



# Finance (No. 2) Act 2015

## 2015 CHAPTER 33

### PART 4

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

##### *Income tax and capital gains tax*

#### **43 Carried interest**

- (1) In Part 3 of TCGA 1992 (individuals, partnerships, trusts and collective investment schemes etc), after section 103K insert—

#### **“CHAPTER 5**

#### **CARRIED INTEREST**

##### **103KA Carried interest**

- (1) This section applies where—
- an individual (“A”) performs investment management services directly or indirectly in respect of an investment scheme under arrangements involving at least one partnership, and
  - carried interest arises to A under the arrangements.
- (2) If the carried interest arises to A in connection with the disposal of one or more assets of the partnership or partnerships—
- a chargeable gain equal to the amount of the carried interest less any permitted deductions (and no other chargeable gain or loss) is to be treated as accruing to A on the disposal, and
  - the chargeable gain is to be treated as accruing to A at the time the carried interest arises.

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*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2015, Section 43. (See end of Document for details)*

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- (3) If the carried interest arises to A in circumstances other than those specified in subsection (2), a chargeable gain of an amount equal to the amount of the carried interest less any permitted deductions is to be treated as accruing to A at the time the carried interest arises.
- (4) Subsections (2) and (3) do not apply in relation to carried interest to the extent that—
- (a) it is brought into account in calculating the profits of a trade of A for the purposes of income tax for any tax year, or
  - (b) it constitutes a co-investment repayment or return.
- (5) For the purpose of subsections (2) and (3) “permitted deductions” in relation to A means such parts of the amounts specified in subsection (6) as is just and reasonable.
- (6) The amounts referred to in subsection (5) are—
- (a) the amount of any consideration in money given to the scheme by or on behalf of A wholly and exclusively for entering into the arrangements referred to in subsection (1)(a) (but not consideration in respect of co-investments),
  - (b) any amount that constituted earnings of A under Chapter 1 of Part 3 of ITEPA 2003 (earnings) in respect of A's entering into those arrangements (but not any earnings in respect of co-investments or any amount of exempt income within the meaning of section 8 of that Act), and
  - (c) any amount which, by reason of events occurring no later than the time the carried interest arises, counts as income of A under the enactments referred to in section 119A(3) in respect of A's participation in the arrangements referred to in subsection (1)(a) (but not an amount counting as income of A in respect of co-investments); and section 119A(5) applies for the purposes of this paragraph as it applies for the purposes of section 119A(4).

For the purposes of this Act no other deduction may be made from the amount of the carried interest referred to in subsection (2) or (3).

- (7) Where the carried interest arises to A by virtue of his or her acquisition of a right to it from another person for consideration given in money by or on behalf of A, the amount of the chargeable gain accruing to A under subsection (2) or (3) is, on the making of a claim by A under this subsection, to be regarded as reduced by the amount of the consideration.
- (8) In this section—
- “co-investment”, in relation to A, means an investment made directly or indirectly by A in the scheme, where there is no return on the investment which is not an arm's length return within the meaning of section 809EZH(2) of ITA 2007;
- “co-investment repayment or return” means a repayment in whole or in part of, or a return on, a co-investment;
- “trade” includes profession or vocation.

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### **103KB Carried interest: consideration on disposal etc of right**

- (1) For the purposes of section 103KA, consideration received or receivable by an individual for the disposal, variation, loss or cancellation of a right to carried interest is to be treated as carried interest arising to that individual at the time of the disposal, variation, loss or cancellation.
- (2) But subsection (1) does not apply if and to the extent that the consideration is a disguised fee arising to the individual for the purposes of section 809EZA of ITA 2007.

### **103KC Carried interest: foreign chargeable gains**

In a case where section 103KA applies, a chargeable gain accruing or treated as accruing to an individual in respect of carried interest is a foreign chargeable gain within the meaning of section 12 only to the extent that the individual performs the services referred to in section 103KA(1)(a) outside the United Kingdom.

### **103KD Carried interest: anti-avoidance**

In determining whether section 103KA applies in relation to an individual, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that that section does not to any extent apply in relation to—

- (a) the individual, or
- (b) the individual and one or more other individuals.

### **103KE Carried interest: avoidance of double taxation**

- (1) This section applies where—
  - (a) capital gains tax is charged on an individual by virtue of section 103KA in respect of any carried interest, and
  - (b) Condition A or Condition B is met.
- (2) Condition A is that—
  - (a) at any time, tax (whether income tax or another tax) charged on the individual in relation to the carried interest has been paid by the individual (and has not been repaid), and
  - (b) the amount on which tax is charged as specified in subsection (1)(a) is not a permissible deduction under section 103KA(6)(b) or (c).
- (3) Condition B is that at any time tax (whether income tax or another tax) charged on another person in relation to the carried interest has been paid by that other person (and has not been repaid).
- (4) In order to avoid a double charge to tax, the individual may make a claim for one or more consequential adjustments to be made in respect of the capital gains tax charged as mentioned in subsection (1)(a).

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- (5) On a claim under this section an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.
- (6) The value of any consequential adjustments made must not exceed the lesser of—
- (a) the capital gains tax charged as mentioned in subsection (1)(a), and
  - (b) the tax charged as mentioned in subsection (2)(a) or (3).
- (7) Consequential adjustments may be made—
- (a) in respect of any period,
  - (b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and
  - (c) despite any time limit imposed by or under an enactment.
- (8) Where—
- (a) an individual makes a claim under this section in respect of a year of assessment, and
  - (b) apart from this subsection, an amount falls to be deducted under section 2(2)(b) from the total amount of chargeable gains accruing to the individual in that year,
- the individual may elect that the amount to be so deducted be reduced by any amount not exceeding the amount on which tax is charged as specified in subsection (2)(a) or (3).

### **103KF Relief for external investors on disposal of partnership asset**

- (1) If—
- (a) a chargeable gain accrues to an external investor in an investment scheme on the disposal of one or more partnership assets, and
  - (b) the external investor makes a claim for relief under this section,
- then subsection (2) applies in relation to the disposal.
- (2) The amount of the chargeable gain is to be reduced by an amount equal to—

$$I - C$$

where—

- a I is an amount equal to such part of the sum invested in the fund by the external investor which on a just and reasonable basis is referable to the asset or assets disposed of, and
- b C is the amount deducted under section 38(1)(a) in respect of consideration given wholly and exclusively for the acquisition of the asset or assets.

### **103KG Meaning of “arise” in Chapter 5**

- (1) For the purposes of this Chapter, carried interest “arises” to an individual (“A”) if, and only if, it arises to him or her for the purposes of Chapter 5E of Part 13 of ITA 2007.

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- (2) But section 809EZDB of ITA 2007 (sums arising to connected company or unconnected person) does not apply in relation to a sum of carried interest arising to—
- (a) a company connected with A, or
  - (b) a person not connected with A,
- where the sum is deferred carried interest in relation to A.
- (3) In this section, “deferred carried interest”, in relation to A—
- (a) means a sum of carried interest where the provision of the sum to A or a person connected with A is deferred (whether pending the meeting of any conditions (including conditions which may never be met) or otherwise), and
  - (b) includes A's share (as determined on a just and reasonable basis) of any carried interest the provision of which to A and one or more other persons, taken together, has been deferred (whether pending the meeting of any conditions (including conditions which may never be met) or otherwise).

In this subsection, in a case where the sum referred to in subsection (2) arises to a company connected with A, the reference to a person connected with A does not include that company.

- (4) Where—
- (a) section 809EZDB of ITA 2007 has been disapplied in relation to a sum of deferred carried interest by virtue of subsection (2),
  - (b) the sum ceases to be deferred carried interest in relation to A, and
  - (c) the sum does not in any event arise to A apart from this subsection,
- the sum is to be regarded as arising to A at the time it ceases to be deferred carried interest.
- (5) But subsection (4) does not apply if—
- (a) none of the enjoyment conditions is met in relation to the sum when it ceases to be deferred carried interest, and
  - (b) there is no reasonable likelihood that any of those conditions will ever be met in relation to the sum.
- (6) The enjoyment conditions are—
- (a) the sum, or part of the sum, is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of A or a person connected with A;
  - (b) the sum's ceasing to be deferred carried interest in relation to A operates to increase the value to A or a person connected with A of any assets which—
    - (i) A or the connected person holds, or
    - (ii) are held for the benefit of A or the connected person;
  - (c) A or a person connected with A receives or is entitled to receive at any time any benefit provided or to be provided out of the sum or part of the sum;
  - (d) A or a person connected with A may become entitled to the beneficial enjoyment of the sum or part of the sum if one or more powers are exercised or successively exercised (and for these purposes it does not

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matter who may exercise the powers or whether they are exercisable with or without the consent of another person);

- (e) A or a person connected with A is able in any manner to control directly or indirectly the application of the sum or part of the sum.

In this subsection, in a case where the sum referred to in subsection (2) arises to a company connected with A, references to a person connected with A do not include that company.

- (7) In determining whether any of the enjoyment conditions is met in relation to a sum or part of a sum—
- (a) regard must be had to the substantial result and effect of all the relevant circumstances, and
  - (b) all benefits which may at any time accrue to a person as a result of the sum ceasing to be deferred carried interest in relation to A must be taken into account, irrespective of—
    - (i) the nature or form of the benefits, or
    - (ii) whether the person has legal or equitable rights in respect of the benefits.
- (8) The enjoyment condition in subsection (6)(b), (c) or (d) is to be treated as not met if it would be met only by reason of A holding shares or an interest in shares in a company.
- (9) The enjoyment condition in subsection (6)(a) or (e) is to be treated as not met if the sum referred to in subsection (2) arises to a company connected with A and—
- (a) the company is liable to pay corporation tax in respect of its profits and the sum is included in the computation of those profits, or
  - (b) paragraph (a) does not apply but—
    - (i) the company is a CFC and the exemption in Chapter 14 of Part 9A of TIOPA 2010 applies for the accounting period in which the sum arises, or
    - (ii) the company is not a CFC but, if it were, that exemption would apply for that period.

In this subsection “CFC” has the same meaning as in Part 9A of TIOPA 2010.

- (10) But subsections (8) and (9) do not apply if the sum referred to in subsection (2) arises to the company referred to in subsection (2)(a) or the person referred to in subsection (2)(b) as part of arrangements where—
- (a) it is reasonable to assume that in the absence of the arrangements the sum or part of the sum would have arisen to A or an individual connected with A, and
  - (b) it is reasonable to assume that the arrangements have as their main purpose, or one of their main purposes, the avoidance of a liability to pay income tax, capital gains tax, inheritance tax or corporation tax.
- (11) The condition in subsection (10)(b) is to be regarded as met in a case where the sum is applied directly or indirectly as an investment in a collective investment scheme.

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- (12) Subsection (2) does not apply in relation to any sum in relation to which the condition in subsection (8)(b) of section 809EZDB is met by virtue of subsection (9) of that section.
- (13) Subsection (2) also does not apply if—
- (a) it is reasonable to assume that the deferral referred to in subsection (3) (a) or (b) is not the effect of genuine commercial arrangements, or
  - (b) that deferral is the effect of such arrangements but it is reasonable to assume that the arrangements have as their main purpose, or one of their main purposes, the avoidance of a liability to pay income tax, capital gains tax, corporation tax or inheritance tax.
- (14) In subsection (13), “genuine commercial arrangements” means arrangements involving A (alone or jointly with others performing investment management services) and external investors in the investment scheme.
- (15) Section 993 of ITA 2007 (meaning of “connected”) applies for the purposes of this section but as if—
- (a) subsection (4) of that section were omitted, and
  - (b) partners in a partnership in which A is also a partner were not “associates” of A for the purposes of sections 450 and 451 of CTA 2010 (“control”).

### **103KH Interpretation of Chapter 5**

- (1) In this Chapter—
- “arrangements” has the same meaning as in Chapter 5E of Part 13 of ITA 2007 (see section 809EZE of that Act);
  - “carried interest”, in relation to arrangements referred to in section 103KA(1)(a), has the same meaning as in section 809EZB of ITA 2007 (see sections 809EZE and 809EZD of that Act);
  - “investment scheme”, “investment management services” and “external investor” have the same meanings as in Chapter 5E of Part 13 of ITA 2007 (see sections 809EZA(6) and 809EZE of that Act).”
- (2) The amendment made by subsection (1) has effect in relation to carried interest arising on or after 8 July 2015 under any arrangements, <sup>F1</sup>....
- (3) But section 103KB(1) of TCGA 1992 (as inserted by subsection (1)) does not have effect in relation to a variation of a right to carried interest occurring on or after 8 July 2015 and before 22 October 2015.
- (4) And section 103KG(2) to (15) of TCGA 1992 (as inserted by subsection (1)) has effect in relation to carried interest arising on or after 22 October 2015 under any arrangements, <sup>F2</sup>....
- (5) In subsections (2) to (4), “arise”, “arrangements” and “carried interest” have the same meanings as in Chapter 5 of Part 3 of TCGA 1992 (as inserted by subsection (1) of this section).

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#### Textual Amendments

- F1** Words in s. 43(2) omitted (with effect in accordance with s. 37(2) of the amending Act) by virtue of Finance Act 2018 (c. 3), s. 37(1)(a)
- F2** Words in s. 43(4) omitted (with effect in accordance with s. 37(2) of the amending Act) by virtue of Finance Act 2018 (c. 3), s. 37(1)(b)



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