

INCOME TAX ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 14: Income tax liability: miscellaneous rules

Overview

Chapter 2: Residence

Overview

2454. This Chapter contains provisions relating to the determination of residence for the purposes of liability to income tax.
2455. The question whether or not a person is UK resident is primarily to be determined in accordance with case law. A limited number of statutory rules either supplement or disapply the case law rules in specific circumstances.
2456. [Sections 829 to 833](#) contain provisions relating to the residence of individuals, section 834 contains provisions relating to the residence of personal representatives and section 835 provides signposts to provisions relating to the residence of trustees and companies.

Section 829: Residence of individuals temporarily abroad

2457. This section provides that an individual who is ordinarily UK resident is not treated as becoming non-UK resident for income tax purposes if the individual has left the United Kingdom for the purpose only of occasional residence abroad. It is based on section 334 of ICTA.
2458. Section 334 of ICTA applies only to a person who is a Commonwealth citizen or a citizen of the Republic of Ireland. This section is not limited in this way. In addition, it is made explicit that the rule in this section applies only if the individual is UK resident, as well as ordinarily UK resident, at the time the individual leaves the United Kingdom. See *Change 123* in Annex 1.
2459. The provisions in section 334 of ICTA can be traced back to the Napoleonic period and have been in continuous existence since the reintroduction of income tax by the Income Tax Act 1842, where the provisions were to be found in section 39. A lengthy discussion of the history of the provisions (then to be found in section 49 of ICTA 1970) can be found in the judgment of Nicholls J in *Reed (HM Inspector of Taxes) v Clark* (1985), 58 TC 528 Ch D¹.
2460. This section moves away from the historic language which has caused the effect of section 334 of ICTA and its predecessors to be somewhat obscured. During the course of his judgment in *Reed v Clark*, Nicholls J stated (at page 552E-G) that:

¹ [1985] STC 323

“Section 49 is a puzzling section, in that precisely what was its intended purpose is not at all easy to perceive. This makes interpretation of its terms the more difficult. ...

Despite this I am in no doubt that section 49 is a substantive charging provision.

2461. *Subsection (1)* makes clear that this section applies only to determine the residence status of individuals and the term “individual” is, accordingly, used throughout this section in place of “person” in section 334 of ICTA.
2462. The term “occasional residence abroad” has been retained, as it has been the subject of judicial interpretation in the decided cases on section 334 of ICTA and its predecessors.
2463. *Subsection (2)* replaces the words in section 334 of ICTA providing that the individual to whom the section applies shall:
- “(a) ...be assessed and charged to income tax notwithstanding that at the time the assessment or charge is made he may have left the United Kingdom...
 - (b) ...be charged as a person actually residing in the United Kingdom upon the whole amount of his profits or gains, whether they arise from property in the United Kingdom or elsewhere, or from any allowance, annuity or stipend, or from any trade, profession, employment or vocation in the United Kingdom or elsewhere.
2464. Unlike the provisions of section 334 of ICTA as interpreted in *Reed v Clark*, subsection (2) does not impose a separate charge to income tax but treats the individual as UK resident for the purpose of determining the individual’s liability to income tax for a tax year, leaving the charging provisions of the Income Tax Acts to determine whether and to what extent the individual is so liable in respect of any particular source of income. The effect on the liability of the individual is the same.
2465. Subsection (2) also clarifies that the provision continues to apply for any tax year in which the individual remains outside the United Kingdom for the purpose only of occasional residence abroad. See the judgment of the Lord President in *Lloyd v Sulley* (1884), 2 TC 37 (Court of Exchequer (Scotland) - First Division) at page 42, referring to section 39 of the Income Tax Act 1842:
- “Now that is a very important provision as extending the meaning of the words in the taxing clause, ‘residing in the United Kingdom’. It extends it to a person who is not for a time actually residing in the United Kingdom, but who has constructively his residence there because his ordinary place of abode and his home is there, although he is absent for a time from it, however long continued that absence may be.
2466. Subsection (2) does not itself determine whether or not the individual’s residence abroad is occasional. That is to be determined in accordance with the principles set out in the cases in which section 334 of ICTA and its predecessors have been considered.
2467. Like section 334 of ICTA, this section does not include anything concerning the ordinary residence of the individual after the individual has left the United Kingdom. The question whether the individual continues to be ordinarily UK resident falls to be determined in accordance with case law.

Section 830: Residence of individuals working abroad

2468. This section provides that, in the cases to which it applies, the fact that living accommodation in the United Kingdom is available for the individual’s use is to be ignored in determining whether or not the individual is UK resident. It is based on section 335 of ICTA.
2469. *Subsection (1)* makes clear that this section relates only to the residence status of individuals and the term “individual” is, accordingly, used throughout this section in place of “person” in section 335 of ICTA.

2470. In *subsection (2)* the phrase “any living accommodation available in the United Kingdom for the individual’s use” has been substituted for the phrase “any place of abode maintained in the United Kingdom for his use” in section 335(1) of ICTA. The reference to the availability of living accommodation brings the wording into line with the wording in HMRC booklet IR20 (Residents and non-residents: Liability to tax in the UK) and with the phrase “living accommodation available in the United Kingdom for his use” in section 336(3) of ICTA, on which sections 831(1) and 832(1) are based.
2471. This does not amount to a change in the law. To the extent that there is any difference between “living accommodation” and “place of abode maintained”, “living accommodation” is the broader concept. In any event, available living accommodation which does not amount to a place of abode maintained for the use of an individual to whom section 335 of ICTA applies does not fall to be taken into account for the purposes of determining the individual’s residence status.

Section 831: Foreign income of individuals in the United Kingdom for temporary purpose

2472. This section provides that an individual who is in the United Kingdom for a temporary purpose and stays there for only a limited period is not to be treated as UK resident for the purposes of certain charges to income tax on income from a source outside the United Kingdom. It is based on section 336(1), (1A) and (3) of ICTA.
2473. The provisions of section 336(2) of ICTA which deals with employment income of individuals in the United Kingdom for a temporary purpose are contained in section 832.
2474. The language of section 336(1) of ICTA dates back to Napoleonic times, while that of section 336(2) dates back only just over 50 years. These differences in language have been preserved where necessary.
2475. *Subsection (1)*, which describes to whom this section applies, makes clear that this section relates only to the residence status of individuals and the term “individual” is used throughout this section in place of “person” in section 336 of ICTA.
2476. Subsection (1)(a) retains the distinction between section 336(1)(a) of ICTA which refers to the person not being in the United Kingdom (emphasis added):
“with any *view or intent* of establishing his residence there
and section 336(2) of that Act which refers to the person not being in the United Kingdom (emphasis added):
“with the *intention* of establishing his residence there.
2477. Subsection (1)(a) refers only to “view” and omits reference to “intent” on the basis that “view” is wider than “intent” or “intention”.
2478. Section 336(1)(b) of ICTA refers to the person having:
“not actually resided in the United Kingdom at one time or several times for a period equal in the whole to six months in any year of assessment
“while section 336(2) of that Act refers to the person having:
not in the aggregate spent at least six months in the United Kingdom in the year of assessment.
2479. Subsection (1)(b) retains the expression “actually resided” rather than adopting the expression “spent”, as “actually resided” may not in every circumstance be synonymous with “spent”. But the language of section 336(1)(b) of ICTA relating to the determination of the period has been modernised, including by substituting reference to 183 days for the reference to six months in section 336(1)(b) of ICTA. See *Change 124* in Annex 1.

2480. *Subsection (2)* restates the provisions listed in section 336(1A) of ICTA. Rule 1 is based on section 336(1A)(b) and (c) and Rule 2 on section 336(1A)(a) of that Act.
2481. The reference in each Rule to treating the individual as non-UK resident follows the approach of section 336(2) of ICTA and replaces the reference in section 336(1) of that Act to the person not being charged “as a person residing in the United Kingdom”.
2482. The words “income arising from a source outside the United Kingdom” in both Rules give effect to the words “profits or gains received in respect of possessions or securities out of the United Kingdom” in section 336(1) of ICTA.
2483. *Subsection (3)* supplements paragraph (e) of Rule 1 with a reminder that a claim has to have been made under section 647 of ITEPA and to have been accepted by the Commissioners for Her Majesty’s Revenue and Customs for the individual to have the benefit of the exemption in section 651 of that Act.
2484. *Subsections (4) and (5)* are based on the final words of section 336(1)(b) of ICTA:
“but if any such person resides in the United Kingdom for such a period he shall be so chargeable for that year.

Section 832: Employment income of individuals in the United Kingdom for temporary purpose

2485. This section provides that an individual who is in the United Kingdom for a temporary purpose and stays there for only a limited period is not to be treated as UK resident for the purposes of the rules in Chapters 4 and 5 of Part 2 of ITEPA which determine taxable earnings from employment. It is based on section 336(2) and (3) of ICTA.
2486. *Subsection (1)*, which describes to whom this section applies, makes clear that this section relates only to the residence status of individuals and the term “individual” is used throughout this section in place of “person” in section 336 of ICTA.
2487. In subsection (1)(b), reference to 183 days has been substituted for the reference to six months in section 336(2) of ICTA. See *Change 124* in Annex 1 and the commentary on section 831.
2488. *Subsections (3) and (4)* are based on the final words of section 336(2) of ICTA:
“but shall be treated as resident there if he has.

Section 833: Visiting forces and staff of designated allied headquarters

2489. This section provides that the presence in the United Kingdom of certain individuals who are in the United Kingdom for specific purposes only does not cause the individual to be treated, for income tax purposes, as being UK resident or as changing the individual’s residence or domicile (see *subsection (4)*). It is based on section 323 of ICTA.
2490. This section applies to an individual who is in the United Kingdom by reason only of being a member of a visiting force of a designated country or of a civilian component of such a force (see *subsection (1)*) or by reason of falling into one of the categories of individuals mentioned in *subsections (2) and (3)*. But it does not apply to British and certain other citizens (see subsection (1)(c)).
2491. As it is clear that this section can only relate to individuals, the term “individual” is used throughout this section in place of “person” in section 323 of ICTA.
2492. Subsection (1) sets out in full the description of a member of a visiting force to whom this section applies. This avoids the cross-reference to section 303(1) of ITEPA in section 323(2) of ICTA.

2493. The definitions of “member” (in relation to a visiting force), “visiting force” and “member of a civilian component of a visiting force” are contained in Part 1 of the Visiting Forces Act 1952 (the 1952 Act). Those definitions have not been set out in full in this section - partly for reasons of length and partly to retain the explicit link between this section and the 1952 Act. *Subsection (6)* incorporates them by reference.
2494. This section corrects a minor drafting error in section 323(4) of ICTA. Section 323(4) of ICTA provides that references to a visiting force in section 323(2) apply also to a civilian component of such a force and that “that subsection shall be construed as one with Part 1 of the Visiting Forces Act 1952”. As there is no reference to “civilian component” in section 323(2) of ICTA, construing that subsection as one with Part 1 of the 1952 Act does not have the effect of applying the definition of “member of a civilian component of a visiting force” in section 10 of that Act for the purposes of section 323(4) or (5) of ICTA. There is no doubt that the definition is intended to apply.
2495. This section makes the correction by:
- incorporating in subsection (1) the provisions of section 323(4) of ICTA applying section 323(2) of that Act to a member of a civilian component of a visiting force; and
 - providing in subsection (6) not only for subsection (1) to be interpreted as if in Part 1 of the 1952 Act, but also for subsection (2), which is based on section 323(5) of ICTA, to be so interpreted.
2496. Section 303 of ITEPA, which is based on part of section 323 of ICTA and applies to the individuals to whom this section applies, provides that earnings paid to such individuals by the government of a designated country or by a designated allied headquarters are exempt from income tax.
2497. The effect of section 833 of this Act is that an individual to whom it applies is not liable to United Kingdom income tax on income arising from a source outside the United Kingdom.
2498. *Subsection (5)* ensures that an individual to whom this section applies has the benefit of the personal reliefs to which the individual would be entitled if resident in the United Kingdom. Such reliefs will, accordingly, be available in calculating the individual’s liability to United Kingdom income tax on such income as, for example, United Kingdom bank interest, dividends from UK resident companies and UK-based earnings which are not exempt under section 303 of ITEPA.

Section 834: Residence of personal representatives

2499. This section sets out rules for determining the residence status of personal representatives, in their capacity as such, where one or more (but not all) of them are UK resident in their own capacity. It is based on section 111(1) and (2) of FA 1989.
2500. Section 111 of FA 1989 was enacted, together with section 110 of that Act (residence of trustees), following the decision in *Dawson v CIR* (1989), 62 TC 301 HL². Section 110 of FA 1989 was repealed by FA 2006 and replaced by similar but extended provisions in section 685E(2) to (7) of ICTA (see the commentary on sections 475 and 476).
2501. In *Dawson* it was held that under the law then in force trust income from a foreign source could not be assessed on a UK resident trustee whose fellow trustees were non-UK resident. In his speech, with which the other members of the Judicial Committee concurred, Lord Keith of Kinkel stated (at page 329):
- “The argument for the Revenue accepts that the income of the settlements arose or accrued to the three trustees jointly, and not jointly and severally, so that none of them

was entitled in law separately to any particular share or fraction of the income. It is contended, however, that the whole income from the foreign investments did, on a proper construction of para 1(a)(i) of s 108 [of ICTA 1970], arise or accrue to the Respondent as a person residing in the United Kingdom, and that the circumstance that it did so to him jointly with two co-trustees resident abroad is irrelevant. However, the word “person” in that sub-sub-paragraph must include the plural “persons” by virtue of s 6(c) of the Interpretation Act 1978. If all three trustees had been resident in the United Kingdom application of the enactment would have been such the income would have been treated as arising or accruing to all three, and all three would have been jointly assessable to tax. In the situation which prevails here, namely that one of the trustees is resident in the United Kingdom but the other two are resident abroad, the income likewise arises or accrues to all three, but all three cannot be jointly assessed to tax. There can be no justification for assessing to tax the Respondent alone, on the ground that he is resident in the United Kingdom, because the income does not arise or accrue to him personally. He has no right of control over the income. His only interest in it is a right and duty to secure, in conjunction with his co-trustees, that it is applied in accordance with the directions of the trust deeds. Similarly, when one turns to s 114(1) of the Act of 1970 it is found that the persons receiving or entitled to the income are the three trustees jointly. Should the plural “persons” be turned into the singular “person” it is found that the Respondent as an individual cannot properly be described as the person receiving or entitled to the income.

- 2502. The effect of section 111 of FA 1989 is to determine, in a case where some of the persons who are the personal representatives are in their own capacity UK resident and some are not, that the personal representatives, in their capacity as such, are either all UK resident or all non-UK resident.
- 2503. If all the personal representatives are UK resident, then, as the persons jointly receiving or entitled to the income, the personal representatives are chargeable in that capacity to income tax in respect of all the income so arising, whether from a United Kingdom or a foreign source. If none of them is UK resident, they are only chargeable in that capacity to income tax in respect of any of that income from a United Kingdom source.
- 2504. This section determines the residence status of all of the personal representatives in that capacity by reference to the residence or domicile of the deceased at the time of death.
- 2505. If the deceased was UK resident, ordinarily UK resident or domiciled in the United Kingdom at the time of death, any of the deceased’s personal representatives who are non-UK resident in their own capacity are to be treated as UK resident in their capacity as personal representatives of the deceased. See *subsections (2) and (3)*.
- 2506. If the condition in subsection (3) is not met in relation to the deceased, any of the deceased’s personal representatives who are UK resident in their own capacity are to be treated as non-UK resident in their capacity as personal representatives of the deceased. See *subsection (4)*.
- 2507. The provision in section 111(1)(b) of FA 1989 that a personal representative who is treated as non-UK resident under that paragraph is also to be treated as resident outside the United Kingdom is included in Chapter 2 of Part 13 (see the commentary on section 718). The provisions of section 111(7) and (8) of FA 1989, relating to the effect of that rule on liability under sections 739 and 740 of ICTA, are included in Part 14 of Schedule 2.
- 2508. The definition of “personal representatives” in section 111(3) of FA 1989 has been omitted. Instead, the general Income Tax Acts definition of “personal representatives” in section 989 applies to this section. See *Change 150* in Annex 1 and the commentary on section 989.

Section 835: Residence rules for trustees and companies

2509. This section provides signposts to other provisions relating to residence, not included in this Chapter. It is new.
2510. Those provisions are:
- sections 475 and 476 of this Act which contain rules for determining the residence of trustees and
 - sections 66 and 66A of FA 1988 and section 249 of FA 1994 which contain rules for determining the residence of a company.
2511. The provisions in FA 1988 and FA 1994 do not form part of this Act, as they apply not only for the purposes of the Tax Acts but also for the purposes of TMA and of TCGA and all other enactments relating to capital gains tax.
2512. In relation to a company, this section is to be read with section 5 which provides that income tax is not charged on the income of a company if the company is within the charge to corporation tax in respect of the income. That section contains a signpost to sections 6(2) and 11(1) of ICTA for the circumstances in which a company is within the charge to corporation tax in respect of its income. Those circumstances in turn depend upon the residence of the company.