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SCHEDULES

SCHEDULE 7

TRANSFER OF ASSETS ABROAD

Income and Corporation Taxes Act 1988

Amendments of ICTA: introductory

1 ICTA is amended as follows.

Section 741: application subject to sections 741B and 741C

- 2 (1) Section 741 (exemption from sections 739 and 740) is amended as follows.
- (2) At the beginning of the section insert “(1)”.
- (3) At the end of the section insert—
- “(2) This section is subject to sections 741B and 741C (application of this section and section 741A etc).”.
- (4) In consequence of amendments made by this Schedule, the heading of the section becomes “Exemption from sections 739 and 740 (transactions before 5th December 2005)”.
- (5) The amendments made by this paragraph shall be taken to have come into force on 5th December 2005.

Exemption from sections 739 and 740: new provision

3 (1) After section 741 insert—

“741A Exemption from sections 739 and 740 (transactions on or after 5th December 2005)

- (1) The individual is not liable to income tax by virtue of section 739 or 740 for the year of assessment by reference to the relevant transactions if he satisfies an officer of the Board—
- (a) that Condition A is met, or
- (b) in a case where Condition A is not met, that Condition B is met.
- (2) Condition A is that it would not be reasonable to draw the conclusion, from all the circumstances of the case, that the purpose of avoiding liability to taxation was the purpose, or one of the purposes, for which the relevant transactions or any of them were effected.
- (3) Condition B is that—

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- (a) all the relevant transactions were genuine commercial transactions, and
 - (b) it would not be reasonable to draw the conclusion, from all the circumstances of the case, that any one or more of those transactions was more than incidentally designed for the purpose of avoiding liability to taxation.
- (4) The intentions and purposes of any person who, whether or not for consideration,—
- (a) designs or effects the relevant transactions or any of them, or
 - (b) provides advice in relation to the relevant transactions or any of them,
- are to be taken into account in determining the purposes for which those transactions or any of them were effected.
- (5) A relevant transaction is a commercial transaction only if it is effected—
- (a) in the course of a trade or business, or
 - (b) with a view to setting up and commencing a trade or business,
- and, in either case, for the purposes of that trade or business.
- (6) For that purpose, the making and managing of investments, or the making or managing of investments, is not a trade or business except to the extent that—
- (a) the person by whom it is done, and
 - (b) the person for whom it is done,
- are independent persons dealing at arm's length.
- (7) In this section—
- “commercial transaction” does not include—
- (a) a transaction on terms other than those that would have been made between independent persons dealing at arm's length, or
 - (b) a transaction that would not have been entered into between independent persons dealing at arm's length;
- “independent persons” means persons who are not connected with each other (within the meaning given by section 839);
- “relevant transactions” means—
- (a) the transfer, and
 - (b) any associated operations;
- “revenue” includes taxes, duties and national insurance contributions;
- “taxation” includes any revenue for whose collection and management the Commissioners for Her Majesty's Revenue and Customs are responsible.
- (8) Any associated operation that would not (apart from this subsection) fall to be taken into account for the purposes of this section must be taken into account for those purposes if, were it to be so taken into account, the conditions in subsection (1) above would be failed by reference to—
- (a) that associated operation, or
 - (b) that associated operation taken together with the transfer or any one or more other associated operations.

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- (9) The jurisdiction of the Special Commissioners on any appeal includes jurisdiction to review any decision taken by an officer of the Board in exercise of the officer's functions under this section.
- (10) This section is subject to sections 741B and 741C (application of section 741 and this section etc).".
- (2) The amendment made by this paragraph shall be taken to have come into force on 5th December 2005.

Application of sections 741 and 741A

- 4 (1) After section 741A insert—

“741B Application of sections 741 and 741A

- (1) This section makes provision with respect to the application for the year of assessment of—
- (a) section 741,
 - (b) section 741A, or
 - (c) section 741C,
- in the case of the individual and the relevant transactions.
- (2) In this section—
- “new transaction” means a relevant transaction effected on or after the relevant date;
 - “old transaction” means a relevant transaction effected before the relevant date;
 - “the relevant date” means 5th December 2005;
 - “relevant transactions” means—
- (a) the transfer, and
 - (b) any associated operations.
- (3) If all the relevant transactions are old transactions, section 741 is the provision to be applied.
- (4) If all the relevant transactions are new transactions, section 741A is the provision to be applied.
- (5) If—
- (a) any one or more of the relevant transactions are old transactions, and
 - (b) any one or more of the relevant transactions are new transactions,
- section 741C is the provision to be applied.

741C Cases where there are both old transactions and new transactions

- (1) This section applies by virtue of section 741B if the case falls within subsection (5) of that section.
- (2) Sections 739 and 740 do not apply, unless subsection (3) below applies.
- (3) This subsection applies if—

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- (a) the conditions in section 741(1) are failed by reference to the old transactions or any of them, or
 - (b) the conditions in section 741A(1) are failed by reference to the new transactions or any of them.
- (4) Where subsection (3) above applies, the general rule is that sections 739 and 740 apply as they would have applied apart from any exemption by virtue of sections 741 to 741C.
- (5) In any case where subsection (3) above applies by virtue only of paragraph (b) of that subsection, the general rule has effect subject to, and in accordance with, the Rules in subsections (6) to (8) below.
- (6) Rule 1 is that, for the purposes of section 739(2) or (3), any income arising before the relevant date must not be brought into account as income of the person resident or domiciled outside the United Kingdom.
- (7) Rule 2 is that for the purposes of section 740, where—
- (a) a benefit is received by the individual in a year of assessment ending after the relevant date, and
 - (b) relevant income of years of assessment up to and including that year falls to be determined,
- the general rule requires years ending before the relevant date to be brought into account as well as years ending after that date.
- (8) Rule 3 is that, for the purposes of section 740, a benefit received by the individual in the year 2005-06 is to be left out of account to the extent that, on a time apportionment basis, it fell to be enjoyed in any part of the year that falls before the relevant date.
- (9) This section is to be read as one with section 741B.”.
- (2) The amendment made by this paragraph shall be taken to have come into force on 5th December 2005.

Just and reasonable apportionment in certain cases

- 5 (1) After section 741C insert—

“741D Section 739: just and reasonable apportionment in certain cases

- (1) This section applies where—
- (a) an individual is liable to tax by virtue of section 739 for a year of assessment (the “taxable year”), but
 - (b) the conditions in subsections (2) to (4) below are met.
- (2) Condition 1 is that since the making of the transfer there have been one or more years of assessment when the circumstances were such that, so far as relating to such of the relevant transactions as were effected before the end of the year, the individual—
- (a) was not liable to tax by virtue of section 739, or
 - (b) would not have been liable to tax by virtue of section 739 if there had been any deemed income of his under that section,

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because an appropriate exemption applied or, in a case falling within paragraph (b) above, would have applied.

- (3) Condition 2 is that the individual is liable to tax under section 739 in the taxable year in consequence of Condition B in section 741A(3) not being met.
 - (4) Condition 3 is that the income by reference to which the individual is liable to tax for the taxable year is attributable—
 - (a) partly to relevant transactions by reference to which the appropriate exemption applied for the last exempt year of assessment, and
 - (b) partly to associated operations not falling within paragraph (a) above (“chargeable operations”).
 - (5) For the purposes of this section, a year of assessment is “exempt” if it is one of the years of assessment mentioned in subsection (2) and there is no earlier year of assessment for which—
 - (a) the individual was liable to tax by virtue of section 739, or
 - (b) the individual would have been liable to tax by virtue of section 739, if there had been any deemed income of his under that section.
 - (6) Where this section applies, the liability of the individual is to be reduced as if it fell to be determined by reference to only so much of the income as appears to an officer of the Board to be justly and reasonably attributable to chargeable operations in all the circumstances of the case.
 - (7) The facts and matters that may be taken into account in determining for the purposes of subsection (6) above whether income may be regarded as justly and reasonably attributable to chargeable operations include whether, and to what extent, the chargeable operations or any of them directly or indirectly affect any of the following—
 - (a) the character, description or amount of any income of any person,
 - (b) any person’s power to enjoy any income,
 - (c) the character, description or amount of any income which a person has power to enjoy.
 - (8) The jurisdiction of the Special Commissioners on any appeal includes jurisdiction to review any decision taken by an officer of the Board in exercise of the officer’s functions under this section.
 - (9) In this section—

“appropriate exemption” means exemption by virtue of—

 - (a) paragraph (b) of section 741(1), or
 - (b) Condition B in section 741A(3);

“relevant transactions” means—

 - (a) the transfer, and
 - (b) any associated operations.”.
- (2) The amendment made by this paragraph shall be taken to have come into force on 5th December 2005.

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Section 742: interpretation of the Chapter

- 6 (1) Section 742 (interpretation of sections 739 to 741) is amended as follows.
- (2) In subsection (1) (meaning of “associated operations”) for “sections 739 to 741” substitute “this Chapter”.
- (3) At the end of subsection (1), insert—
- “It is immaterial whether the operation is effected before, after, or at the same time as the transfer.”.
- (4) After subsection (1) insert—
- “(1A) The income that becomes payable to, or has become income of, a person resident or domiciled outside the United Kingdom that is referred to in section 739(1) or (3) or section 740(1) includes any income which becomes payable to, or has become income of, the person by virtue or in consequence of—
- (a) the transfer,
 - (b) one or more associated operations, or
 - (c) the transfer and one or more associated operations.
- (1B) The income which an individual has power to enjoy, as mentioned in section 739(2), includes any income which he has power to enjoy by virtue or in consequence of—
- (a) the transfer,
 - (b) one or more associated operations, or
 - (c) the transfer and one or more associated operations.”.

(5) The heading to the section accordingly becomes “Interpretation of this Chapter”.

(6) The amendments made by this paragraph shall be taken to have come into force on 5th December 2005.