

Status: Point in time view as at 01/04/2009.

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SCHEDULES

SCHEDULE 4

Section 26

RESTRICTIONS ON TRADE LOSS RELIEF FOR PARTNERS

Limit on amount of sideways relief and capital gains relief available in any tax year

- 1 (1) In ITA 2007, before section 104 (and the italic cross-heading before it) insert—

“Limit on amount of sideways relief and capital gains relief

Limit on reliefs in any tax year not to exceed cap for tax year

- 103(1) This section applies if an individual carries on one or more trades—
- (a) as a non-active partner in a firm during a tax year, or
 - (b) as a limited partner in a firm at a time in that tax year,
- and the individual makes a loss in any of those trades (an “affected loss”) in that tax year.
- (2) There is a restriction on the amount of sideways relief and capital gains relief which (after applying the restrictions under the other provisions of this Chapter) may be given to the individual for any affected loss (but see subsections (6) and (7)).
 - (3) The restriction is that the total amount of the sideways relief and capital gains relief given to the individual for all the affected losses must not exceed the cap for that tax year.
 - (4) The cap for any tax year is £25,000.
 - (5) The Treasury may by order amend the sum for the time being specified in subsection (4).
 - (6) The restriction under this section does not apply to so much of any affected loss as derives from qualifying film expenditure (see section 103D).
 - (7) The restriction under this section does not affect the giving of sideways relief for a loss made in a trade against the profits of that trade.
 - (8) In this section “trade” does not include a trade which consists of the underwriting business of a member of Lloyd’s (within the meaning of section 184 of FA 1993).”
- (2) The amendment made by sub-paragraph (1) has effect in relation to any loss made by an individual in a trade in the tax year 2007-08 or any subsequent tax year.
 - (3) But, in the case of a loss made by an individual in a trade in a tax year the basis period for which begins before 2nd March 2007 (a “straddling basis period”), the amount of that loss for the purposes of section 103C of ITA 2007 is—

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- (a) the amount of sideways relief and capital gains relief which (after applying the restrictions under the other provisions of Chapter 3 of Part 4 of that Act) may be given to the individual for that loss, less
 - (b) the amount (if any) of the pre-announcement loss.
- (4) “The pre-announcement loss” is determined as follows.
- (5) Calculate the profits or losses of the straddling basis period, but without regard to capital allowances and qualifying film expenditure (within the meaning of section 103D of ITA 2007).
- (6) If that calculation produces a loss and the individual has made a contribution of an amount as capital to the firm or LLP in question—
- (a) on or before the start of the straddling basis period, or
 - (b) after the start of that period but before 2nd March 2007,
- apportion the loss produced by that calculation to the part of the straddling basis period which begins with the relevant date and falls before 2nd March 2007 in proportion to the number of days in that part.
- (7) Calculate so much of the loss of the straddling basis period as derives from relevant pre-announcement capital expenditure.
- (8) The pre-announcement loss is the sum of—
- (a) the amount of the loss apportioned under sub-paragraph (6) (if any), and
 - (b) so much of the loss of the straddling basis period (if any) as derives from relevant pre-announcement capital expenditure.
- (9) In sub-paragraph (6) “the relevant date” means—
- (a) in any case where a contribution was made on or before the start of the straddling basis period, the start of that period, and
 - (b) in any other case, the date on which the contribution was made or, if more than one contribution was made, the date on which the first contribution was made.
- (10) For the purposes of this paragraph the amount of the loss of the straddling basis period that derives from relevant pre-announcement capital expenditure is determined on a just and reasonable basis.
- (11) In this paragraph “relevant pre-announcement capital expenditure” means—
- (a) any capital allowance in respect of expenditure paid before 2nd March 2007, and
 - (b) any capital allowance in respect of expenditure paid on or after that date pursuant to an unconditional obligation in a contract made before that date, and for this purpose “an unconditional obligation” means an obligation which may not be varied or extinguished by the exercise of any right conferred on the firm or LLP in question (whether or not under the contract).
- (12) For the purposes of this paragraph—
- (a) an amount of money is not to be taken as contributed as capital to a firm or LLP until the money is paid to the firm or LLP, and
 - (b) a right or other asset is not to be taken as contributed as capital to a firm or LLP until it is transferred to the firm or LLP.

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- (13) Section 62 of ITA 2007 (partners: losses of a tax year etc) applies for the purposes of this paragraph as it applies for the purposes of Chapter 3 of Part 4 of that Act.

*Disregard of contributions made for purpose of
accessing sideways relief and capital gains relief*

- 2 (1) In ITA 2007, before section 114 insert—

“Exclusion of amounts in calculating contribution to the firm or LLP

Exclusion of amounts contributed to access relief

113A(1) An amount which an individual contributes to a firm as capital is to be excluded in calculating the individual's contribution to the firm for the purposes of section 104 or 110 if the contribution was made for a prohibited purpose (but see subsection (4)).

(2) If—

- (a) an individual carries on a trade as a member of an LLP at a time in a tax year,
- (b) the individual does not devote a significant amount of time to the trade in the relevant period for that year, and
- (c) the individual contributes an amount to the LLP as capital at any time in that year,

that amount is to be excluded in calculating the individual's contribution to the LLP for the purposes of section 107 if the contribution was made for a prohibited purpose (but see subsection (4)).

(3) For the purposes of this section a contribution is made for a prohibited purpose if the main purpose, or one of the main purposes, of making the contribution is the obtaining of a reduction in tax liability by means of sideways relief or capital gains relief.

(4) This section has no effect in relation to the application of any restriction under section 104, 107 or 110 to any loss that derives wholly from qualifying film expenditure.”

(2) The amendment made by sub-paragraph (1) has effect in relation to any amount contributed to a firm or LLP as capital on or after 2nd March 2007 (but see sub-paragraph (4)).

(3) For this purpose—

- (a) an amount of money is not to be taken as contributed as capital to a firm or LLP until the money is paid to the firm or LLP, and
- (b) a right or other asset is not to be taken as contributed as capital to a firm or LLP until it is transferred to the firm or LLP.

(4) The amendment made by sub-paragraph (1) has no effect in relation to any amount contributed by an individual on or after 2nd March 2007 if—

- (a) the amount is contributed pursuant to an obligation in a contract made before that date, and

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- (b) the obligation may not be varied or extinguished by the exercise of any right conferred on the individual (whether or not under the contract).

Provision corresponding to paragraphs 1 and 2 for tax year 2006-07

- 3 (1) ICTA has effect, in relation to any loss made by an individual in a trade in the tax year 2006-07 the basis period for which ends on or after 2nd March 2007, as if provision corresponding to section 103C of ITA 2007 were included in Chapter 7 of Part 4 of ICTA.
- (2) Sub-paragraphs (3) to (13) of paragraph 1 apply for the purposes of sub-paragraph (1) above.
- (3) ICTA has effect for the tax year 2006-07 as if provision corresponding to section 113A of ITA 2007 were included in that Chapter.
- (4) Sub-paragraphs (2) to (4) of paragraph 2 apply for the purposes of sub-paragraph (3) above.
- (5) The provisions which are treated by this paragraph as included in Chapter 7 of Part 4 of ICTA have effect as if—
- (a) any reference in section 103C of ITA 2007 to sideways relief were to relief under section 380 or 381 of ICTA,
 - (b) any reference in section 103C of ITA 2007 to capital gains relief in relation to a loss were to the treatment of the loss as an allowable loss by virtue of section 72 of FA 1991,
 - (c) any reference in section 103C or 113A of ITA 2007 to any provision of Chapter 3 of Part 4 of ITA 2007 were to the corresponding provision of Chapter 7 of Part 4 of ICTA, and
 - (d) any reference in section 113A of ITA 2007 to a contribution to a firm or an LLP were to a contribution to a trade carried on by the firm or LLP,
- and references in paragraphs 1(3) to (13) and 2(2) to (4) to any of those expressions are to be read accordingly.

Consequential amendments

- 4 ITA 2007 is amended as follows.
- 5 In section 32 (liability not dealt with in the calculation), for “section 112(5)” substitute “ section 103B(5) ”.
- 6 In section 82(a) (exploitation of films), for “sections 115 and 116” substitute “ section 115 ”.
- 7 (1) Section 102 (overview of Chapter 3 of Part 4) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), for “104 to 106 and section 114)” substitute “ 103A, 103C to 105, 113A and 114) ”,
 - (b) in paragraph (b), for “107 to 109 and section 114)” substitute “ 103C, 103D, 107 to 109, 113A and 114) ”, and
 - (c) in paragraph (c), for “in an early tax year (see sections 110 to 114)” substitute “ (see sections 103B to 103D and 110 to 114) ”.
- (3) In subsection (2), for “sections 115 and 116” substitute “ section 115 ”.

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8 After section 103 insert—

“103A Meaning of “limited partner”

- (1) In this Chapter “limited partner” means an individual who carries on a trade—
 - (a) as a limited partner in a limited partnership registered under the Limited Partnerships Act 1907,
 - (b) as a partner in a firm who in substance acts as a limited partner in relation to the trade (see subsection (2)), or
 - (c) while the condition mentioned in subsection (3) is met in relation to the individual.
- (2) An individual in substance acts as a limited partner in relation to a trade if the individual—
 - (a) is not entitled to take part in the management of the trade, and
 - (b) is entitled to have any liabilities (or those beyond a certain limit) for debts or obligations incurred for the purposes of the trade met or reimbursed by some other person.
- (3) The condition referred to in subsection (1)(c) is that—
 - (a) the individual carries on the trade jointly with other persons,
 - (b) under the law of a territory outside the United Kingdom, the individual is not entitled to take part in the management of the trade, and
 - (c) under that law, the individual is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade.
- (4) In the case of an individual who is a limited partner as a result of subsection (1)(c), references in this Chapter to the individual's firm are to be read as references to the relationship between the individual and the other persons mentioned in subsection (3)(a).

103B Meaning of “non-active partner” etc

- (1) For the purposes of this Chapter an individual carries on a trade as a non-active partner during a tax year if the individual—
 - (a) carries on the trade as a partner in a firm at a time during the year,
 - (b) does not carry on the trade as a limited partner at any time during the year, and
 - (c) does not devote a significant amount of time to the trade in the relevant period for the year.
- (2) For the purposes of this Chapter an individual devotes a significant amount of time to a trade in the relevant period for a tax year if, in that period, the individual spends an average of at least 10 hours a week personally engaged in activities carried on for the purposes of the trade.
- (3) For this purpose “the relevant period” means the basis period for the tax year (unless the basis period is shorter than 6 months).
- (4) If the basis period for the tax year is shorter than 6 months, “the relevant period” means—

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- (a) the period of 6 months beginning with the date on which the individual first started to carry on the trade (if the basis period begins with that date), or
- (b) the period of 6 months ending with the date on which the individual permanently ceased to carry on the trade (if the basis period ends with that date).

(5) If—

- (a) any relief is given on the assumption that the individual devoted or will devote a significant amount of time to the trade in the relevant period for a tax year, but
 - (b) the individual in fact failed or fails to do so,
- the relief is withdrawn by the making of an assessment to income tax under this section.”

9 After section 103C (as inserted by paragraph 1(1) above) insert—

“103D Meaning of “qualifying film expenditure”

(1) For the purposes of this Chapter expenditure is qualifying film expenditure if—

- (a) it is deducted under a relevant film provision for the purposes of the calculation required by section 849 of ITTOIA 2005 (calculation of firm's profits or losses), or
- (b) it is incidental expenditure which (although not deducted under a relevant film provision) is incurred in connection with the production of a film, or the acquisition of the original master version of a film, in relation to which expenditure is so deducted.

(2) Expenditure is incidental if it is on management, administration or obtaining finance.

(3) The extent to which expenditure is within subsection (1)(b) is determined on a just and reasonable basis.

(4) For the purposes of this Chapter the amount of any loss that derives from qualifying film expenditure is determined on a just and reasonable basis.

(5) In this section—

“the acquisition of the original master version of a film” has the same meaning as in Chapter 9 of Part 2 of ITTOIA 2005 (see sections 130 and 132 of that Act),

“film” is to be read in accordance with paragraph 1 of Schedule 1 to the Films Act 1985, and

“a relevant film provision” means any one of sections 137 to 140 of ITTOIA 2005 (relief for certified master versions of films).”

10 In—

- (a) section 104(5) (restriction on reliefs for limited partners),
- (b) section 107(2) (restriction on reliefs for members of LLPs),
- (c) section 110(1)(a) (restriction on reliefs for non-active partners in early tax years), and
- (d) section 115(1)(d) (restrictions on relief for firms exploiting films),

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- omit “(see section 112)”.
- 11 In—
- (a) section 105(11) (meaning of “contribution to the firm” for purposes of section 104),
 - (b) section 108(9) (meaning of “contribution to the LLP” for purposes of section 107), and
 - (c) section 111(12) (meaning of “contribution to the firm” for purposes of section 110),
- for the words from “any regulations” to “excluded” substitute “ section 113A and any regulations made under section 114 (exclusion of amounts ”.
- 12 Omit section 106 (meaning of “limited partner”).
- 13 In section 112 (meaning of “non-active partner” and “early tax year” etc)—
- (a) omit subsections (1) to (5), and
 - (b) the heading accordingly becomes “ Meaning of “early tax year” ”.
- 14 Omit the italic-cross heading before section 114 (regulations: exclusion of amounts in calculating contribution to the firm or LLP) and for the heading of that section substitute “ Power to exclude other amounts ”.
- 15 In section 115 (restrictions on reliefs for firms exploiting films), for subsection (4) substitute—
- “(4) The restrictions under this section do not apply to so much of the loss (if any) as derives from qualifying film expenditure.”
- 16 Omit section 116 (exclusion from restrictions under section 115: certain film expenditure).
- 17 In section 792 (partners claiming excess sideways or capital gains relief)—
- (a) in subsection (7), for “106” substitute “ 103A ”, and
 - (b) in subsection (8), for “106(3)(a)” substitute “ 103A(3)(a) ”.
- 18 In section 809 (individuals in partnership claiming relief for licence-related trading losses: other definitions)—
- (a) in subsection (1), for “112” substitute “ 103B ”, and
 - (b) in subsection (2), for “112(1)(b)” substitute “ 103B(1)(b) ”.
- 19 In paragraph 148(3)(b) of Schedule 2 (transitionals and savings: tax avoidance)—
- (a) for “106” substitute “ 103A ”, and
 - (b) for “112” substitute “ 103B ”.
- 20 In Schedule 4 (index of defined expressions)—
- (a) in the definition of “limited partner”, for “106” substitute “ 103A ”,
 - (b) in the definition of “non-active partner”, for “112” substitute “ 103B ”, and
 - (c) after the definition of “qualifying donation (in Chapter 2 of Part 8)” insert—
-
- “qualifying film expenditure (in section 103D”.
Chapter 3 of Part 4)
-
- 21 The amendments made by paragraphs 5 to 20 are deemed always to have had effect.

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