



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 13

#### TAX AVOIDANCE

### CHAPTER 2

#### TRANSFER OF ASSETS ABROAD

##### *Charge where power to enjoy income*

#### **720 Charge to tax on income treated as arising under section 721**

- (1) The charge under this section applies for the purpose of preventing the avoiding of liability to income tax by individuals who are <sup>F1</sup>... UK resident by means of relevant transfers.
- (2) Income tax is charged on income treated as arising to such an individual under section 721 (individuals with power to enjoy income as a result of relevant transactions).
- (3) Tax is charged under this section on the amount of income treated as arising in the tax year.
- (4) But see section 724 (special rules where benefit provided out of income of person abroad) [<sup>F2</sup>and section 726 (non-UK domiciled individuals to whom remittance basis applies)].
- (5) The person liable for any tax charged under this section is the individual to whom the income is treated as arising.
- (6) For rules about the reduction in the amount charged in some circumstances and the availability of deductions and reliefs, see—

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section 725 (reduction in amount charged where controlled foreign company involved), and  
 section 746 (deductions and reliefs where individual charged under this section or section 727).

- (7) For exemptions from the charge under this section, see sections 736 to [F3742A] (exemptions where no tax avoidance purpose or genuine commercial transaction [F4 etc]).

#### Textual Amendments

- F1** Word in s. 720(1) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 60](#) (with [Sch. 46 para. 73](#))
- F2** Words in s. 720(4) inserted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 164](#)
- F3** Word in s. 720(7) substituted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 3\(a\)](#)
- F4** Word in s. 720(7) inserted (with effect in accordance with Sch. 10 para. 9(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 3\(b\)](#)

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

- (1) Income is treated as arising to such an individual as is mentioned in section 720(1) in a tax year for income tax purposes if [F5 conditions A to C] are met.
- (2) Condition A is that the individual has power in the tax year to enjoy income of a person abroad as a result of—
- (a) a relevant transfer,
  - (b) one or more associated operations, or
  - (c) a relevant transfer and one or more associated operations.
- (3) Condition B is that the income [F6 of the person abroad] would be chargeable to income tax if it were the individual's and received by the individual in the United Kingdom.

[F7(3A) Condition C is that the individual is UK resident for the tax year.]

[F8(3B) The amount of the income treated as arising under subsection (1) is equal to the amount of the income of the person abroad (subject to sections 724 and 725).

(3C) Subsection (1) does not apply if—

- (a) the individual is liable for income tax charged on the income of the person abroad by virtue of a charge not contained in this Chapter, and
- (b) all that income tax has been paid.]

(4) For the purposes of subsection (2), it does not matter whether the income [F9 of the person abroad] may be enjoyed immediately or only later.

(5) It does not matter for the purposes of this section—

- [F10(a) . . . . .
- [F11(b) whether the individual is UK resident for the tax year in which the relevant transfer is made (if different from the tax year mentioned in subsection (1)), or]

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- (c) whether the avoiding of liability to income tax is a purpose for which the transfer is effected.
- (6) For the circumstances in which an individual is treated as having the power to enjoy income for the purposes of this section, see section 722.

#### Textual Amendments

- F5** Words in s. 721(1) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 61\(2\)](#) (with [Sch. 46 para. 73](#))
- F6** Words in s. 721(3) inserted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 10\(2\)](#)
- F7** S. 721(3A) inserted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 61\(3\)](#) (with [Sch. 46 para. 73](#))
- F8** S. 721(3B)(3C) inserted (with effect in accordance with Sch. 10 paras. 20, 21(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 10\(3\)](#)
- F9** Words in s. 721(4) inserted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 10\(4\)](#)
- F10** S. 721(5)(a) omitted (with effect in accordance with Sch. 10 paras. 20, 21(2) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 10\(5\)](#)
- F11** S. 721(5)(b) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 61\(4\)](#) (with [Sch. 46 para. 73](#))

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

- (1) For the purposes of section 721, an individual is treated as having power to enjoy income of a person abroad if any of the enjoyment conditions are met.
- (2) In subsection (1) “the enjoyment conditions” means conditions A to E as specified in section 723.
- (3) In determining whether an individual has power to enjoy income for the purposes of section 721, regard must be had to the substantial result and effect of all the relevant transactions.
- (4) In making that determination all benefits which may at any time accrue to the individual as a result of the transfer and any associated operations must be taken into account, irrespective of—
- the nature or form of the benefits, or
  - whether the individual has legal or equitable rights in respect of the benefits.

### 723 The enjoyment conditions

- (1) Condition A is that the income is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of the individual, whether in the form of income or not.
- (2) Condition B is that the receipt or accrual of the income operates to increase the value to the individual—
- of any assets the individual holds, or
  - of any assets held for the individual's benefit.

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- (3) Condition C is that the individual receives or is entitled to receive at any time any benefit provided or to be provided out of the income or related money.
- (4) In subsection (3) “related money” means money which is or will be available for the purpose of providing the benefit as a result of the effect or successive effects—
  - (a) on the income, and
  - (b) on any assets which directly or indirectly represent the income, of the associated operations referred to in section 721(2).
- (5) Condition D is that the individual may become entitled to the beneficial enjoyment of the income if one or more powers are exercised or successively exercised.
- (6) For the purposes of subsection (5) it does not matter—
  - (a) who may exercise the powers, or
  - (b) whether they are exercisable with or without the consent of another person.
- (7) Condition E is that the individual is able in any manner to control directly or indirectly the application of the income.

#### 724 Special rules where benefit provided out of income of person abroad

- (1) This section applies if an individual has power to enjoy income of a person abroad for the purposes of section 721 because of receiving any such benefit as is referred to in section 723(3) (benefit provided out of income of person abroad).
- (2) Despite anything in section 720, the individual is liable to income tax under that section for the tax year in which the benefit is received on [<sup>F12</sup>an amount equal to] the whole of the amount or value of that benefit.
- (3) But subsection (2) does not apply so far as it is shown that the benefit derives directly or indirectly from income [<sup>F13</sup>by reference to] which the individual has already been charged to income tax for that tax year or a previous tax year [<sup>F14</sup>under this Chapter].

##### Textual Amendments

- F12** Words in s. 724(2) inserted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 11\(2\)](#)
- F13** Words in s. 724(3) substituted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 11\(3\)\(a\)](#)
- F14** Words in s. 724(3) inserted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 11\(3\)\(b\)](#)

#### 725 Reduction in amount charged where controlled foreign company involved

- [<sup>F15</sup>(1) This section applies if—
- (a) under Part 9A of TIOPA 2010 (controlled foreign companies), the CFC charge is charged in relation to a CFC's accounting period,
  - [<sup>F16</sup>(b) an amount of income is treated as arising to an individual under section 721 for a tax year, and
  - (c) the income mentioned in section 721(2) is or includes a sum forming part of the CFC's chargeable profits for that accounting period.]]

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(2) The amount of income so treated is reduced by—

$$S \times \frac{CA}{CP}$$

where—

S is the sum forming part of the [<sup>F17</sup>CFC's] chargeable profits for that accounting period,

CA is the [<sup>F18</sup>CFC's chargeable profits for that accounting period so far as apportioned to chargeable companies at step 3 in section 371BC(1) of TIOPA 2010], and

CP is the [<sup>F17</sup>CFC's] chargeable profits for that accounting period.

[<sup>F19</sup>(2A) In a case in which section 724 applies, the reference to S in the formula in subsection (2) is to be read as a reference to X% of S.

(2B) “X%” is determined as follows—

$$100\% \times \frac{A}{I}$$

where—

A is the amount on which the individual is liable as determined under section 724(2), and

I is the amount of the income mentioned in section 721(2).]

[<sup>F20</sup>(3) Terms used in this section which are defined in Part 9A of TIOPA 2010 have the same meaning as in that Part.]

#### Textual Amendments

- F15** S. 725(1) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 22\(2\)](#) (with [Sch. 20 para. 50\(9\)](#))
- F16** S. 725(1)(b)(c) substituted for s. 725(1)(b) (with effect in accordance with [Sch. 10 para. 20](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 12\(2\)\(4\)](#) (with [Sch. 10 para. 12\(4\)\(5\)](#))
- F17** Words in s. 725(2) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 22\(3\)\(a\)](#) (with [Sch. 20 para. 50\(9\)](#))
- F18** Words in s. 725(2) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 22\(3\)\(b\)](#) (with [Sch. 20 para. 50\(9\)](#))
- F19** S. 725(2A)(2B) inserted (with effect in accordance with [Sch. 10 para. 20](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 10 para. 12\(3\)](#)
- F20** S. 725(3) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 22\(4\)](#) (with [Sch. 20 para. 50\(9\)](#))

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## **[<sup>F21</sup>726 Non-UK domiciled individuals to whom remittance basis applies**

- [<sup>F22</sup>(1) This section applies in relation to income treated under section 721 as arising to an individual in a tax year (“the deemed income”) if section 809B, 809D or 809E (remittance basis) applies to the individual for that year.]
- (2) For the purposes of this section the deemed income is “foreign” if (and to [<sup>F23</sup>the corresponding extent] that) the income mentioned in section 721(2) would be relevant foreign income if it were the individual's.
- (3) Treat the foreign deemed income as relevant foreign income of the individual.
- (4) For the purposes of Chapter A1 of Part 14 (remittance basis) treat so much of the income within section 721(2) as would be relevant foreign income if it were the individual's as deriving from the foreign deemed income.
- [<sup>F24</sup>(5) In the application of section 832 of ITTOIA 2005 to the foreign deemed income, subsection (2) of that section has effect with the omission of paragraph (b).]]

### **Textual Amendments**

- F21** S. 726 substituted (21.7.2008 with effect in accordance with Sch. 7 para. 170 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 165**
- F22** S. 726(1) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 46 para. 19** (with [Sch. 46 para. 26](#))
- F23** Words in s. 726(2) substituted (with effect in accordance with Sch. 10 para. 20 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 10 para. 13**
- F24** S. 726(5) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 91(2)**

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