703(3) and (9) of ICTA.
2073. The section is the first of a group of sections (sections 695 to 700) which lay down the procedure for counteraction of income tax advantages.
2074. As explained in the note on section 692, section 695 similarly replaces a reference to "the Board" with a reference to "an officer of Revenue and Customs" (namely, the officer dealing with the case). See *Change 5* in Annex 1.

Section 696: Opposed notifications: statutory declarations

2075. This section applies if the person on whom the preliminary notification is served considers that section 684 does not apply. It is based on section 703(9) and (10) of ICTA.
2076. As explained in the note on section 692, this section similarly 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.
2077. *Subsections (1) and (2)* are about the person's right to make a statutory declaration that section 684 does not apply and the time limit for doing so.
2078. *Subsection (3)* lays down the legal consequences if the person makes a statutory declaration, sends it to the officer and the officer sees no reason to take further action.

Section 697: Opposed notifications: determinations by tribunal

2079. This section applies if the officer receiving a statutory declaration sees reason to take further action. It is based on section 703(10) of ICTA.
2080. As explained in the note on section 692, section 697 similarly 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.
2081. *Subsections (2) and (3)* are about what the officer must and may do.
2082. If the taxpayer gives a statutory declaration that section 684 does not apply and the officer sees reason to take further action, subsection (2) requires the officer to send the tribunal a certificate to that effect, together with the statutory declaration.
2083. *Subsection (4)* is about what the tribunal must do.
2084. *Subsection (5)* lays down the legal consequences if the tribunal determines that there is no case for the officer to take further action.

2085. *Subsection (6)* limits those consequences to cases where the transaction or transactions under review are the only ones involved.

Section 698: Counteraction notices

2086. This section is concerned with notices for the counteraction of income tax advantages. It is based on section 703(3), (9), (10) and (12) of ICTA.

2087. As explained in the note on section 692, section 698 similarly 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.

2088. *Subsection (1)* lays down that the officer can serve a counteraction notice in two circumstances, namely if:

- the person on whom a preliminary notification has been served has not exercised the right to make a statutory declaration in the time allowed; or
- the person has exercised this right, but the tribunal has determined that there is a prima facie case for counteraction.

2089. *Subsection (1)*, unlike the source legislation, makes it explicit that counteraction can proceed once the tribunal has determined that there appears to be a case for counteraction. This follows a dictum to that effect from Oliver J in *Balen v CIR* (1978) 52 TC 406³ at page 408.

2090. *Subsection (4)* specifies the kinds of adjustment which a notice may require to be made, including an assessment.

Section 699: Limit on amount assessed in section 689 and 690 cases

2091. This section sets a limit on the amount assessed in cases within sections 689 and 690. It is based on section 703(3A) of ICTA.

Section 700: Timing of assessments in section 690 cases

2092. This section is a special rule for the timing of assessments in section 690 cases. It is based on section 704 E(2) and (3) of ICTA.

Section 701: Application for clearance of transactions

2093. This section is concerned with applications for clearance of transactions. It is based on section 707(1) of ICTA.

2094. This section will apply solely for income tax purposes, and section 707 of ICTA will apply solely for corporation tax purposes. HMRC’s operational guidance will tell officers what action they should take if a clearance application is made which appears to refer to the wrong provision.

Section 702: Effect of clearance notification under section 701

2095. This section lays down the legal consequences of HMRC giving a clearance notification under section 701. It is based on section 707 of ICTA.

2096. This section will apply solely for income tax purposes, and section 707 of ICTA will apply solely for corporation tax purposes. If HMRC issue a section 702 or section 707 clearance which refers by mistake to the wrong provision, HMRC will treat it as if it referred to the correct provision.

3 [1978] STC 420.

Section 703: Power to obtain information

2097. This section gives HMRC power to obtain information relevant to this Chapter. It is based on section 708 of ICTA.
2098. **Section 703** changes the 28-day information gathering time limit to 30 days. See *Change 108* in Annex 1.
2099. As explained in the note on section 692, section 703 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.
2100. This section will apply solely for income tax purposes, and section 708 of ICTA will apply solely for corporation tax purposes.

Section 704: The tribunal

2101. This section prescribes how the special tribunal for the purposes of this Chapter is to be constituted. It is based on section 706 of ICTA.

Section 705: Appeals against counteraction notices

2102. This section is concerned with appeals against counteraction notices. It is based on section 705(1) and(5) of ICTA.
2103. Section 705(5) of ICTA gives the Special Commissioners the power not only to vary or quash an assessment but also, implicitly, to affirm it: see *Browne-Wilkinson J in Anysz v CIR (1977)*, 53 TC 601 ChD at page 630⁴. *Subsection (3)* makes this implication explicit, and similarly makes it explicit that the Special Commissioners have the power to affirm a counteraction notice.

Section 706: Rehearing by tribunal of appeal against counteraction notice

2104. This section is concerned with the tribunal rehearing appeals against counteraction notices. It is based on section 705(2), (3) and (5) of ICTA.
2105. As explained in the note on section 692, this section similarly replaces references to “the Board” with a reference to “an officer of Revenue and Customs” (namely, the officer dealing with the case) See *Change 5* in Annex 1.
2106. Section 705(3) of ICTA provides that the tribunal shall “have and exercise” the same “powers and authorities” as the Special Commissioners. In the present context, exercising a power is implicit in having it and it is unnecessary to refer to both “powers” and “authorities”. *Subsection (4)*, which is based on this part of section 705(3), therefore merely says that the tribunal have the same powers in relation to the appeal as the Special Commissioners.

Section 707: Statement of case by tribunal for opinion of High Court or Court of Session

2107. This section is concerned with appeals from the tribunal to the High Court (in England and Wales) or the Court of Session (in Scotland). It is based on sections 705(5) and 705A of ICTA.
2108. As explained in the note on section 692, this section similarly replaces a reference to “the Board” with a reference to “an officer of Revenue and Customs” (namely, the officer dealing with the case). See *Change 5* in Annex 1.
2109. This section removes the requirement in section 705A of ICTA for the dissatisfied party to declare “his or their dissatisfaction” before requiring the tribunal to state a case for

4 [1978] STC 296 at page 321.

the opinion of the court. This is a minor administrative change in the law. See *Change 109* in Annex 1.

Section 708: Cases before High Court or Court of Session

2110. This section is concerned with cases before the High Court or the Court of Session. It is based on section 705A of ICTA.

Section 709: Effect of appeals against tribunal's determination under section 706

2111. This section sets out the legal consequences if the tribunal have made a determination under section 706 about an assessment and a case has been required to be stated about it under section 707 or is pending before the High Court or the Court of Session. It is based on section 705A(10) to (12) of ICTA.

Section 710: Appeals from High Court or Court of Session

2112. This section is concerned with appeals from the High Court and the Court of Session. It is based on section 705A(8), (9) and (12) of ICTA.

2113. This section refers to “the Supreme Court” rather than “the House of Lords”. This anticipates the substitutions to be made by paragraph 47 of Schedule 9 to the Constitutional Reform Act 2005. This Act includes a transitional amendment substituting “the House of Lords” for “the Supreme Court” for the period before the paragraph 47 amendments come into force.

Section 711: Proceedings in Northern Ireland

2114. This section deals with proceedings in Northern Ireland. It is based on section 705B of ICTA.

2115. Section 705B of ICTA (transactions in securities: proceedings in Northern Ireland) applies the procedures of section 705A of ICTA to Northern Irish appeals. In particular, it provides that “the Taxes Acts (as defined in section 118(1) of [TMA])” shall have effect as if section 705A of ICTA applied with modifications to reflect the court system in Northern Ireland.

2116. Section 118(1) of TMA defines “the Taxes Acts” as “this Act [ie TMA] and (a) the Tax Acts and (b) the Taxation of Chargeable Gains Act 1992 and all other enactments relating to capital gains tax.”

2117. The implicit reference to the enactments relating to capital gains tax is redundant. This section therefore omits it.

2118. This section refers to “the Supreme Court” rather than “the House of Lords”. In this connection see the commentary on section 710.

Section 712: Application of Chapter where individual within section 684 dies

2119. This section is concerned with the application of this Chapter where an individual within section 684 has died. It is based on section 703(11) of ICTA.

2120. *Subsection (3)* expressly refers not only to the making of a statutory declaration, rights of appeal and the giving of information (like the source legislation) but also to notices and notifications such as are mentioned in *subsection (2)*. This reference is implicit in section 703(11) of ICTA.

Section 713: Interpretation of Chapter

2121. This section is interpretative. It is based on section 709(2) of ICTA.

2122. In *CIR v Joiner* (1975), 50 TC 449 HL⁵ Lord Diplock said (at page 487):
- “In the instant case the explanation in [what is now section 709(2) of ICTA] of the expression “transaction in securities”, though introduced by the word “includes”, speaks of “transactions, of whatever description, relating to securities” as well as referring to particular examples of such transactions. This is so extensive as to leave no possibility of there being any transaction which could sensibly be described as a “transaction in securities” without also falling within the longer description in the interpretation clause. So it is no more than a direction to the reader: “Whenever you see the words “transaction in securities” in this Chapter of the Statute you must treat them as being shorthand for the whole of the words in [what is now section 709(2)] that are preceded by the verb “includes” [in the fourth place in which it occurs].”
2123. Buckley J and Lord Simon of Glaisdale had made the same point in *Greenberg v CIR* (1971), 47 TC 240 at pages 260 and 282.
2124. This section therefore expressly rewrites the definition of “transaction in securities” as exhaustive.

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.

5 [1975] STC 657.

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 HL⁶.

6 [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 HL⁷ 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.

7 [2001] STC 1520.

*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.

Chapter 3: Transactions in land

Overview

2208. This Chapter contains a wide-ranging anti-avoidance rule specifically aimed at transactions in land. It is based on sections 776 to 778 of ICTA.

2209. The sections of this Chapter are arranged in the following order:

- Sections 752 to 754 – introduction;
- Sections 755 to 760 – charge on gains from transactions in land;
- Sections 761 to 764 – further provisions relevant to the charge;
- Sections 765 to 767 – exemptions;
- Sections 768 and 769 – recovery of tax;
- Sections 770 and 771 – clearances and power to obtain information;
- Section 772 – interpretation.

Section 752: Overview of Chapter

2210. This section provides an overview of the Chapter. It is based on section 776(1) and (2) of ICTA.

Section 753: Meaning of disposing of land

2211. This section explains the expression "disposing of land". It is based on section 776(4) of ICTA.

Section 754: Priority of other income tax provisions

2212. This section provides for other tax provisions to apply in priority to Chapter 3. It is based on section 777(10) of ICTA.

Section 755: Charge to tax on gains from transactions in land

2213. This section imposes the charge to income tax on gains from transactions in land. It is based on section 776(3A) of ICTA. It is the first of a group of sections (sections 755 to 760) which form the core of the Chapter.

2214. *Subsection (2)* signposts exemptions from the charge.

Section 756: Income treated as arising where gains obtained from some land disposals

2215. This section sets out the circumstances in which income is treated as arising. It is based on section 776(2), (3), (5), (13) and (14) of ICTA.

2216. *Subsection (1)* specifies the requirements which must all be met if this section is to apply. One of the requirements is that all or any part of the land is situated in the United Kingdom.

2217. HMRC’s interpretation of the territorial scope of section 776 of ICTA is summarised in the table below.

<i>Residence of taxpayer</i>	<i>Where land is located</i>	<i>Application of section 776</i>
United Kingdom	Wholly in the United Kingdom	Section 776 applies (assuming all the other conditions are met).
United Kingdom	Wholly outside the United Kingdom	Section 776 does not apply.
United Kingdom	Partly in the United Kingdom, partly outside the United Kingdom	Section 776 applies to the whole of the gain (assuming all the other conditions are met).
Non-UK	Wholly in the United Kingdom	Section 776 applies (assuming all the other conditions are met).
Non-UK	Wholly outside the United Kingdom	Section 776 does not apply.
Non-UK	Partly in the United Kingdom, partly outside the United Kingdom	Section 776 applies (assuming all the other conditions are met), but only to the gain attributable to the UK land.

2218. This section and section 759 reflect this interpretation, and make a minor change in the law (although not in practice). See *Change 115* in Annex 1.

2219. The expression “all *or part* of the land” in subsection (1)(c) is based on section 776(14) of ICTA; it will (for example) cover a case in which several areas of land, some within the UK and some outside the United Kingdom, pass under a single bargain. In such a case, if the person liable is non-UK resident, the total consideration will be apportioned, and the provisions will be applied to the separate gain for each area of land in the United Kingdom to arrive at the non-UK resident’s deemed income.

2220. If this section applies, *subsection (2)* treats the gain as income and deems it to arise when the gain is realised.

2221. For the sake of consistency with the rest of the section, *subsection (5)* refers to the opportunity of “realising” a gain, rather than (as in the source legislation) the opportunity of “making” it. This difference is verbal not substantive.

Section 757: Person obtaining gain

2222. This section specifies the person obtaining the gain. It is based on section 776(2)(c)(i) and (ii) and 776(5)(b) of ICTA.
2223. *Subsection (3)* indicates when a number of transactions may be regarded as constituting a single arrangement or scheme. Subsection (3) differs from the source legislation in that it is not drafted to apply for the purposes of section 753(1). There is no need for subsection (3) to bring a plurality of transactions within section 753(1)(b), since a plurality of transactions will already be within section 753(1)(a).

Section 758: Income charged

2224. This section defines the measure of income and gives a signpost to section 760 (method of calculating gain). It is based on section 776(3B) of ICTA.

Section 759: Person liable

2225. This section defines the person liable, bringing together a number of previously separate provisions. It is based on section 776(3)(b), (3B) and (8) of ICTA.
2226. *Subsection (1)* states that the person liable for any tax charged under this Chapter on income is the person whose income it is.
2227. *Subsection (2)* then lays down the general rule: that person is the person who realises the gain.
2228. *Subsection (3)* states that the general rule is subject to two exceptions, set out in subsections (4) and (6).
2229. *Subsection (4)* deals with the case where there is a person providing value. If all or any part of the gain accruing to a person (“A”) is derived from value provided directly or indirectly by another person (“B”), the income is B’s.
2230. *Subsection (5)* makes it clear that it does not matter for the purpose of subsection (4) whether or not the value is put at the disposal of A.
2231. *Subsection (6)* deals with the case where there is a person providing an opportunity to realise a gain. If all or any part of the gain accruing to a person is derived from an opportunity of realising a gain provided directly or indirectly by another person, the income is the other person’s.
2232. There is no equivalent of subsection (5) to back up subsection (6), because none is needed. This is a change in the law but not in practice. See *Change 116* in Annex 1.
2233. *Subsection (8)* makes a minor change in the law, although not in practice. See the commentary on section 756 and *Change 115* in Annex 1.

Section 760: Method of calculating gain

2234. This section lays down how a gain is to be calculated for the purposes of this Chapter. It is based on section 776(6) of ICTA.

Section 761: Transactions, arrangements, sales and realisations relevant for Chapter

2235. **Section 761** concerns transactions, arrangements, sales and realisations relevant for this Chapter. It is based on section 777(2) and (3) of ICTA.
2236. This section is the first of a group of supplementary sections (sections 761 to 764). These sections apply for the purposes of the Chapter as a whole; because of their importance, they have been placed immediately after sections 755 to 760, the core sections.

Section 762: Tracing value

2237. This section is about tracing value. It is based on section 777(5) of ICTA.

Section 763: Meaning of “another person”

2238. This section explains the meaning of “another person” in this Chapter. It is based on section 777(7) of ICTA.

Section 764: Valuations and apportionments

2239. This section is about valuations and apportionments. It is based on section 777(6) of ICTA.

Section 765: Exemption: gain attributable to period before intention to develop formed

2240. This section exempts that part of a gain which is fairly attributable to a period before the intention to develop the land was formed. It is based on section 776(7) of ICTA.

2241. It is the first of a group of three exemptions, which are set out in sections 765 to 767.

Section 766: Exemption: disposals of shares in companies holding land as trading stock

2242. This section limits the scope of the charge by providing an exemption for disposals of shares in companies holding land as trading stock. It is based on section 776(10) of ICTA.

Section 767: Exemption: private residences

2243. This section gives exemption in respect of private residences, if certain conditions are met. It is based on section 776(9) of ICTA.

Section 768: Recovery of tax where consideration receivable by person not assessed

2244. This section deals with recovery of tax where consideration is receivable by a person (B) other than the person assessed (A). It is based on section 777(8) and (13) of ICTA.

2245. Under *subsection (3)* A is entitled to recover from B any part of the tax which A has paid. To assist with this, A may obtain a certificate of tax paid: see the commentary on section 769.

2246. This section also includes a tie-breaker provision. This is a minor change in the law. See *Change 117* in Annex 1.

Section 769: Recovery of tax: certificates of tax paid etc

2247. This section deals with certificates of tax paid for the purposes of section 768(3). It is based on section 777(8) of ICTA.

2248. Section 777(8) of ICTA provides that the certificate is to be furnished by “the Board or an inspector”. In 1969, when this legislation was introduced, section 5 of the Income Tax Management Act 1964 provided that all assessments to income tax at the standard rate were to be made by an inspector and all assessments to surtax were to be made by the Board. The reference to “the Board” in section 777(8) appears to be a missed consequential on the abolition of surtax. This section therefore omits “the Board” as redundant and, following section 7 of CRCA, refers to “an officer of Revenue and Customs” rather than “an inspector”.

2249. *Subsection (3)* gives a signpost to section 944 in Part 15 (Deduction of tax at source) which rewrites section 777(9) of ICTA.

Section 770: Clearance procedure

2250. This section deals with clearances. It is based on section 776(11) and (12) of ICTA.
2251. **Section 770** includes a minor change in the law. Section 776(11) of ICTA gives the clearance function to “the inspector to whom [the taxpayer] makes his return of income”. In practice, HMRC do not interpret this restrictively. Section 770 gives the clearance function to the Commissioners for Her Majesty’s Revenue and Customs. This will be consistent with section 707 of ICTA (transactions in securities: clearance procedure), which is rewritten in sections 701 and 702. See *Change 118* in Annex 1.
2252. **Section 770** will apply solely for income tax purposes and section 776(11) and (12) of ICTA will apply solely for corporation tax purposes. HMRC’s operational guidance will tell officers what action they should take if a clearance application is made which appears to refer to the wrong provision. If HMRC issue a clearance under section 770 of this Act or under section 776 of ICTA which refers by mistake to the wrong provision, HMRC will treat it as if it referred to the correct provision.

Section 771: Power to obtain information

2253. This section enables HMRC to obtain information which is relevant to this Chapter. It is based on section 778 of ICTA.
2254. Section 778 of ICTA refers to “the Board or an inspector” and “the Board or the inspector”. For the reason given in the commentary on section 769, the references to “the Board” in section 778 appear to be a missed consequential on the abolition of surtax. Section 771 therefore now omits “the Board” as redundant and, following section 7 of CRCA, refers to “an officer of Revenue and Customs” rather than “an inspector”.
2255. *Subsection (1)* includes a minor change in the law: 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.

Section 772: Interpretation of Chapter

2256. This section is interpretative. It is based on sections 776(13) and 777(13) of ICTA.
2257. **Section 777(13)** defines “capital amount” to mean any amount, in money or money’s worth, which, apart from the sections 775 and 776, does not fall to be included in any computation of income for purposes of the Tax Acts. It provides that other expressions including the word “capital” are to be construed accordingly. The drafting of subsection (1) reflects the fact that a gain is the result of an arithmetical calculation, arrived at very broadly by deducting receipts from expenses, and cannot itself be said to be in money or money’s worth.
2258. *Subsection (2)* (meaning of “property deriving its value from land”) is based on section 776(13)(b) of ICTA.

Section 776(13)(a) of ICTA: “land”

2259. This section does not rewrite the second limb of the definition of “land” in section 776(13)(a) of ICTA.
2260. In Schedule 1 to the Interpretation Act 1978 land is defined as including “buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land.” Although the Interpretation Act 1978 was largely a consolidation, the definition of land was new and only applies from the commencement of that Act.
2261. The origin of section 776(13)(a) of ICTA is section 32(12)(a) of FA 1969. This definition therefore predates the definition of land in Schedule 1 to the Interpretation Act 1978.

2262. The definition of “land” in force in 1969 was that contained in the Interpretation Act 1889. In section 3 of that Act land was defined as including “messuages, tenements, and hereditaments, houses and buildings of any tenure”. This section was derived from section 4 of Lord Brougham’s Act of 1850. The definition was never appropriate for Scotland where messuages and hereditaments were unknown to the law.
2263. There is nothing in the definition of “land” in the Interpretation Act 1978 which is not also within the definition of “land” in section 776(13)(a) of ICTA.
2264. The Interpretation Act 1978 refers to “buildings and other structures”. Section 776(13)(a) of ICTA merely refers to “buildings”. But this cannot be read as excluding “structures”, because what is a building is a question of degree and circumstance and case law makes it clear that virtually any kind of structure is capable of being a building.
2265. Adopting the Interpretation Act definition of “land” for the purposes of this Chapter would only be a change in the law if a “structure” (a) was not, as a matter of normal English usage, “land”, (b) was not a “building” (and was therefore not brought within “land” by the second limb of section 776(13)(a) of ICTA), and (c) was nevertheless brought within “land” by the provision in the Interpretation Act that “land” includes buildings and other structures. There is no reason to believe that there are such “structures”.
2266. The Interpretation Act 1978 refers to “land covered with water”; section 776(13)(a) of ICTA does not. But there is no doubt that for legal purposes land includes every species of ground as well as waters and marshes. The term “land covered with water” has been used in legislation to distinguish, for rating purposes, land covered by artificial bodies of water such as reservoirs, filter beds belonging to water companies, canals, dry docks etc; no such distinction would be appropriate in the context of section 776 of ICTA, and therefore none was made.
2267. Finally, section 776(13)(a) of ICTA refers to “any estate or interest in land or buildings”, whereas the Interpretation Act 1978 is more specific, referring to “any estate, interest, *easement, servitude or right in or over land*” (emphasis added). Nonetheless, the section 776(13)(a) definition of land includes the rights italicised above. It is couched in generic terms and does not need to mention specific interests in land, including those particular to Scots law.
2268. It is therefore a matter of historical accident that section 776 of ICTA includes its own non-exhaustive definition of “land”, rather than using the standard non-exhaustive definition in the Interpretation Act 1978. The Act therefore omits the second limb of section 776(13)(a) of ICTA as redundant.
2269. The Act does not rewrite the first limb of section 776(13)(a) of ICTA as a Chapter-wide definition. Instead, references to “the land” are expanded to “all or part of the land” where appropriate.

Section 777(13) of ICTA: “receivable”

2270. Section 777(13) of ICTA provides:
- “For the purposes of the relevant provisions ... any amount in money or money’s worth shall not be regarded as having become receivable by some person until that person can effectively enjoy or dispose of it.
2271. Section 777(1) of ICTA defines “the relevant provisions” as sections 775 to 777 of ICTA. On the face of it, therefore, the qualification of “receivable” in section 777(13) of ICTA applies to section 776 of ICTA. But the word “receivable” is not actually used in section 776.

2272. In *Yuill v Wilson* (1980), 52 TC 674 HL⁸ and *Yuill v Fletcher* (1984), 58 TC 145 CA⁹ the courts interpreted “realised” in section 776(3) of ICTA consistently with the explanation of “receivable” in section 777(13) of ICTA. In the House of Lords in *Yuill v Wilson*, Viscount Dilhorne said (52 TC 674 at page 714):

““I have based my conclusions on the meaning which I think should be given to the expression “the gain is realised”. Section [777] of the Act is as I have said intended to supplement sections [775] and [776]. Subsection (13) of section [777] is a definition subsection and, *inter alia*, states that for the purposes of sections [775] and [776] “any amount in money or money’s worth shall not be regarded as having become receivable by some person until that person can effectively enjoy or dispose of it.” The operation of [section 776] does not depend on whether money or money’s worth is receivable. One does not find in it any reference to money or money’s worth being receivable. It depends on whether a gain is obtained or realised. So the operation of this definition is, to say the least, obscure in relation to section [776]. It, however, accords with the meaning which I think should be given to the word “realised”, that is to say, that a gain is not realised until it can be effectively enjoyed or disposed of.”

2273. Lord Salmon agreed with Viscount Dilhorne. Other judges interpreted “realised” in the same way as Viscount Dilhorne, but relied on what is now section 777(13) of ICTA to do so¹⁰.

2274. Following Viscount Dilhorne and Lord Salmon, this Act does not rewrite the explanation of “receivable” for the purposes of this Chapter. This omission does not change the law.

Chapter 4: Sales of occupation income

Overview

2275. This Chapter contains an anti-avoidance provision directed against schemes which turn income from an occupation into capital. It is based on sections 775, 777 and 778 of ICTA.

2276. The sections of this Chapter are arranged in the following order:

- Sections 773 to 775 – introduction;
- Sections 776 to 779 – charge on sale of occupation income;
- Sections 780 to 783 – further provisions relevant to the charge;
- Sections 784 and 785 – exemption for sales of going concerns;
- Sections 786 and 787 – recovery of tax;
- Section 788 – power to obtain information;
- Section 789 – interpretation.

Section 773: Overview of Chapter

2277. This section provides an overview of the Chapter, outlining its purpose and the charge it imposes. It is based on section 775(1) of ICTA.

⁸ [1980] STC 460.

⁹ [1984] STC 401.

¹⁰ In the Court of Appeal, Buckley LJ and Goff LJ had used the explanation of “receivable” to interpret “realised” and in the House of Lords so too did Lord Russell of Killowen and Lord Keith of Kinkel. Lord Edmund-Davies did not express an opinion on this point. In *Yuill v Fletcher*, the Special Commissioners noted this difference of approach, and inferred that the application of what is now section 777(13) of ICTA to what is now section 776 of ICTA could “be legitimately regarded as an open question, or at least as containing open questions”: (paragraph 9.9 of the Decision: 58 TC 145 at page 163). Neither the High Court nor the Court of Appeal expressed any view on this point; the Court of Appeal held that the House of Lords’ decision in *Yuill v Wilson* should be followed as either a binding precedent or of the highest persuasive authority.

2278. Although section 775(1)(a) and (b) of ICTA refer to “transactions or arrangements”, section 775(1)(c) only refers to “transactions”. The original source legislation, section 31(1)(c) of FA 1969, refers to “transactions or arrangements” and *subsection (2)* restores this phrase.

Section 774: Meaning of “occupation”

2279. This section explains the expression “occupation”. It is based on section 775(3) of ICTA.

Section 775: Priority of other tax provisions

2280. This section provides for other tax provisions to apply in priority to Chapter 4. It is based on section 777(10) of ICTA.

Section 776: Charge to tax on sale of occupation income

2281. This section sets out the scope of the charge. It is based on section 775(2A) of ICTA.

2282. *Sections 776 to 779* form the core of the Chapter.

Section 777: Conditions for sections 778 and 779 to apply

2283. This section sets out the circumstances in which income is treated as arising. It is based on sections 775(1), (3), and (7) to (9) and 777(13) of ICTA.

2284. *Subsection (1)* specifies three conditions (labelled A to C) which must all be met if section 778 or, as the case may be, section 779 is to apply.

2285. *Subsection (2)* sets out condition A, which is about location of the occupation carried on by the individual.

2286. *Subsection (3)* sets out condition B, which is about the ways in which transactions are effected or arrangements made to exploit the individual’s earning capacity in the occupation.

2287. *Subsection (4)* is based on the explanation of the meaning of “income or receipts derived from the individual’s activities” in section 775(3) of ICTA.

2288. *Subsection (5)* sets out condition C, which is about the receipt of a capital amount by the individual, either for the individual or for another person.

2289. *Subsection (6)* provides further details about what the previous subsection includes.

2290. *Subsection (7)* defines “capital amount”. It is based on section 777(13) of ICTA. Section 777(13) of ICTA refers to “any amount ... which, apart from the sections 775 and 776, does not fall to be included in any computation of income for purposes of the Tax Acts”. It is not possible for an amount to be treated as income both by section 775 and by section 776 of ICTA, and so subsection (7) does not rewrite the reference to section 776.

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

2291. This section applies if the capital amount mentioned in section 777(5) does *not* consist of either property which derives substantially the whole of its value from the individual’s activities or a right which does so. It is based on sections 775(1), (2) and (7) and 777(13) of ICTA.

2292. If section 778 applies, *subsection (2)* treats the capital amount as income.

2293. *Subsection (2)* omits the reference in section 775(2) to the capital amount being treated as “earned income”. The only place in the Income Tax Acts where the expression “earned income” is used, following the reform of the pensions legislation in FA 2004,

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is section 282A of ICTA (jointly held property). As explained in the commentary on Chapter 3 of Part 14, section 282A has been rewritten in direct terms without reference to earned income. Accordingly, this section does not refer to earned income either.

2294. HMRC's interpretation of the territorial scope of section 775 of ICTA is summarised in the table below.

<i>Taxpayer's residence</i>	<i>Where occupation is carried on</i>	<i>Application of section 775</i>
UK	Wholly in the United Kingdom	Section 775 applies (assuming all the other conditions are met).
UK	Wholly outside the United Kingdom	Section 775 does not apply.
UK	Partly in the United Kingdom, partly outside the United Kingdom	Section 775 applies to the whole of the gain (assuming all the other conditions are met).
Non-UK	Wholly in the United Kingdom	Section 775 applies (assuming all the other conditions are met).
Non-UK	Wholly outside the United Kingdom	Section 775 does not apply.
Non-UK	Partly in the United Kingdom, partly outside the United Kingdom	Section 775 applies (assuming all the other conditions are met), but only to the capital amount attributable to that part of the occupation carried on in the United Kingdom.

2295. The sections reflect this interpretation, and make a minor change in the law (although not in practice) to clarify the territorial scope of section 775. See *Change 115* in Annex 1.

2296. At first sight, section 775(9) of ICTA ("This section shall apply to all persons ...") seems to apply to the "other person" mentioned in section 775(1)(a) of ICTA. But, to the extent that section 775(9) of ICTA applies to the "other person", it is redundant. To that extent, therefore, it is repealed without replacement.

Section 779: Income arising where derivative property or right obtained

2297. This section applies if the capital amount mentioned in section 777(5) *does* consist of either property which derives substantially the whole of its value from the individual's activities or a right which does so. It is based on section 775(2) and (7) of ICTA.

2298. The effect of this section replicates that of section 775(7) of ICTA, which imposes a separate charge from section 775(1) to (2A) of ICTA. It may apply in (for example) cases where individuals acquire stock options and subsequently exercise them.

Section 780: Transactions, arrangements, sales and realisations relevant for Chapter

2299. This section concerns transactions, arrangements, sales and realisations relevant for this Chapter; it greatly extends the circumstances in which a charge to tax may arise. It is based on section 777(2) and (3) of ICTA.

Section 781: Tracing value

2300. This section is about tracing the value of any property or right. It is based on section 777(5) of ICTA.

Section 782: Meaning of “other person”

2301. This section explains the meaning of “other person” in this Chapter. It is based on section 777(7) of ICTA.

Section 783: Valuations and apportionments

2302. This section is about valuations and apportionments. It is based on section 777(6) of ICTA.

Section 784: Exemption for sales of going concerns

2303. This section limits the scope of the charge by providing an exemption (itself limited by section 785) for transfers of businesses and companies as going concerns. It is based on section 775(4) and (6) of ICTA.

Section 785: Restriction on exemption: sales of future earnings

2304. This section is directed against abuse of the exemption given by section 784. It is based on section 775(5) of ICTA.

2305. The taxpayer might attempt to avoid the charge under this Chapter by exploiting section 784, namely by transferring a future income stream into a business or company carrying on a going concern and obtaining a capital amount for the disposal of the entire package. In such a case, this section would require an apportionment and restrict the exemption.

2306. [Section 785](#) also includes a minor change in the law, although not in practice. See *Change 119* in Annex 1.

Section 786: Recovery of tax where consideration receivable by person not assessed

2307. This section deals with recovery of tax where consideration is receivable by a person (B) other than the person assessed (A). It is based on section 777(8) and (13) of ICTA.

2308. Under *subsection (3)* A is entitled to recover from B any part of the tax which A has paid. To assist with this, A may obtain a certificate of tax paid. See the commentary on section 787.

2309. [Section 786](#) also includes a tie-breaker provision. This is a minor change in the law. See *Change 117* in Annex 1.

Section 787: Recovery of tax: certificates of tax paid etc

2310. This section deals with certificates of tax paid for the purposes of section 786(3). It is based on section 777(8) of ICTA.

2311. Section 777(8) of ICTA provides that the certificate is to be furnished by “the Board or an inspector”. In 1969, when this legislation was introduced, section 5 of the Income Tax Management Act 1964 provided that all assessments to income tax at the standard rate were to be made by an inspector and all assessments to surtax were to be made by the Board. A consequential amendment to the reference to “the Board” in section 777(8) appears to have been missed on the abolition of surtax. This section therefore now omits the reference to “the Board” as redundant and, following section 7 of CRCA, refers to “an officer of Revenue and Customs” rather than “an inspector”.

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2312. *Subsection (3)* gives a signpost to section 944 in Part 15 (Deduction of tax at source) which rewrites section 777(9) of ICTA.

Section 788: Power to obtain information

2313. This section enables HMRC to obtain information which is relevant to this Chapter. It is based on section 778 of ICTA.
2314. Section 778 of ICTA refers to “the Board or an inspector” and “the Board or the inspector”. For the reason given in the note on section 787, consequential amendments to the references to “the Board” in section 778 appear to have been missed on the abolition of surtax. This section therefore now omits the references to “the Board” as redundant and, following section 7 of CRCA, refers to “an officer of Revenue and Customs” rather than “an inspector”.
2315. *Subsection (1)* includes a minor change in the law: 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.

Section 789: Minor definitions

2316. This section non-exhaustively defines “company” and “share”. It is based on section 777(13) of ICTA.

Chapter 5: Avoidance involving trading losses

Overview

2317. The Chapter provides for the recovery of certain loss reliefs if regulations apply to reduce an individual’s contribution to the firm so that the contribution becomes lower, or even lower, than relief already given to the individual.
2318. This Chapter also sets out provisions about avoidance involving trade losses made by individuals in a trade exploiting a film or licence. The provisions tackle schemes used by individuals to try to convert a tax deferral into a permanent tax gain.
2319. The Chapter is based on Chapter 9 of Part 3 of FA 2004 and Chapter 7 of Part 2 of FA 2005.

Section 790: Overview of Chapter

2320. This section provides an overview of the Chapter. It is new.
2321. *Subsection (1)* signposts the sections dealing with the three sets of circumstances addressed by the Chapter.
2322. The definition of “capital gains relief” refers to section 261B of TCGA, which is inserted by Schedule 1 to this Act.

Section 791: Charge to tax on income treated as received under section 792

2323. This section imposes a charge to tax on income treated as received under section 792. It is based on section 74(4) of FA 2005.
2324. The section follows the approach to charging provisions adopted in ITTOIA.

Section 792: Partners claiming excess sideways or capital gains relief

2325. This section treats an individual as receiving income in certain cases where regulations made under section 114 of this Act result in the individual having claimed excessive sideways relief or capital gains relief for post-1 December 2004 trade losses made by

the individual as a limited partner, a member of a limited liability partnership or a non-active partner. It is based on section 74 of FA 2005.

2326. The section specifies that income is treated as arising when a “chargeable event” occurs, and that such an event occurs at any time when the regulations result in the individual having claimed excessive relief. Such excesses (of losses so claimed over the individual’s contribution to the firm) arise because the individual’s contribution to the firm is treated by the regulations as reduced on the occurrence of certain events. Such an event might be, for example, the release of a loan taken out to finance the individual’s contribution to the firm (see Condition 3 of Regulation 4(1) of [SI 2005/2017](#), as consequentially amended by Schedule 2 Part 5 (application of existing regulations under sections 114 and 802)).
2327. *Subsection (2)(b)* refers to “capital gains relief” as part of making explicit the interaction between section 72 of FA 1991 and the provisions in ICTA, FA 2004 and FA 2005 which restrict the giving of sideways relief. See *Change 13* in Annex 1.
2328. There is a change from “contribution to the trade” in the source legislation to “contribution to the firm”. See the overview commentary on Chapter 3 of Part 4 (restrictions on relief for certain partners) and *Change 16* in Annex 1.

Section 793: Calculating the amount of income treated as received

2329. This section specifies how the amount of income treated as received by the previous section is to be calculated. It is based on section 75 of FA 2005.
2330. The basic proposition is that the amount is the reduction in the individual’s contribution to the firm resulting from the application of the regulations. Nevertheless, the amount of income treated as received cannot exceed the amount of post-1 December 2004 trade losses claimed (and not reclaimed). Neither can it exceed the excess of the trade losses claimed (and not reclaimed) over the contribution to the firm.
2331. There is a change from “contribution to the trade” in the source legislation to “contribution to the firm”. See the overview commentary on Chapter 3 of Part 4 (restrictions on relief for certain partners) and *Change 16* in Annex 1.

Section 794: Meaning of “the total amount of trade losses claimed” etc

2332. This section defines “the total amount of the trade losses claimed”, “the individual’s contribution to the firm” and other terms. It is based on section 74 of FA 2005.
2333. There is a change from “contribution to the trade” in the source legislation to “contribution to the firm”. See the overview commentary on Chapter 3 of Part 4 (restrictions on relief for certain partners) and *Change 16* in Annex 1.

Section 795: Meaning of “post-1 December 2004 loss”

2334. This section defines “post-1 December 2004 loss”. It is based on section 76 of FA 2005.

Section 796: Charge to tax on income treated as received under section 797

2335. This section imposes a charge to tax on income treated as received under section 797. It is based on section 119(4) of FA 2004.
2336. The section follows the approach to charging provisions adopted in ITTOIA.

Section 797: Individuals claiming sideways or capital gains relief for film-related losses

2337. This section sets out circumstances in which an individual, who has claimed sideways or capital gains relief for film-related losses, is treated as receiving income. It is based on section 119 of FA 2004.

2338. The section specifies that income is treated as arising when a “chargeable event” occurs, and that such an event occurs at the time that the last of three conditions (relevant claim, relevant disposal and exit event) become satisfied.
2339. *Subsection (2)* specifies that an exit event will occur every time an individual receives non-taxable consideration for a relevant disposal, as well as certain times when the individual makes a further claim for sideways relief or capital gains relief or the individual’s contribution to the firm is reduced. So a number of exit events may occur for any particular relevant disposal. And a number of chargeable events may occur for a particular tax year.
2340. There is a change from “contribution to the trade” in the source legislation to “contribution to the firm”. See the overview commentary on Chapter 3 of Part 4 (restrictions on relief for certain partners) and *Change 16* in Annex 1.

Section 798: Meaning of “non-taxable consideration” etc

2341. This section defines “non-taxable consideration”. It is based on sections 122(3) and 123(2) of FA 2004.
2342. In particular, the section makes it clear that, if the consideration is received after deduction of costs or any other payment relating to the relevant disposal or exit event, it is the gross amount that is treated as the non-taxable consideration.

Section 799: Meaning of “disposal of a right of the individual to profits” etc

2343. This section specifies a number of things that are to count as a disposal of a right of an individual to profits arising from a trade. It is based on section 120 of FA 2004.

Section 800: Meaning of “film-related losses” etc

2344. This section defines various terms. It is based on sections 121(1) and (1A) and section 123(1) of FA 2004.
2345. There is a change from “contribution to the trade” in the source legislation to “contribution to the firm”. See the overview commentary on Chapter 3 of Part 4 (restrictions on relief for certain partners) and *Change 16* in Annex 1.

Section 801: Meaning of “capital contribution”

2346. This section defines “capital contribution”. It is based on sections 121 and 122(1) of FA 2004.
2347. There is a change from “contribution to the trade” in the source legislation to “contribution to the firm”. See the overview commentary on Chapter 3 of Part 4 (restrictions on relief for certain partners) and *Change 16* in Annex 1.

Section 802: Exclusion of amounts in calculating capital contribution by a partner

2348. This section enables regulations to be made, which can apply on a retrospective basis, to exclude certain amounts from the calculation of an individual’s capital contribution. It is based on section 122A of FA 2004.
2349. Regulations under this provision are subject to the affirmative resolution procedure.
2350. There is a change from “contribution to the trade” in the source legislation to “contribution to the firm”. See the overview commentary on Chapter 3 of Part 4 (restrictions on relief for certain partners) and *Change 16* in Annex 1.
2351. Some regulations have been made under section 122A of FA 2004. See the [Partnerships \(Restrictions on Contributions to a Trade\) Regulations 2005 \(SI 2005/2017\)](#) and the [Partnerships \(Restrictions on Contributions to a Trade\) Regulations 2006 \(SI](#)

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2006/1639). See also the commentary on Parts 5 and 13 of Schedule 2 about consequential amendments made to these regulations by this Act.

2352. In *subsection (5)*, the reference to Act includes references to Acts of the Scottish Parliament and Northern Ireland legislation. See *Change 152* in Annex 1, section 1018 and the commentary on that section.

Section 803: Prohibition against double counting

2353. This section ensures that consideration is only brought into account once. It is based on section 122(2) of FA 2004.

2354. There is a change from “contribution to the trade” in the source legislation to “contribution to the firm”. See the overview commentary on Chapter 3 of Part 4 (restrictions on relief for certain partners) and *Change 16* in Annex 1.

Section 804: Charge to tax on income treated as received under section 805

2355. This section imposes a charge to tax on income treated as received under section 805. It is based on section 127(2) of FA 2004.

2356. The section follows the approach to charging provisions adopted in ITTOIA.

Section 805: Partners claiming relief for licence-related trading losses

2357. This section sets out circumstances in which an individual, who was a non-active partner in an early year, and who has claimed sideways relief or capital gains relief for a loss deriving from expenditure related to a licence, is treated as receiving income. It is based on sections 126 and 127 of FA 2004.

2358. The meaning of non-active partner is explained in section 809, by reference to provisions in Chapter 3 of Part 4.

2359. There must be a relevant disposal of the licence which requires that the individual receives non-taxable consideration (defined in *subsection (5)*).

2360. Income is treated as arising when a “chargeable event” occurs which could be at any time when an individual receives non-taxable consideration for a disposal or the individual makes a further claim for sideways relief or capital gains relief. So a number of chargeable events may occur for a particular tax year.

Section 806: Calculation of amount of income treated as received by the individual

2361. This section sets out a step calculation for finding the income which the individual is treated as receiving. It is based on section 127(4) to (6) of FA 2004.

Section 807: Supplementary provision relating to calculation in section 806

2362. This section supplements section 806. It is based on section 128 of FA 2004.

Section 808: Meaning of “disposal of the licence” etc

2363. This section specifies a number of things that are to count as a disposal of a licence. It is based on section 129 of FA 2004.

Section 809: Other definitions

2364. This section includes various definitions used in relation to the restrictions for losses related to a licence. It is based on sections 126, 127(7) and 130 of FA 2004.