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### 1210 Introduction and background.

Domicile status is likely only to be relevant to the taxation of individuals under the transfer of assets provisions if they are claiming the 'remittance basis' of taxation for the particular tax year. More information about the 'remittance basis' can be found in the *Residence, Domicile & Remittance Basis Guide* (HMRC6).

Domicile is a general law, rather than a tax law, concept. Information about domicile and its effect on United Kingdom taxation generally can be found on the HMRC website. Before Finance Act 1981 domicile status made no difference to tax charges under the transfer of assets legislation. In effect this meant that individuals were chargeable on the whole of the income of the person abroad where they met the criteria for the legislation to apply regardless of their domicile status.

This contrasted with the situation for individuals who received income directly. In particular such individuals who were resident in the United Kingdom but regarded as non-UK domiciled could benefit from the 'remittance basis' of taxation in respect of foreign source income.

The transfer of assets legislation was therefore changed to bring it more into line with the direct charging provisions relating to the income of individuals ordinarily resident but not domiciled in, the UK.

Those provisions relating to non-UK domiciled individuals within the transfer of assets legislation then remained largely unchanged over the years until the tax law rewrite which became Income Tax (Trading and Other Income) Act 2005 (ITTOIA). The provisions for transfer of assets were then further changed with Finance Act 2008 introducing a full 'remittance basis' for transfer of assets in line with major changes to remittance basis for direct personal income introduced in that Finance Act.

The current provisions that affect transfer of assets charges are now within ITA 2007, and are as follows:-

Provisions affecting the income charge:

Section 726 ITA 2007 (where power to enjoy)  
Section 730 ITA 2007 (receipt of a capital sum)

Provisions affecting the benefits charge:

Section 735/735A ITA 2007 (receipt of benefits)

These sections were amended or introduced by Finance Act 2008 and the revised terms apply for the tax year 2008/9 onwards.

### 1220 The Income Charge

The basic provisions that describe whether an individual is liable to an income charge and if so how much is chargeable are contained in Chapter 800.

This Chapter proceeds on the basis that a potential charge is established and considers the possible effect on that charge if the individual is non-UK domiciled.

Whether or not an individual is non-UK domiciled is not a matter for this manual.

This section looks at the effect of being non-UK domiciled on the income charge in three stages:-

- The position up to 5 April 2005 under S739 ICTA 1988 (before the introduction of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA)).
- The position between 6 April 2005 and 5 April 2008 under S739 ICTA (after the introduction of ITTOIA) and the effect of the introduction of Income Tax Act 2007.
- The position from 6 April 2008 under S726 and 730 ITA 2007 after changes brought in by the Finance Act 2008.

Any issues concerning whether an individual is resident or domiciled in the United Kingdom should be determined from the separate guidance on those subjects or by consulting the relevant specialist in CAR Residency (Offshore Personal Tax Team).

### 1221 The position up to 5 April 2005

For non-UK domicile status to have any effect on the income charge an individual must show that he would not, by reason of his being so domiciled, have been chargeable to tax in respect of the income if it had in fact been his income (Section 743(3) ICTA 1988).

The only circumstances in which an individual ordinarily resident in the United Kingdom would not have been chargeable to tax in respect of the income if received by him, on the basis of domicile status alone, would have been if the income were foreign source income not received in the United Kingdom.

In other words, it is income that, if received by him, would have been charged to tax under Case V of Schedule D on the basis of sums received in the United Kingdom, described in S65(5) ICTA 1988.

Where the condition is met then the individual is not chargeable (under the income charge) by reference to so much of the income treated as his as satisfies this condition. This can be illustrated by some straightforward examples:-

#### **Example 1**

An ordinarily resident but non-UK domiciled individual is potentially chargeable to tax under the income charge in respect of income of 1000, comprised of 500 UK source and 500 foreign source income, all arising to a person abroad. The foreign source income is not received in the United Kingdom.

If the income were in fact the individual's the rules in what were Cases IV and V of Schedule D (S65 ICTA 1988) would, for a non-UK domiciled individual, only charge the foreign income to the extent that sums in respect of it were received in the United Kingdom. On the basis that the 500 foreign source income is not received in the UK that amount is excluded from the transfer of assets income charge and the maximum charge for the year is 500.

#### **Example 2**

As above, but sums of 800 in respect of the income of the person abroad are received in the United Kingdom. In this scenario, the potential charge on the individual is 1000 but a maximum of 200 may potentially be excluded by the non-UK domiciled provision leaving a minimum charge of 800.

This Handbook does not provide detailed guidance as to when a sum is received in the United Kingdom. However for the purpose of the income charge under transfer of assets the same approach will generally be taken as is taken for direct income chargeable under what was Case IV/V of Schedule D.

[1222 The position between 6 April 2005 and 5 April 2008](#)

Following the tax law rewrite new and separate charging provisions were introduced for all types of foreign income replacing the general charge under what was Case IV/V of Schedule D. The new provisions, included in the Income Tax (Trading and Other Income) Act 2005 (ITTOIA), also provided, on a claim, an alternative basis for calculating certain income categorised as 'relevant foreign income' and the amount on which an individual would be taxed.

From the introduction of ITTOIA non-UK domicile status could impact this relevant foreign income and resulted broadly speaking in the income subject to the claim being taxed only when received in the United Kingdom.

Apart from minor adjustments consequential upon the introduction of ITTOIA the transfer of assets provisions giving exclusion from charge for certain income of non-UK domiciled individuals remained largely unchanged. However the exclusion was only for income that would not be chargeable to tax on the basis of domicile status alone. It could be argued that following the new charging provisions brought into effect by ITTOIA, which carried no distinction on the basis of domicile, that from 6 April 2005 there was no such income that fell to be excluded on the basis of domicile under the transfer of assets provisions.

However the introduction of ITTOIA was not intended to change the law under transfer of assets in this way and as a result HMRC continues to operate the income charge provisions in this interim period in the same way that they were operated prior to April 2005, subject to cases where there appears to be manipulation of the interaction of the new provisions. Where you identify a case that appears to involve manipulation refer it to the Transfer of Assets Technical Adviser in CAR (Residency) Offshore Personal Tax Team.

When the transfer of assets provisions were themselves rewritten into the Income Tax Act 2007 the post April 2005 position was maintained through two new sections (Section 726 and 730 ITA 2007) one for each of two possible income charges.

The new provisions enabled otherwise chargeable income to be excluded if two conditions, called Condition A and Condition B, are met.

Condition A - is that the individual is domiciled outside the UK.

Condition B - is that if the income had in fact been the individual's income the individual would not have been chargeable to income tax in respect of it because of domicile status alone.

The approach that will therefore be taken in this period will generally be that described in Examples 1 and 2 at TAH 1221.

### 1223 The Position from 6 April 2008

Finance Act 2008 introduced major changes to the way in which a potential income charge under the transfer of assets provisions is affected by domicile status. These changes bring the position for income treated as arising to the individual under the transfer of assets provisions fully into line with the provisions that apply for the individual if the income were actually received directly by the individual.

The new rules are contained in Sections 726 and 730 ITA 2007 and are identical for each of the two income charging provisions.

Unlike the old rule the new structure does not provide for any income to be excluded. Rather it sets a 'ring fence' around amounts that are affected by domicile status and which would otherwise be charged to tax in the year that the income arises to the person abroad and allows those amounts to be taxed only when there is a relevant amount remitted to the United Kingdom.

The new provisions apply if two conditions are met:-

- the individual is not domiciled in the United Kingdom in the year (that is the year for which an income charge would otherwise arise); and
- the 'remittance basis' applies to the individual for that year.

For details of when the 'remittance basis' applies see the *Residence, Domicile & Remittance Basis Guide* (HMRC6).

The way in which the new provision works is:-

- all of the income that would otherwise be taxed under the income charge is considered;
- that income is designated as 'foreign' if, and to the extent that, it would be 'relevant foreign income' if it were the individual's;
- the amount of 'foreign deemed income' so determined is then treated as if it were relevant foreign income;

The result of this is that the ring fenced amount regarded as 'relevant foreign income' is then charged to tax under the rules contained in Part 8 ITTOIA and not under the transfer of assets income charge. The Part 8 rule charges tax for any tax year in which the individual is resident in the United Kingdom and, during which, any of the relevant foreign income is remitted to the United Kingdom. It does not matter whether the source from which the income arose exists when the income is remitted.

Detailed guidance on the operation of Part 8 ITTOIA is contained in the *Residence, Domicile & Remittance Basis Guide* (HMRC6) and what is meant by 'relevant foreign income' is also determined from Part 8 ITTOIA (S830 ITTOIA).

To ensure that the remittance basis rules work as they should in relation to ring fenced amounts the new transfer of assets provisions treat so much of the income arising to the person abroad that would be chargeable under the income charge and which would be relevant foreign income if it were the individual's as deriving from the 'foreign deemed income' in applying the remittance basis rules in Chapter A1 of Part 14 ITA 2007.

Detailed guidance on whether any relevant foreign income is remitted to the United Kingdom and on what remitted to the United Kingdom means for the purpose of applying the remittance basis can be found in the *Residence, Domicile & Remittance Basis Guide*.

The position is summarised by the following example.

### Example 3

In year 1 an ordinarily resident but non-UK domiciled individual is potentially chargeable to tax under the income charge in respect of income of 1000, comprised of 500 UK source and 500 foreign source income, all arising in the year to a person abroad. The foreign income is not received in the United Kingdom. The remittance basis applies for that year. In year 3, there is a remittance to the UK of 800.

In year 1 there is a potential charge under the transfer of assets income charge of 1000. However as the remittance basis applies and part of the actual income would be relevant foreign income if received by the individual the actual transfer of assets income charge is 500 and 500 is 'ring fenced' for charge under Part 8 ITTOIA. Where any amount is remitted to the UK during that or any subsequent year which is a remittance for Chapter A1 Part 14 ITA 2007 (the Remittance Basis) then part or all of the ring fenced amount may be charged under Part 8 ITTOIA in the year of remittance, subject as appropriate to the rules on remittances from mixed funds (see the *Residence, Domicile & Remittance Basis Guide* (HMRC6)).

For the benefits charge on individuals who are non-UK domiciled see TAH 1230.

**1224 Transition**

The provisions described in TAH 1223 have effect for the tax year 2008-09 and subsequent years. There are no specific transitional arrangements for introduction of the new provisions. As the income charge only looks at income arising to the person abroad in the tax year it should not be necessary to have regard to income of earlier years in determining whether there is an amount that is to be regarded as foreign deemed income. However if there is foreign deemed income then in considering any possible charge under Part 8 ITTOIA it will be appropriate to consider all sums remitted to the United Kingdom in the tax year even if they arise, for example, from income of periods prior to the introduction of these provisions. Those remittances will fall to be tested against the rules in Chapter A1 Part 14 ITA 2007 as to whether they are taxable remittances.

**1225 The income affected by domicile status**

For the purpose of the transfer of assets income charge domicile status can only affect foreign income, and then only where that income is not received in or remitted to the United Kingdom.

Whether income is or is not foreign income is a matter to be discerned from the facts, and any relevant law, and will usually be a consideration before applying the transfer of assets legislation. But the type or category of income of the person abroad need only be considered where domicile status is claimed to make a difference to the amount that would otherwise be charged under the transfer of assets provisions.

In considering, where it is relevant to do so, what the type of income is you must look at the income in the hands of the person whose income it actually is; that is in the hands of the person abroad.

It may be appropriate to consult with relevant specialists to determine the true character of any income potentially within the scope of the transfer of assets provisions. For example where it is suspected that arrangements have been entered into in an attempt to maximise domicile status by creating what is described as foreign income.

### 1230 The benefits charge

The basic provisions that describe whether an individual is liable to a benefits charge are contained in Chapter 900.

This Chapter proceeds on the basis that a potential charge is established and considers the possible effect on that charge if the individual is non-UK domiciled.

Whether an individual is non-UK domiciled is not a matter for this manual.

This section looks at the effect of being non-UK domiciled on the benefits charge in three stages:-

- The position up to 5 April 2005 under S740 ICTA 1988 before the introduction of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA)).
- The position between 6 April 2005 and 5 April 2008 under S740 ICTA after the introduction of ITTOIA and the effect of the introduction of Income Tax Act 2007.
- The position from 6 April 2008 under S735 ITA 2007 after changes brought in by Finance Act 2008.

Any issues concerning whether an individual is resident or domiciled in the United Kingdom should be determined from the separate guidance on those subjects or by consulting the relevant specialist in CAR Residency (Offshore Personal Tax Team).

### 1231 The position up to 5 April 2005

For non-UK domicile status to have any effect upon the benefits charge two conditions must be met:-

- The benefit received that triggers the potential charge must not be received in the United Kingdom.
- The relevant income taken into account must be such that if the individual had received it he would not, by reason of being non-UK domiciled alone, have been chargeable to tax in respect of it. (Section 740(5) ICTA 1988).

The only circumstances in which an individual ordinarily resident in the United Kingdom would not have been chargeable to tax in respect of income if received by him, on the basis of domicile status alone, would have been if the income were foreign source income not received in the United Kingdom.

In other words, it is income, which, if received by the individual, would have been charged to tax under Case IV/V of Schedule D on the basis of sums received in the United Kingdom, described in S65(5) ICTA 1988.

Where the conditions are met then the individual is not chargeable under the benefits charge by reference to so much of the relevant income as satisfies the second condition (Section 740(5) ICTA 1988). This can be illustrated by some straightforward examples:-

#### **Example 4**

An ordinarily resident individual receives a benefit of 750 outside the UK from an offshore structure in which income of 1000 arises. The income comprises 500 UK source and 500 foreign source income not received in the UK. It is agreed that the provisions for a charge under S740 are met, and the potential charge is 750. However as part of the relevant income is foreign income not received in the UK that amount is excluded from the comparison of relevant income and benefits. The maximum charge for the year is therefore 500 (lower of the benefits received or relevant income after exclusion).

#### **Example 5**

As above, but the benefit is 400 received outside the UK. In this case the charge for the year is on 400 (being the lower of the benefits received or the relevant income after exclusion).

**Example 6**

As Example 4, but 200 in respect of the foreign income is received in the UK. In this example only 300 of the relevant income can be said to derive from income that would not have been chargeable on the basis of domicile alone, and so only 300 of the 1000 relevant income is excluded, leaving 700. The charge is therefore 700 (being the lower of the benefits received or relevant income after exclusion).

**Example 7**

As example 4 but in a later year 200 is received in the UK. Here the charge for the year is 500 as for Example 4. There is nothing chargeable in the later year as the basic conditions for a charge do not exist.

**Example 8**

As in Example 4 but in a later year there is further relevant income 100, which is all foreign income not received in the UK. In that same year a sum of 200 in respect of past income is received in the UK.

In the first year there is a charge of 500 as in Example 4. A benefit received of 250 is rolled forward as it has not been matched with relevant income. As there is relevant income in the later year a potential charge arises. The relevant income is now 1100 of which only 400 can be excluded on the basis of domicile, 500 has already been matched to benefits in an earlier year leaving 200 to compare with the benefit of 250. The charge for this later year is thus 200 (being the lower of the benefits received or relevant income after exclusions).

If in these examples the benefit had been received in the United Kingdom there would be no potential exclusion on the basis of domicile.

Broadly in considering what relevant income may be excluded similar considerations apply for what is regarded as 'received in the United Kingdom' as would apply for the purpose of old Cases IV/V of Schedule D in S65(5) – (9) ICTA including the special provisions there relating to UK linked loans. More detail on when sums are regarded as received in the United Kingdom for this purpose can be found in the *Residence, Domicile & Remittance Basis Guide* (HMRC6).

**1232 The position between 6 April 2005 and 5 April 2008**

Following the tax law rewrite new and separate charging provisions were introduced for all types of foreign income replacing the general charge under what was Case IV/V of Schedule D. The new provisions, included in the Income Tax (Trading and Other Income) Act 2005 (ITTOIA), also provided, on a claim, an alternative basis for calculating certain income categorised as 'relevant foreign income' and the amount on which an individual would be taxed.

From the introduction of ITTOIA non-UK domicile status could impact this relevant foreign income and resulted broadly speaking in the income subject to the claim being taxed only when received in the United Kingdom.

Apart from minor adjustments consequential upon the introduction of ITTOIA the transfer of assets provisions giving exclusion from charge for certain benefits of non-UK domiciled individuals remained largely unchanged. However the exclusion from relevant income was only for income that would not be chargeable to tax on the basis of domicile status alone. It could be argued that following the new charging provisions brought into effect by ITTOIA, which carried no distinction on the basis of domicile, that from 6 April 2005 there was no such income that fell to be excluded on the basis of domicile under the transfer of assets provisions.

The introduction of ITTOIA was not intended to change the law under transfer of assets and as a result HMRC continues to operate the benefits charge provisions in this interim period in the same way that they were operated prior to April 2005 as set out in Examples 4 – 8 in TAH 1231, subject to cases where there appears to be manipulation of the interaction of the new provisions. Where you identify a case that appears to involve manipulation refer it to the Transfer of Assets Technical Adviser in CAR (Residency) Offshore Personal Tax Team.

When the transfer of assets provisions were themselves rewritten into the Income Tax Act 2007 the post April 2005 position was maintained through the new section 735 ITA 2007. It could therefore also be argued under this provision that there is no reduction to the otherwise chargeable amount by virtue of non-UK domicile status.

The new ITA provision appears to take a slightly different approach than the previous provision in ICTA 1988 in that it requires a chargeable amount to be calculated and then allows the otherwise chargeable amount to be reduced if, and in proportion to, the extent that the relevant income by reference to which it is determined includes amounts that would not have been charged because of domicile. In effect if the relevant income includes foreign income not received in the United Kingdom the otherwise chargeable amount is reduced by reference to the proportion that amount has to the total. This approach is not without difficulties.

The provision applies if there is an otherwise chargeable amount, that is an amount which apart from the non domicile provision would have been chargeable under the transfer of assets benefit charge, and three conditions are met:-

## TAH 1200

## Non-UK domiciled individuals

1. Condition A is that the individual is domiciled outside the UK.
2. Condition B is that the benefit is not received in the United Kingdom.
3. Condition C is that if the individual had received any of the relevant income by reference to which the potential chargeable amount is determined the individual would not have been chargeable to income tax in respect of it because of domicile status alone.

Where the conditions are met then the individual is not chargeable under the benefits charge by reference to so much of the chargeable amount determined by reference to the relevant income to which Condition C applies.

In applying Condition C the same approach to foreign income will be taken for this purpose as operated before the introduction of ITTOIA.

### Example 9

As Example 4 in TAH 1231. Applying the Steps approach in ITA 2007 the 'chargeable amount' would be 750 (total relevant income 1000 compared with benefits provided received outside the UK of 750). As the foreign income of 500 is not received in the UK take that amount to satisfy Condition C.

In the absence of a provision that says that the chargeable amount is determined by reference to one type of income in preference to another it might be reasonable to take the view that the reduction in the chargeable amount given by S735 is the ratio that the income that satisfies Condition C has to the total. That is a reduction of 375. Such an approach could however lead to extreme and anomalous results and as neither the introduction of ITTOIA nor ITA 2007 were intended to change the law under transfer of assets HMRC will continue to operate the provisions in a way that is consistent with the former provisions in this interim period. This is subject to cases where there appears to be manipulation of the interaction of the new provisions. Where you identify a case that appears to involve manipulation refer it to the Transfer of Assets Technical Adviser in CAR (Residency) Offshore Personal Tax Team.

Taking this approach the individual is not chargeable by reference to 250 of the relevant income to which Condition C applies, which leaves a charge under transfer of assets of 500.

### 1233 The position from 6 April 2008

Finance Act 2008 introduced major changes to the way in which a potential benefits charge under the transfer of assets provisions is affected by domicile status. These changes bring the position for amounts deemed as income arising to the individual under the transfer of assets provisions fully into line with the provisions that would apply for the individual if the deemed amount were actually income received directly by the individual.

The new rules are contained in a revised Section 735 ITA 2007.

Unlike the old rule the new structure does not provide for either relevant income or chargeable amount to be excluded. Rather it sets a 'ring fence' around amounts that could be affected by domicile status and which would otherwise be charged to tax, in the year that income is deemed to arise to the individual, and allows those amounts to be taxed only when there is a relevant amount remitted to the United Kingdom. The effect is the same as if a corresponding amount of actual income had arisen directly to an individual to whom the remittance basis of taxation applies.

The new provisions apply if three conditions are met:-

- income is treated as arising to an individual under the transfer of assets benefits charge.
- the 'remittance basis' applies to the individual for that year
- the individual is not domiciled in the United Kingdom in the year (that is the year for which a benefits charge would otherwise arise);

For details of when the 'remittance basis' applies see the separate *Residence, Domicile & Remittance Basis Guide* (HMRC6).

The way in which the new provision works is:-

- all of the amounts that would otherwise be taxed under the benefits charge are considered;
- that deemed income is designated as 'foreign' if, and to the extent that, the relevant income to which it relates would be 'relevant foreign income' if it were the individual's;
- the amount of 'foreign deemed income' so determined is then treated as if it were relevant foreign income.

The result of this is to create a ring fenced amount regarded as 'relevant foreign income' which can then be charged to tax under the rules contained in Part 8 ITTOIA and not under the transfer of assets benefits charge. The Part 8 rule charges tax for

any tax year in which the individual is resident in the United Kingdom and, during which, any of the relevant foreign income is remitted to the United Kingdom. It does not matter whether the source from which the income arose exists when the income is remitted.

Detailed guidance on the operation of Part 8 ITTOIA is contained in the *Residence, Domicile & Remittance Basis Guide* and what is meant by 'relevant foreign income' is also determined from Part 8 ITTOIA (S830 ITTOIA).

To ensure that the remittance basis rules work as they should in relation to ring fenced amounts the new transfer of assets provisions treat relevant income, or a benefit, that relates to any part of the foreign deemed income as deriving from that part of the foreign deemed income for the purpose of applying the remittance basis rules in Chapter A1 of Part 14 ITA 2007.

Detailed guidance on applying the remittance basis can be found in the *Residence, Domicile & Remittance Basis Guide*. In applying that guidance in the context of transfer of assets benefits charge it is necessary to consider both the benefits and underlying income to determine whether and when any of the 'relevant foreign income' is regarded as remitted to the United Kingdom.

A detailed example on this provision is at TAH 1236.

**1234 Relevant income and benefits relating to foreign deemed income**

As the benefits charge is effectively a cumulative charge, potentially looking at relevant income and benefits over a period of time, for the purpose of applying the provisions in S735 it is necessary to have an ordering rule to work out how much of any amount that would otherwise be taxable in the year the potential charge arises can be regarded as foreign deemed income and can thus be 'ring fenced' to be charged to tax as and when remitted to the United Kingdom.

The new provision is at S735A and only applies to the operation of the rule described in TAH 1233. In other words it only applies for the purpose of S735 ITA 2007.

The approach that the new provision takes is to look at all of the items taken into account in arriving at the potential amount that would otherwise be chargeable under the benefits charge. It then lines up relevant income and benefits in tax year order on a first in first out basis and taking each item separately. If there is more than one benefit received each would be taken into account in order, that is the earliest benefit first. In relation to income the rule takes United Kingdom income first for each year and then foreign income of each year. So if, say, one item of foreign income arose on 30 September in a tax year and another item of foreign income arose on 31 December they would be taken into account by reference to the September item first and then the December item.

In the event that income arises over a period it is treated for the purpose of this provision as arising immediately before the end of the period. For example, business profits accrue over an accounting period to say 31 December so for the purpose of this provision the income would be treated as arising on 31 December. Therefore if in a tax year there was say interest income arising on 30 September and business profits accruing over an accounting period to 31 December, for the purpose of this provision they would be placed in the order interest first and profits second.

An amount that is a potentially chargeable amount under the benefits charge is then regarded as foreign deemed income if and to the extent that the relevant income to which it relates would be relevant foreign income if it were the individual's as described in TAH1233. This example illustrates how this ordering works.

**Example 10**

Year	Date	Relevant Income		Benefits
		UK Income	Foreign Income	
1	30 Sept	500		
1	31 Dec		500	
2	31 Dec		1000	750
3	30 Sept		500	
3	31 Dec	500		
4	30 Sept		500	
4	31 Dec	500		750

**TAH 1200****Non-UK domiciled individuals**

There are potential transfer of assets benefits charges in Yr 2 of 750 and Yr 4 of 750. In Yr 2, 250 will be foreign deemed income and ring fenced to be charged under Part 8 ITTOIA as and when there is an amount remitted to the UK. 500 is charged under transfer of assets. In Yr 4 the whole 750 will be deemed foreign income. If however the benefit in Yr 4 was 1500, then only 1250 would be ring fenced as foreign deemed income and 250 would be charged under transfer of assets.

**1235 Relevant income and benefits relating to foreign deemed income**

This paragraph gives the detail of how the new ordering rule outlined in TAH 1234 works. It proceeds by looking at relevant income and benefits determined for the purpose of the 'Steps' taken in arriving at the potential total chargeable amount (see TAH XXX). There are six parts to the new rule as follows.

- (a) First, all the benefits mentioned in Step 1 are placed in the order in which they were received by the individual starting with the earliest received.
- (b) From the benefits deduct any benefit that gives rise to a charge in respect of capital gains or offshore income gains as described in Section 734(1)(b) and 734(1)(d) ITA 2007 (See TAH XXX).
- (c) Take the relevant income of each tax year starting with the earliest tax year and place the income in date order. In doing this, first take income that is not foreign income and then repeat with foreign income. The order will be the earliest income first. Income is 'foreign' for this purpose if it would be relevant foreign income if it were the individual's. In repeating this exercise for each year relevant income of the earliest tax year will be relevant income of the first tax year after the last tax year in relation to which the calculation was performed. These may not be consecutive years.
- (d) Deduct from the income any income that has already been taken into account for the transfer of assets provisions. These amounts may not be taken into account because of the 'no duplication of charges' provisions in Section 743(1) or (2) ITA 2007 (see TAH XXX). But any income charged to income tax under the benefits provisions on the individual is not deducted.
- (e) Next, place any income treated as arising to the individual under the transfer of assets benefits charge in the order in which it is treated as arising starting with the earliest.
- (f) Finally, treat the income listed in (e) as related to the benefits and relevant income by matching that income with the benefits and the relevant income in the orders mentioned in (a), (c) and (e) above.

An example illustrating the provisions and methodology described in TAH 1233 – 1235 is set out in TAH 1236 below.

**1236 Relevant income and benefits relating to foreign deemed income**

The example in this paragraph illustrates the principles and methodology described in TAH 1233 – 1235.

**Example 11**

An individual who is ordinarily resident, but not domiciled, in the United Kingdom has received cash benefits from an offshore structure in circumstances where the conditions for the transfer of assets provisions to apply are met. The ‘remittance basis’ of taxation applies for each year.

Year	Date arises	UK income	Foreign income	Benefits received	Benefit received in UK
1	30 Sept	500			
1	31 Mar		800	1000	0
2	31 Mar	100	1000	1400	0
3	31 Mar	500	500		
4	30 Sept	200		1000	0
4	31 Mar		500		
5	30 Sept	500	100	600	600
5	31 Mar		400		

**Year 1**

1. The potential benefits charge is 1000 (being the lesser of 1300 relevant income and 1000 benefits received-see TAH 900).
2. As all of the conditions for Section 735 to apply are met, consider whether any of the potential charge is foreign deemed income. The principles in Section 735A are used for this purpose (TAH 1235).
  - First match the 1000 with the UK income of 500. As this income cannot be relevant foreign income then 500 cannot be foreign deemed income and thus is charged under the transfer of assets benefits charge.
  - The remaining benefit is then matched with the foreign income of 800 this income would be relevant foreign income if it was the individuals and thus 500 of the deemed amount is foreign deemed income. This is treated as relevant foreign income and becomes potentially chargeable under Part 8 ITTOA 2005.
  - There is a balance of 300 relevant income that remains unmatched.

3. Where any amount is remitted to the UK during that or any subsequent year which is a remittance for Chapter A1 Part 14 ITA 2007 (the Remittance Basis) then part or all of the ring fenced amount may be charged under Part 8 ITTOIA in the year of remittance, subject as appropriate to the rules on remittances from mixed funds (see the *Residence, Domicile & Remittance Basis Guide* (HMRC6)).
4. The total taxable amount for the year under transfer of assets benefits charge is therefore 500.

### Year 2

1. The potential benefits charge is 1400 (being the lesser of the total relevant income 2400 and the total benefits 2400 less 1000 already charged).
2. Calculate how much of the total potential charge can be regarded as foreign deemed income applying Section 735A-
  - The potential chargeable amount is in effect matched with-
    - a. 300 of foreign income from year 1. This gives foreign deemed income of 300 chargeable under Part 8.
    - b. 100 UK income of year 2. As this income cannot be relevant foreign income this amount of 100 remains chargeable under the transfer of assets benefits charge.
    - c. The foreign income of year 2 of 1000. As this would be relevant foreign income if it were the individual's this amount can be regarded as foreign deemed income and so chargeable under Part 8.
3. The result is that of the potential charge of 1400, 100 is charged under transfer of assets benefits charge and 1300 is ring fenced and treated as relevant foreign income chargeable under Part 8 ITTOIA.
4. The total charge under the transfer of assets benefits charge is therefore 100.
5. Where any amount is remitted to the UK during that or any subsequent year which is a remittance for Chapter A1 Part 14 ITA 2007 (the Remittance Basis) then part or all of the ring fenced amount may be charged under Part 8 ITTOIA in the year of remittance, subject as appropriate to the rules on remittances from mixed funds (see the *Residence, Domicile & Remittance Basis Guide* (HMRC6)).

**Year 3**

Although there is further relevant income in this year there are no unmatched benefits so there can be no potential charge under transfer of assets benefits charge so a consideration of S735 is not applicable.

**Year 4**

1. The potential charge is 1000 (being the lesser of the total relevant income 4100 and the total benefits 3400 less 2400 already charged).
2. Work out the deemed foreign income applying Section 735A-
  - The potential chargeable amount is in effect matched with
    - a. The UK relevant income 500 from year 3.
    - b. The foreign income of 500 from year 3.
3. The total amount charged under the transfer of assets benefits charge is therefore 500.
4. 500 is ring fenced as foreign deemed income and treated as relevant foreign income.
5. Where any amount is remitted to the UK during that or any subsequent year which is a remittance for Chapter A1 Part 14 ITA 2007 (the Remittance Basis) then part or all of the ring fenced amount may be charged under Part 8 ITTOIA in the year of remittance, subject as appropriate to the rules on remittances from mixed funds (see the *Residence, Domicile & Remittance Basis Guide* (HMRC6)).
6. There is 700 of unmatched relevant income to take forward.

**Year 5**

1. The potential charge is 600 (being the lesser of the total relevant income 5100 and the total benefits 4000 less 3400 already charged).
2. Work out the deemed foreign income applying Section 735A-
  - The potential chargeable amount is in effect matched with
    - a. The UK relevant income 200 from year 4.
    - b. 400 of the foreign relevant income from year 4.
3. The total amount charged under the transfer of assets benefits charge is therefore 200.
4. 400 is ring fenced as foreign deemed income and treated as relevant foreign income.

5. Where any amount is remitted to the UK during that or any subsequent year which is a remittance for Chapter A1 Part 14 ITA 2007 (the Remittance Basis) then part or all of the ring fenced amount may be charged under Part 8 ITTOIA in the year of remittance, subject as appropriate to the rules on remittances from mixed funds (see the *Residence, Domicile & Remittance Basis Guide* (HMRC6)).
6. As the benefit was received in the United Kingdom a minimum of the ring fenced amount of this year will be charged under Part 8 ITTOIA and consideration would need to be given to whether there are further untaxed amounts of ring fenced income that would be charged for this year applying the relevant remittance basis rules.
7. There is 1100 of unmatched relevant income to take forward.

**1237 Transition**

The provisions described in TAH 1233 – 1236 have effect for the tax year 2008-09 and subsequent years. There are no specific transitional arrangements for introduction of the new provisions. However because of the nature of the benefits charge when making calculations for the purpose of these provisions it will still be necessary to take account of relevant income and benefits of earlier periods. Nothing however in these new provisions will alter a charge or outcome of an earlier period.

The following examples illustrate some of the points that may arise on transition.

**Example 12**

An ordinarily resident but non-UK domiciled individual is agreed to be potentially subject to tax under the transfer of assets benefits charge. The table below shows the income arising to persons abroad and the benefits received by the individual. The remittance basis of taxation applies for all years including 2008/09. There are no amounts remitted to the UK in any year.

Year	Date	Relevant Income		Benefits received outside UK
		UK Income	Foreign Income not received in UK	
2004/05	31 March	0	2000	1000
2005/06	31 March	0	3000	1000
2006/07	31 March	0	3000	1000
2007/08	31 March	0	4000	1000
2008/09	31 March	0	2000	0

There is no charge under the transfer of assets regime for 2004/05 to 2006/07. In effect for each of those years benefits are 'unmatched' to relevant income after exclusion by S740(5). In 2007/08 applying the Steps approach a 'chargeable amount' of 4000 arises. Applying S735 that amount is reduced to 0. There is no unmatched benefit at 5 April 2008 but a pool of available relevant income of 8000 rolling forward. For 2008/09 there is no application of the transfer of assets benefits charge.

**Example 13**

An ordinarily resident but non-UK domiciled individual is agreed to be potentially subject to tax under the transfer of assets benefits charge. The table below shows the income arising to persons abroad and the benefits received by the individual. The remittance basis of taxation applies for all years including 2008/09. There are no amounts remitted to the UK in any year.

Year	Date	Relevant Income		Benefits received outside UK
		UK Income	Foreign Income not received in UK	
2004/05	31 March	0	2000	1000
2005/06	31 March	0	3000	1000
2006/07	31 March	0	3000	1000
2007/08		0	0	0
2008/09	31 March	0	2000	1000

There is no charge under the transfer of assets regime for 2004/05 to 2006/07. In effect for each of those years benefits are 'unmatched' to relevant income after exclusion by S740(5). In 2007/08 there is no application of the transfer of assets provisions. Applying the Steps approach for 2008/09 there is 'deemed income' of 4000. The conditions for S735 are met and applying S735A there is foreign deemed income to be treated as relevant foreign income of 4000 chargeable under Part 8 ITTOIA.

#### Example 14

An ordinarily resident but non-UK domiciled individual is agreed to be potentially subject to tax under the transfer of assets benefits charge. The table below shows the income arising to persons abroad and the benefits received by the individual. The remittance basis of taxation applies for all years including 2008/09. There are no amounts remitted to the UK in any year.

Year	Date	Relevant Income		Benefits received outside UK
		UK Income	Foreign Income not received in UK	
2004/05	31 March	0	2000	10000
2005/06	31 March	0	3000	1000
2006/07	31 March	0	3000	1000
2007/08	31 March	0	4000	1000
2008/09	31 March	0	2000	0

There is no charge under the transfer of assets regime for 2004/05 to 2006/07. In effect for each of those years benefits are 'unmatched' to relevant income after exclusion by S740(5). In 2007/08 applying the Steps approach a 'chargeable amount' of 12000 arises (being the lesser of the total relevant income 12000 and the total benefits 13000 less 0 already charged). Applying S735 that amount is reduced to 0. There is unmatched benefit at 5 April 2008 of 1000 to take forward but no pool of available relevant income. For 2008/09 there is further relevant income giving 'deemed income' of 1000. The conditions for S735 are met and applying S735A there is foreign deemed income to be treated as relevant foreign income of 1000 chargeable under Part 8 ITTOIA. There is unmatched available relevant income of 1000 to take forward. There is no charge under transfer of assets benefits charge.

**TAH 1200**

**Non-UK domiciled individuals**

[End of Chapter](#)