



Income Tax Act 2007

2007 CHAPTER 3

PART 14

INCOME TAX LIABILITY: MISCELLANEOUS RULES

CHAPTER 1

LIMITS ON LIABILITY TO INCOME TAX OF NON-UK RESIDENTS

Introduction

810 Overview of Chapter

- (1) This Chapter provides for limits on the liability to income tax of non-UK residents.
- (2) See sections 811 to 814 in the cases of—
 - (a) a non-UK resident, other than a company, and
 - (b) a non-UK resident company liable as a trustee.
- (3) See sections 815 and 816 in the case of a non-UK resident company which is liable otherwise than as a trustee.

Limit for non-UK resident individuals, trustees etc

811 Limit on liability to income tax of non-UK residents

- (1) This section applies to income tax to which—
 - (a) a non-UK resident, other than a company, is liable, or
 - (b) a non-UK resident company is liable as a trustee.
- (2) Subsection (1) is subject to section 812 (case where limit not to apply).

Status: Point in time view as at 06/04/2007.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 1. (See end of Document for details)

- (3) The non-UK resident's liability to income tax for a tax year is limited to the sum of amounts A and B.
- (4) Amount A is the sum of—
- (a) any sums representing income tax deducted from the non-UK resident's disregarded income for the tax year (see section 813),
 - (b) any sums representing income tax that are treated as deducted from or paid in respect of that income, and
 - (c) any tax credits in respect of that income.
- (5) Amount B is the amount that, apart from this section, would be the non-UK resident's liability to income tax for the tax year, if the following were left out of account—
- (a) the non-UK resident's disregarded income for the tax year, and
 - (b) any relief mentioned in subsection (6) to which the non-UK resident is entitled for the tax year as a result of—
 - (i) section 56(3) or 460(3) of this Act or section 278(2) of ICTA (residence etc of claimants), or
 - (ii) double taxation arrangements.
- (6) The reliefs referred to in subsection (5) are—
- (a) an allowance under Chapter 2 of Part 3 of this Act or section 257 or 265 of ICTA (personal allowance and blind person's allowance),
 - (b) a tax reduction under Chapter 3 of Part 3 of this Act or section 257A, 257AB, 257BA or 257BB of ICTA (tax reductions for married couples and civil partners),
 - (c) relief under section 457 or 458 of this Act (payments to trade unions and police organisations),
 - (d) a tax reduction under section 459 of this Act or section 273 of ICTA (payments for benefit of family members), and
 - (e) relief under section 266 of ICTA (life assurance premiums).

812 Case where limit not to apply

- (1) Section 811 does not apply to income tax to which non-UK resident trustees are liable for a tax year, if there is a beneficiary of the trust who is—
- (a) an individual who is ordinarily UK resident, or
 - (b) a UK resident company.
- (2) For the purposes of subsection (1) a person is a beneficiary of the trust if—
- (a) the person is an actual or potential beneficiary of the trust, and
 - (b) condition A or B is met in relation to the person.
- (3) Condition A is that the person is, or will or may become, entitled under the trust to receive some or all of any income under the trust.
- (4) Condition B is that some or all of any income under the trust may be paid to or used for the benefit of the person in the exercise of a discretion conferred by the trust.
- (5) The references in subsections (3) and (4) to any income under the trust include a reference to any capital under the trust so far as it represents amounts originally received by the trustees as income.

Status: Point in time view as at 06/04/2007.

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813 Meaning of “disregarded income”

- (1) For the purposes of this Chapter income arising to a non-UK resident is “disregarded income” if it is—
 - (a) disregarded savings and investment income (see section 825),
 - (b) disregarded annual payments (see section 826),
 - (c) disregarded pension income,
 - (d) disregarded social security income,
 - (e) disregarded transaction income (see section 814), or
 - (f) income of such other description as the Treasury may by regulations designate for the purposes of this section.
- (2) But income in relation to which the non-UK resident has a UK representative for the purposes of section 126 of, and Schedule 23 to, FA 1995 (UK representatives of non-UK residents) is not disregarded income.
- (3) Income is “disregarded pension income” if it is chargeable under Part 9 of ITEPA 2003 (pension income) because any of the following provisions of that Act applies to it—
 - section 577 (UK social security pensions),
 - section 579A (pensions under registered pension schemes) (but see subsection (4) below),
 - section 609 (annuities for the benefit of dependants),
 - section 610 (annuities under non-registered occupational pension schemes), or
 - section 611 (annuities in recognition of another's services).
- (4) Income chargeable under Part 9 of ITEPA 2003 because section 579A of that Act applies to it is disregarded pension income only if the registered pension scheme in question—
 - (a) falls within paragraph 1(1)(f) of Schedule 36 to FA 2004, and
 - (b) was, immediately before 6 April 2006, a retirement annuity contract to which section 605 of ITEPA 2003 applied.
- (5) Income is “disregarded social security income” if—
 - (a) it is a taxable benefit listed in Table A in section 660 of ITEPA 2003, other than income support or jobseeker's allowance, and
 - (b) it is chargeable under Part 10 of that Act (social security income).

814 Meaning of “disregarded transaction income”

- (1) Subsection (2) applies if a non-UK resident carries on (alone or in partnership) a business through a broker in the United Kingdom.
- (2) Income is “disregarded transaction income”, subject to subsection (6), if—
 - (a) it is transaction income, and
 - (b) the independent broker conditions are met in relation to the transaction in question.
- (3) Subsection (4) applies if a non-UK resident carries on (alone or in partnership) a business through an investment manager in the United Kingdom.
- (4) Income is “disregarded transaction income”, subject to subsection (6), if—
 - (a) it is transaction income, and

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- (b) the independent investment manager conditions are met in relation to the transaction in question.
- (5) In this Chapter “transaction income”, in relation to a transaction carried out through a broker or investment manager in the United Kingdom on behalf of a non-UK resident, means income which arises to the non-UK resident from—
- (a) so much of the non-UK resident's business carried on (alone or in partnership) through the broker or investment manager as relates to the transaction, or
 - (b) property or rights which, as a result of the transaction, are used by, or held by or for, the broker or investment manager on behalf of the non-UK resident.
- (6) Income is not disregarded transaction income if it is chargeable to income tax in accordance with section 171(2) of FA 1993 (profits of the underwriting business of a member of Lloyd's).
- (7) This section needs to be read with—
- section 817 (the independent broker conditions),
 - sections 818 to 824 (the independent investment manager conditions),
 - section 827 (meaning of “investment manager” and “investment transaction”),
 - and
 - section 828 (transactions through brokers and investment managers).

Limit for non-UK resident companies

815 Limit on liability to income tax of non-UK resident companies

- (1) This section applies to income tax to which a non-UK resident company is liable, otherwise than as a trustee.
- (2) The non-UK resident company's liability to income tax for a tax year is limited to the sum of amounts A and B.
- (3) Amount A is the sum of—
 - (a) any amounts representing income tax deducted from the non-UK resident company's disregarded company income for the tax year,
 - (b) any amounts representing income tax that are treated as deducted from or paid in respect of that income, and
 - (c) any tax credits in respect of that income.
- (4) Amount B is the amount that, apart from this section, would be the non-UK resident company's liability to income tax for the tax year if the non-UK resident company's disregarded company income for the tax year were left out of account.

816 Meaning of “disregarded company income”

- (1) For the purposes of this Chapter income arising to a non-UK resident company is “disregarded company income” if it is—
 - (a) disregarded savings and investment income (see section 825),
 - (b) disregarded annual payments (see section 826),
 - (c) income arising from a transaction carried out on behalf of the non-UK resident company in the course of the company's trade through a broker in the United Kingdom, in relation to which the independent broker conditions are met,

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- (d) income arising from an investment transaction carried out on behalf of the non-UK resident company in the course of the company's trade through an investment manager in the United Kingdom, in relation to which the independent investment manager conditions are met, or
 - (e) income of such other description as the Treasury may by regulations designate for the purposes of this section.
- (2) This section needs to be read with—
- section 817 (the independent broker conditions),
 - sections 818 to 824 (the independent investment manager conditions),
 - section 827 (meaning of “investment manager” and “investment transaction”),
 - and
 - section 828 (transactions through brokers and investment managers).

The independent broker conditions

817 The independent broker conditions

- (1) The independent broker conditions are met in relation to a transaction carried out on behalf of a non-UK resident by a broker in the United Kingdom if—
- (a) conditions A to D are met, if this section applies for the purposes of section 813, or
 - (b) conditions A to C and E are met, if this section applies for the purposes of section 816.
- (2) Condition A is that at the time of the transaction the broker is carrying on the business of a broker.
- (3) Condition B is that the transaction is carried out by the broker in the ordinary course of that business.
- (4) Condition C is that the remuneration which the broker receives in respect of the transaction for the provision of the services of a broker to the non-UK resident is not less than is customary for that class of business.
- (5) Condition D is that the broker does not fall for the purposes of section 126 of, and Schedule 23 to, FA 1995 to be treated as a UK representative of the non-UK resident in relation to any other income which is chargeable to income tax, or amounts which are chargeable to capital gains tax, for the same tax year as the transaction income.
- (6) Condition E is that the broker does not fall to be treated as a permanent establishment of the non-UK resident company in relation to any other transaction of any kind carried out in the same accounting period of the non-UK resident company as the transaction in question.

The independent investment manager conditions

818 The independent investment manager conditions

- (1) The independent investment manager conditions are met in relation to an investment transaction carried out on behalf of a non-UK resident by an investment manager in the United Kingdom if—

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- (a) conditions A to F are met, if this section applies for the purposes of section 813, or
 - (b) conditions A to E and G are met, if this section applies for the purposes of section 816.
- (2) Condition A is that at the time of the transaction the investment manager is carrying on a business of providing investment management services.
- (3) Condition B is that the transaction is carried out in the ordinary course of that business.
- (4) Condition C is that, when the investment manager acts on behalf of the non-UK resident in relation to the transaction, the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.
- (5) Condition D is that the requirements of the 20% rule are met (see section 819).
- (6) Condition E is that the remuneration which the investment manager receives in respect of the transaction for the provision of investment management services to the non-UK resident is not less than is customary for that class of business.
- (7) Condition F is that the investment manager does not fall for the purposes of section 126 of, and Schedule 23 to, FA 1995 to be treated as a UK representative of the non-UK resident in relation to any other income which is chargeable to income tax, or amounts which are chargeable to capital gains tax, for the same tax year as the transaction income.
- (8) Condition G is that the investment manager does not fall to be treated as a permanent establishment of the non-UK resident company in relation to any other transaction of any kind carried out in the same accounting period of the non-UK resident company as the transaction in question.

819 Investment managers: the 20% rule

- (1) The requirements of the 20% rule are met if conditions A and B are met.
- (2) Condition A is that in relation to a qualifying period it has been or is the intention of the investment manager and the persons connected with the investment manager that at least 80% of the non-UK resident's relevant disregarded income should consist of amounts to which none of them has a beneficial entitlement.
- (3) Condition B is that, so far as there is a failure to fulfil that intention, that failure—
- (a) is attributable (directly or indirectly) to matters outside the control of the investment manager and persons connected with the investment manager, and
 - (b) does not result from a failure by any of them to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.
- (4) This section needs to be read with—
- section 820 (meaning of “qualifying period”),
 - section 821 (meaning of “relevant disregarded income”), and
 - section 822 (meaning of “beneficial entitlement”).

Status: Point in time view as at 06/04/2007.

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820 Meaning of “qualifying period”

- (1) This section applies for the purposes of this Chapter.
- (2) If section 819 applies for the purposes of section 813, a “qualifying period” means—
 - (a) the tax year in which the transaction income is chargeable to income tax, or
 - (b) a period of not more than 5 years comprising two or more tax years including that one.
- (3) If section 819 applies for the purposes of section 816, a “qualifying period” means—
 - (a) the accounting period of the non-UK resident company in which the transaction in question is carried out, or
 - (b) a period of not more than 5 years comprising two or more complete accounting periods including that one.

821 Meaning of “relevant disregarded income”

- (1) This section applies for the purposes of this Chapter.
- (2) If section 819 applies for the purposes of section 813, the “relevant disregarded income” of the non-UK resident for the qualifying period is the total of the non-UK resident's income for the tax years comprised in the qualifying period which derives from the transactions mentioned in subsection (4).
- (3) If section 819 applies for the purposes of section 816, the “relevant disregarded income” of the non-UK resident company for the qualifying period is the total of the non-UK resident company's income for the accounting periods comprised in the qualifying period which derives from the transactions mentioned in subsection (4).
- (4) The transactions referred to in subsections (2) and (3) are investment transactions—
 - (a) carried out by the investment manager on the non-UK resident's behalf, and
 - (b) in relation to which the independent investment manager conditions are met, ignoring the requirements of the 20% rule.

822 Meaning of “beneficial entitlement”

- (1) This section applies for the purposes of this Chapter.
- (2) A person has a “beneficial entitlement” to relevant disregarded income if the person has or may acquire a beneficial entitlement that is, or would be, attributable to the relevant disregarded income as a result of having an interest or other rights mentioned in subsection (3).
- (3) The interests and rights referred to in subsection (2) are—
 - (a) an interest (whether or not an interest giving a right to an immediate payment of a share in the profits or gains) in property in which the whole or any part of the relevant disregarded income is represented, or
 - (b) an interest in, or other rights in relation to, the non-UK resident.

823 Treatment of transactions where requirements of 20% rule not met

- (1) This section applies in the case of an investment transaction in relation to which the independent investment manager conditions are met, except for the requirements of the 20% rule.

Status: Point in time view as at 06/04/2007.

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- (2) This Chapter has effect as if the requirements of that rule were met in relation to the transaction but only in relation to—
- (a) so much of the transaction income of the non-UK resident as falls within subsection (3), if this section applies for the purposes of section 813, or
 - (b) so much of the income of the non-UK resident company deriving from the transaction as falls within subsection (3), if this section applies for the purposes of section 816.
- (3) Income falls within this subsection if it does not represent income—
- (a) which is relevant disregarded income of the non-UK resident, and
 - (b) to which the investment manager or a person connected with the investment manager has or has had any beneficial entitlement.

824 Application of 20% rule to collective investment schemes

- (1) This section applies if amounts arise or accrue to the non-UK resident as a participant in a collective investment scheme.
- (2) It applies for the purposes of determining whether the requirements of the 20% rule are met in relation to a transaction carried out for the purposes of the scheme.
- (3) In applying this section make the following assumptions—
- (a) that all the transactions carried out for the purposes of the scheme are carried out on behalf of a company (“the assumed company”) which is—
 - (i) constituted for the purposes of the scheme, and
 - (ii) non-UK resident, and
 - (b) that the participants do not have any rights in respect of the amounts arising or accruing in respect of those transactions, other than the rights which, if they held shares in the assumed company, would be their rights as shareholders.
- (4) If the scheme is such that the assumed company would not be regarded for tax purposes as carrying on a trade in the United Kingdom in relation to the appropriate relevant period, the requirements of the 20% rule are treated as met in relation to a transaction carried out for the purposes of the scheme.
- (5) If the scheme is such that the assumed company would be so regarded for tax purposes, sections 819 to 823 have effect in relation to a transaction carried out for the purposes of the scheme with the modifications in subsection (6).
- (6) The modifications are—
- (a) for references to the non-UK resident substitute references to the assumed company, and
 - (b) for references to the non-UK resident's relevant disregarded income for a qualifying period substitute references to the sum of the amounts that would, for relevant periods comprised in the qualifying period, be chargeable to tax on the assumed company as profits deriving from the transactions—
 - (i) carried out by the investment manager, and
 - (ii) assumed to be carried out on behalf of the company.
- (7) In this section—
- “the appropriate relevant period” is—

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- (a) the tax year in which the transaction income is chargeable to income tax, if this section applies for the purposes of section 813, or
 - (b) the accounting period in which the transaction is carried out, if this section applies for the purposes of section 816,
- “collective investment scheme” has the meaning given by section 235 of FISMA 2000,
- “participant”, in relation to a collective investment scheme, is construed in accordance with that section, and
- “relevant period” means—
- (a) a tax year, if this section applies for the purposes of section 813, or
 - (b) an accounting period, if this section applies for the purposes of section 816.

Supplementary

825 Meaning of “disregarded savings and investment income”

- (1) For the purposes of this Chapter income is “disregarded savings and investment income” if—
 - (a) it is chargeable under Chapter 3 or 5 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies and stock dividends from UK resident companies), or
 - (b) it is within subsection (2) and is not relevant foreign income.
- (2) Income is within this subsection if it is chargeable under—
 - (a) Chapter 2 of Part 4 of ITTOIA 2005 (interest),
 - (b) Chapter 7 of that Part (purchased life annuity payments),
 - (c) Chapter 8 of that Part (profits from deeply discounted securities),
 - (d) Chapter 10 of that Part (distributions from unauthorised unit trusts), or
 - (e) Chapter 11 of that Part (transactions in deposits).

826 Meaning of “disregarded annual payments”

For the purposes of this Chapter income is “disregarded annual payments” if it is not relevant foreign income and is chargeable under—

- (a) section 579 of ITTOIA 2005, so far as it relates to annual payments (royalties etc from intellectual property),
- (b) Chapter 4 of Part 5 of that Act, so far as it relates to annual payments (certain telecommunication rights: non-trading income), or
- (c) Chapter 7 of Part 5 of that Act (annual payments not otherwise charged).

827 Meaning of “investment manager” and “investment transaction”

- (1) In this Chapter “investment manager” means a person who provides investment management services.
- (2) In this Chapter “investment transaction” means—

Status: Point in time view as at 06/04/2007.

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- (a) transactions in shares, stock, futures contracts, options contracts or securities of any description not mentioned in this paragraph, but excluding futures contracts or options contracts relating to land,
 - (b) transactions consisting in the buying or selling of any foreign currency or in the placing of money at interest, and
 - (c) such other transactions as the Treasury may by regulations designate for the purposes of this section.
- (3) For the purposes of subsection (2) a contract is not prevented from being a futures contract or an options contract by the fact that a party is or may be entitled to receive or liable to make, or entitled to receive and liable to make, only a payment of a sum (as opposed to a transfer of assets other than money) in full settlement of all obligations.

828 Transactions through brokers and investment managers

- (1) For the purposes of this Chapter a person is regarded as carrying out a transaction on behalf of another if the person—
- (a) undertakes the transaction, whether on behalf of or to the account of the other, or
 - (b) gives instructions for it to be so carried out by another.
- (2) In the case of a person who acts as a broker or investment manager as part only of a business, this Chapter has effect as if that part were a separate business.

Status:

Point in time view as at 06/04/2007.

Changes to legislation:

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