

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

INCOME TAX ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 13: Tax avoidance

Overview

Chapter 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.

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, 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.

<i>Taxpayer's residence</i>	<i>Where occupation is carried on</i>	<i>Application of section 775</i>
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”.

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”.

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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.