

INCOME TAX ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 14: Income tax liability: miscellaneous rules

Overview

Chapter 2: Residence

Overview

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:
- “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.

¹ [1985] STC 323

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

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.