



Income Tax Act 2007

2007 CHAPTER 3

PART 13

TAX AVOIDANCE

CHAPTER 3

TRANSACTIONS IN LAND

Introduction

752 Overview of Chapter

- (1) This Chapter has effect for the purpose of preventing the avoidance of income tax by persons concerned with land or the development of land.
- (2) This Chapter imposes a charge to income tax in some circumstances where gains of a capital nature are obtained from disposing of land.

753 Meaning of disposing of land

- (1) For the purposes of this Chapter land is disposed of if the property in the land or control over the land is effectively disposed of—
 - (a) by one or more transactions, or
 - (b) by any arrangement or scheme.
- (2) It does not matter for the purposes of subsection (1) if the transactions, arrangement or scheme concern—
 - (a) the land, or
 - (b) property deriving its value from the land (see section 772(2)).
- (3) See also—

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section 761 (transactions, arrangements, sales and realisations relevant for this Chapter), and

section 762 (tracing value).

754 Priority of other income tax provisions

This Chapter has effect subject to—

- (a) Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor), and
- (b) any other provision of the Tax Acts treating income as belonging to a particular person.

Charge on gains from transactions in land

755 Charge to tax on gains from transactions in land

- (1) Income tax is charged on income treated as arising under section 756 (income treated as arising when gains obtained from some land disposals).
- (2) For exemptions from the charge, see—
 - section 765 (exemption: gain attributable to period before intention to develop formed),
 - section 766 (exemption: disposals of shares in companies holding land as trading stock), and
 - section 767 (exemption: private residences).

756 Income treated as arising when gains obtained from some land disposals

- (1) This section applies if—
 - (a) any of the conditions specified in subsection (3) is met as respects land,
 - (b) a gain of a capital nature is obtained from the disposal of all or part of the land,
 - (c) all or part of the land is situated in the United Kingdom, and
 - (d) a person within section 757(1)(a), (b) or (c) obtains the gain.
- (2) The gain is treated for income tax purposes as income arising when the gain is realised.
- (3) The conditions are that—
 - (a) the land is acquired with the sole or main object of realising a gain from disposing of all or part of the land,
 - (b) any property deriving its value from the land is acquired with the sole or main object of realising a gain from disposing of all or part of the land,
 - (c) the land is held as trading stock, and
 - (d) the land is developed with the sole or main object of realising a gain from disposing of all or part of the land when developed.
- (4) It does not matter for the purposes of this section whether the person within section 757(1)(a), (b) or (c) obtains the gain for that person or another person.
- (5) For the purposes of this section, if, for example by a premature sale, a person (“A”) directly or indirectly transmits the opportunity of realising a gain to another person (“B”), A obtains B’s gain for B.

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(6) For the meaning of “another person”, see section 763.

757 Person obtaining gain

- (1) The persons referred to in section 756(1)(d) are—
 - (a) the person acquiring, holding or developing the land,
 - (b) a person connected with a person within paragraph (a), and
 - (c) a person who is a party to, or concerned in, an arrangement or scheme within subsection (2).
- (2) An arrangement or scheme is within this subsection if—
 - (a) it is effected as respects all or part of the land, and
 - (b) it enables a gain to be realised—
 - (i) by any indirect method, or
 - (ii) by any series of transactions.
- (3) For the purposes of this section any number of transactions may be regarded as constituting a single arrangement or scheme if—
 - (a) a common purpose can be discerned in them, or
 - (b) there is other sufficient evidence of a common purpose.

758 Income charged

- (1) Tax is charged under this Chapter on the full amount of income treated as arising in the tax year.
- (2) See section 760 (method of calculating gain) for how to calculate the amount of income charged.

759 Person liable

- (1) The person liable for any tax charged under this Chapter on income is the person whose income it is.
- (2) The general rule is that that person is the person who realises the gain.
- (3) But that rule is subject to subsections (4) and (6).
- (4) If all or any part of the gain accruing to a person (“A”) is derived from value provided directly or indirectly by another person (“B”), the income is B's.
- (5) Subsection (4) applies whether or not the value is put at the disposal of A.
- (6) If all or any part of the gain accruing to a person is derived from an opportunity of realising a gain provided directly or indirectly by another person, the income is the other person's.
- (7) For the meaning of “another person”, see section 763.
- (8) In applying section 1015 (territorial scope of charges including the charge under this Chapter) for the purposes of this Chapter, an amount treated as arising to a non-UK resident under section 756 is treated as being from a source in the United Kingdom so far (and only so far) as the land to which the disposal relates is in the United Kingdom.

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760 Method of calculating gain

- (1) Subsections (3) to (5) apply for calculating a gain for the purposes of this Chapter.
- (2) But, except so far as those subsections make provision, such method is to be used for those purposes as is just and reasonable in the circumstances.
- (3) The method must—
 - (a) take into account the value of what is obtained for disposing of the land, and
 - (b) allow only such expenses as are attributable to the land disposed of.
- (4) If a freehold is acquired and on disposal the reversion is retained, account may be taken of the way in which trading profits are calculated in such a case.
- (5) Account may be taken of the adjustments to be made in calculating trading profits under section 158 of ITTOIA 2005 (lease premiums etc: reduction of receipts).
- (6) In this section “trading profits” means the profits under Part 2 of ITTOIA 2005 (trading profits) of a person dealing in land.
- (7) In the application of this section in Scotland—

“freehold” means the interest of the owner, and

“reversion” means the interest of the landlord in property subject to a lease.
- (8) See also section 764 (valuations and apportionments).

Further provisions relevant to the charge

761 Transactions, arrangements, sales and realisations relevant for Chapter

- (1) For the purposes of this Chapter, account is to be taken of any method, however indirect, by which—
 - (a) any property or right is transferred or transmitted, or
 - (b) the value of any property or right is enhanced or diminished.
- (2) Accordingly—
 - (a) the occasion of the transfer or transmission of any property or right however indirect, and
 - (b) the occasion when the value of any property or right is enhanced,
 may be an occasion when tax is charged under this Chapter.
- (3) Subsections (1) and (2) apply in particular—
 - (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
 - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning—
 - (i) share capital or other rights in a company,
 - (ii) rights in a partnership, or
 - (iii) an interest in settled property,
 - (c) to the creation of an option affecting the disposition of any property or right and the giving of consideration for granting it,
 - (d) to the creation of a requirement for consent affecting such a disposition and the giving of consideration for granting it,

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- (e) to the creation of an embargo affecting such a disposition and the giving of consideration for releasing it, and
- (f) to the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

762 Tracing value

- (1) This section applies if it is necessary to determine the extent to which the value of any property or right is derived from any other property or right for the purposes of this Chapter.
- (2) Value may be traced through any number of companies, partnerships and trusts.
- (3) The property held by a company, partnership or trust must be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.

763 Meaning of “another person”

- (1) For the purposes of this Chapter references to other persons are to be read in accordance with subsections (2) to (4).
- (2) A partnership or partners in a partnership may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.
- (3) The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being the trustees.
- (4) Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.

764 Valuations and apportionments

- (1) All such valuations are to be made as are appropriate to give effect to this Chapter.
- (2) For the purposes of this Chapter, any expenditure, receipt, consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances.

Exemptions

765 Exemption: gain attributable to period before intention to develop formed

- (1) This section applies if—
 - (a) income is treated as arising because the condition mentioned in section 756(3) (d) is met (land developed with sole or main object of realising a gain from its disposal when developed), and
 - (b) part of the income is fairly attributable to a period before the intention to develop was formed.
- (2) No liability to income tax arises under this Chapter in respect of that part of the income.
- (3) In applying this section account must be taken of the treatment under Part 2 of ITTOIA 2005 (trading profits) of a person who appropriates land as trading stock.

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766 Exemption: disposals of shares in companies holding land as trading stock

- (1) No liability to income tax arises under this Chapter in respect of a gain on property deriving value from land if—
 - (a) the gain is obtained by the holder of shares,
 - (b) the gain arises as a result of the holder of shares falling within section 757(1) (a) or (b) (persons acquiring, holding or developing land and connected persons), and
 - (c) the circumstances are such as are mentioned in subsections (2) and (3).
- (2) The gain arises on a disposal of shares in—
 - (a) a company which holds that land as trading stock, or
 - (b) a company which directly or indirectly owns at least 90% of the ordinary share capital of another company which itself holds that land as trading stock.
- (3) All the land so held is disposed of—
 - (a) in the normal course of its trade by the company which holds it, and
 - (b) so as to procure that all opportunity of profit in respect of the land arises to that company.
- (4) This section does not affect any liability as a result of any person falling within section 757(1)(c) (parties to arrangements and schemes, etc).

767 Exemption: private residences

No liability to income tax arises under this Chapter in respect of a gain accruing to an individual if—

- (a) the gain is exempt from capital gains tax as a result of sections 222 to 226 of TCGA 1992 (private residences), or
- (b) it would be so exempt but for section 224(3) of that Act (residences acquired partly with a view to making a gain).

Recovery of tax

768 Recovery of tax where consideration receivable by person not assessed

- (1) This section applies if a person (“A”) is assessed to tax under this Chapter in respect of consideration receivable by another person (“B”).
- (2) Consideration is not regarded as having become receivable by B for this purpose until B can effectively enjoy or dispose of it.
- (3) A is entitled to recover from B any part of the tax which A has paid.
- (4) If any part of the tax remains unpaid at the end of the period of 6 months beginning with the date when it became due and payable, it is recoverable from B as if B were the person assessed.
- (5) Subsection (4) does not affect the right to recover the tax from A.
- (6) For the purposes of this section, any income which an individual is treated as having as a result of this Chapter (the “land income”) is treated as the highest part of the individual's total income.

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- (7) But if in the tax year—
- (a) more than one gain is treated as the individual's land income, or
 - (b) the individual is also treated as having income as a result of Chapter 4 (sales of occupation income),
- only a just and reasonable proportion of each gain treated as land income is to be treated as the highest part of the individual's total income.
- (8) See section 1012 for the relationship between—
- (a) the rules in subsections (6) and (7), and
 - (b) other rules requiring particular income to be treated as the highest part of a person's total income.

769 Recovery of tax: certificates of tax paid etc

- (1) For the purposes of section 768(3), an officer of Revenue and Customs must, if required to do so, produce a certificate specifying—
- (a) the amount of income in respect of which tax has been paid, and
 - (b) the amount of tax paid.
- (2) The certificate is conclusive evidence of any facts stated in it.
- (3) See also section 944 (under which directions may be given for payments within this Chapter to non-UK residents to be made under deduction of tax).

Clearances and power to obtain information

770 Clearance procedure

- (1) This section applies if a person considers that the condition mentioned in section 756(3)(a), (b) or (d) may be met as respects a gain of a capital nature which that person—
- (a) has obtained from the disposal of land, or
 - (b) would obtain from a proposed disposal of land.
- (2) The person may provide the Commissioners for Her Majesty's Revenue and Customs with written particulars showing how the gain has arisen or would arise.
- (3) The Commissioners must notify the person whether or not they are satisfied that, in the circumstances described in the particulars, the person will not, or would not, be liable to tax on the gain under this Chapter.
- (4) The notification must be given before the end of the period of 30 days beginning with the day after that on which the particulars are received.
- (5) A person notified by the Commissioners under this section that they are so satisfied is not liable to income tax on the gain under this Chapter.
- (6) A notification under this section about the Commissioners' decision concerning a gain is void if the particulars given under this section about the gain do not make a full and accurate disclosure of all facts and considerations relating to it which are material to the decision.

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771 Power to obtain information

- (1) An officer of Revenue and Customs may by notice require any person to provide the officer within such period as the officer may direct with such particulars as the officer may reasonably require for the purposes of this Chapter.
- (2) That period must be at least 30 days.
- (3) The particulars which a person must provide under this section, if required to do so by such a notice, include particulars about—
 - (a) transactions or arrangements with respect to which the person is or was acting on behalf of others,
 - (b) transactions or arrangements which in the opinion of the officer should properly be investigated for the purposes of this Chapter, although in the person's opinion no liability to tax arises under this Chapter, and
 - (c) whether the person has taken or is taking any part and, if so, what part in transactions or arrangements of a description specified in the notice.
- (4) Subsection (3) is subject to subsection (5).
- (5) In relation to anything done by a [^{F1}relevant lawyer] on behalf of a client who does not consent to the provision of information required to be provided by a notice under subsection (1), the [^{F1}relevant lawyer] may not be compelled under this section to do more than—
 - (a) state that the [^{F1}relevant lawyer] was acting on behalf of a client, and
 - (b) give the name and address of the client.
- (6) A [^{F1}relevant lawyer] is not treated as having taken part in a transaction or arrangement for the purposes of subsection (3)(c) merely because of giving professional advice to a client about it.
- [^{F2}(7) In this section “relevant lawyer” means a barrister, advocate, solicitor or other legal representative communications with whom may be the subject of a claim to professional privilege or, in Scotland, protected from disclosure in legal proceedings on grounds of confidentiality of communication.]

Textual Amendments

- F1** Words in s. 771(5)(6) substituted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), s. 211(2), **Sch. 21 para. 160(a)** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)
- F2** S. 771(7) inserted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), s. 211(2), **Sch. 21 para. 160(b)** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)

Interpretation

772 Interpretation of Chapter

- (1) In this Chapter “capital”, in relation to a gain, means that the gain does not fall to be included in any calculation of income for [^{F3}purposes of the Tax Acts otherwise than as a result of [^{F4}Part 18 of CTA 2010 (transactions in land)] or] this Chapter.
- (2) In this Chapter references to property deriving its value from land include—

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- (a) any shareholding in a company deriving its value directly or indirectly from land,
 - (b) any partnership interest deriving its value directly or indirectly from land,
 - (c) any interest in settled property deriving its value directly or indirectly from land, and
 - (d) any option, consent or embargo affecting the disposition of land.
- (3) In this Chapter—
“company” includes any body corporate, and
“share” includes stock.

Textual Amendments

- F3** Words in s. 772(1) substituted (retrospective with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) \(No. 2\) Order 2009 \(S.I. 2009/2859\)](#), [art. 4\(4\)](#)
- F4** Words in s. 772(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 547](#) (with [Sch. 2](#))

Status:

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