
Status: Point in time view as at 21/07/2009.

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SCHEDULES

SCHEDULE 2

TRANSITIONALS AND SAVINGS

PART 5

LOSSES (EXCEPT LOSSES ON DISPOSAL OF SHARES)

General: carry forward loss reliefs

- 18 (1) The repeal by this Act of the superseded carry forward provisions does not alter the effect of those provisions so far as they determine—
- (a) whether, and
 - (b) to what extent,
- relief for any loss made (or treated as made) in a tax year before the tax year 2007-08 is to be given for the tax year 2007-08 or any subsequent tax year.
- (2) But any relief for the loss (or any part of the loss) which is given for the tax year 2007-08 or any subsequent tax year is to be given in accordance with the relevant provisions of Part 4 of this Act.
- (3) In this paragraph “the superseded carry forward provisions” means—
- (a) sections 379A and 379B of ICTA (carry forward of loss in Schedule A business or overseas property business),
 - (b) sections 385, 387, 390 and 391 (so far as applying to section 385) of ICTA (carry forward of loss in trade, profession or vocation),
 - (c) section 392(2)(b) and (5) of ICTA (carry forward of miscellaneous loss), and
 - (d) any provision inserting or amending, or affecting the application of, any of the above provisions.

Trade loss relief against general income

- 19 (1) This paragraph applies for the purposes of section 64 if the loss is made in the tax year 2007-08.
- (2) Relief for the loss can be given for the tax year 2006-07.
- (3) Sub-paragraphs (4) and (5) apply if relief for the loss is claimed for the tax year 2006-07.
- (4) If relief is to be given, the relief is given in the way it would have been given had it been given under section 380(1)(b) of ICTA ignoring this Act (and section 65 of this Act is to be read accordingly).
- (5) Section 72 of FA 1991 applies as if the relief had been claimed under section 380(1)(b) of ICTA.

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- 20 (1) This paragraph applies if—
- (a) a person makes a loss (“the 2006-07 loss”) in a trade in the tax year 2006-07,
 - (b) relief under section 380 of ICTA is not available for the 2006-07 loss because of section 384(1) of that Act,
 - (c) the person makes a loss (“the 2007-08 loss”) in the trade in the tax year 2007-08,
 - (d) (apart from this paragraph) relief under section 64 of this Act is not available for the 2007-08 loss because of section 66 of this Act,
 - (e) the basis period for the tax year 2007-08 overlaps with the tax year 2006-07, and
 - (f) ignoring this Act, section 384(1) of ICTA would not have prevented relief under section 380 of that Act being available for the 2007-08 loss.
- (2) Section 66 of this Act is not to apply in relation to the 2007-08 loss.
- (3) This paragraph applies to professions and vocations as it applies to trades.

Early trade losses relief

- 21 (1) This paragraph applies for the purposes of section 72 if the loss is made in the tax year 2007-08, 2008-09 or 2009-10.
- (2) Relief for the loss can be given for one or more of the tax years 2004-05, 2005-06 and 2006-07 (depending on the tax year in which the loss is made).
- (3) If relief for the loss is to be given for one or more of those tax years, the relief is given in the way in which it would have been given had it been given under section 381 of ICTA ignoring this Act (and section 73 of this Act is to be read accordingly).
- 22 (1) This paragraph applies if—
- (a) a person makes a loss (“the 2006-07 loss”) in a trade in the tax year 2006-07,
 - (b) relief under section 381 of ICTA is not available for the 2006-07 loss because of subsection (4) of that section,
 - (c) the person makes a loss (“the 2007-08 loss”) in the trade in the tax year 2007-08,
 - (d) (apart from this paragraph) relief under section 72 of this Act is not available for the 2007-08 loss because of section 74(1) of this Act,
 - (e) the basis period for the tax year 2007-08 overlaps with the tax year 2006-07, and
 - (f) ignoring this Act, subsection (4) of section 381 of ICTA would not have prevented relief under that section being available for the 2007-08 loss.
- (2) Section 74(1) of this Act is not to apply in relation to the 2007-08 loss.
- (3) This paragraph applies to professions and vocations as it applies to trades.

Sideways relief: trade leasing allowances given to individuals

- 23 (1) This paragraph applies if—
- (a) a person makes a loss (“the 2006-07 loss”) in a trade in the tax year 2006-07,
 - (b) relief under section 380 or 381 of ICTA is not available for the 2006-07 loss (or for part of it) because of section 384(6) of that Act,

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- (c) the person makes a loss (“the 2007-08 loss”) in the trade in the tax year 2007-08,
- (d) (apart from this paragraph) relief under section 64 or 72 of this Act is not available for the 2007-08 loss (or for part of it) because of section 75 of this Act,
- (e) the basis period for the tax year 2007-08 overlaps with the tax year 2006-07, and
- (f) ignoring this Act, section 384(6) of ICTA would not have prevented relief under section 380 or 381 of that Act being available for the 2007-08 loss (or for the part).

(2) Section 75 of this Act is not to apply in relation to the 2007-08 loss (or to the part).

Sideways relief: dealings in commodity futures

24 Section 81 does not apply if the arrangements mentioned in that section were made wholly before 6 April 1976.

Terminal trade loss relief

- 25 (1) This paragraph applies for the purposes of section 89 if the final tax year is the tax year 2007-08, 2008-09 or 2009-10.
- (2) Relief for the terminal losses in question can be given for one or more of the tax years 2004-05, 2005-06 and 2006-07 (depending on which tax year is the final tax year).
- (3) If relief for the terminal losses is to be given for one or more of those tax years, the relief is given in the way in which it would have been given had it been given under section 388 of ICTA ignoring this Act (and section 91 of this Act is to be read accordingly).

Post-cessation trade loss relief and post-cessation property relief

26 The events covered by section 98(5) (including as applied by section 125(6)(b)) include events—

- (a) which occur before the tax year 2007-08, and
- (b) in relation to which no claim is made under section 109A of ICTA.

Reliefs for limited partners not to exceed contribution to the firm

- 27 (1) The relief covered by section 104(5) includes—
- (a) relief given for a loss as a result of section 380 or 381 of ICTA,
 - (b) any amount that, ignoring this Act, would have been included in the individual's aggregate amount in relation to the trade for the purposes of section 117 of ICTA as a result of paragraph 22(3) of Schedule 2 to CAA 2001, and
 - (c) the treatment of a loss as an allowable loss by virtue of section 72 of FA 1991.
- (2) The income covered by section 104(6) includes amounts treated as received as a result of the application of section 74 of FA 2005.

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Reliefs for members of LLPs not to exceed contribution to the LLP

- 28 (1) The relief covered by section 107(6) includes—
- (a) relief given for a loss as a result of section 380 or 381 of ICTA, and
 - (b) the treatment of a loss as an allowable loss by virtue of section 72 of FA 1991.
- (2) The income covered by section 107(7) includes amounts treated as received as a result of the application of section 74 of FA 2005.

Members of LLPs: carry-forward of losses

- 29 (1) The amounts of loss covered by section 109(1)(b) include amounts of loss which, as a result of section 117 of ICTA (as applied by section 118ZB of that Act), are not—
- (a) relieved under section 380 or 381 of ICTA, or
 - (b) treated as an allowable loss by virtue of section 72 of FA 1991.
- (2) In section 109(3)—
- (a) references to section 109 include references to section 118ZD of ICTA,
 - (b) references to sideways relief include references to relief under section 380 or 381 of ICTA, and
 - (c) references to capital gains relief include references to the treatment of a loss as an allowable loss by virtue of section 72 of FA 1991.

Reliefs for non-active partners not to exceed contribution to the firm

- 30 (1) The relief covered by section 110(5) includes—
- (a) relief given for a loss as a result of section 380 or 381 of ICTA, and
 - (b) the treatment of a loss as an allowable loss by virtue of section 72 of FA 1991.
- (2) Sub-paragraph (1) is subject to paragraph 33.
- (3) The income covered by section 110(6) includes amounts treated as received as a result of the application of section 74 of FA 2005.

Non-active partners: carry-forward of losses

- 31 (1) The amounts of loss covered by section 113(1)(b) include amounts of loss which, as a result of section 118ZE of ICTA, are not—
- (a) relieved under section 380 or 381 of ICTA, or
 - (b) treated as an allowable loss by virtue of section 72 of FA 1991.
- (2) In section 113(4)—
- (a) references to section 113 include references to section 118ZI of ICTA,
 - (b) references to sideways relief include references to relief under section 380 or 381 of ICTA, and
 - (c) references to capital gains relief include references to the treatment of a loss as an allowable loss by virtue of section 72 of FA 1991.
- (3) In section 113(8) the reference to section 109 includes a reference to section 118ZD of ICTA.

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Restriction on reliefs for non-active partners: pre-10 February 2004 events

- 32 In Chapter 3 of Part 4 any reference to an early tax year in relation to an individual carrying on a trade does not include a tax year the basis period for which ends before 10 February 2004.
- 33 (1) Sub-paragraphs (2) to (9) set out relief which is not covered by section 110(5) (relevant relief).
- (2) Relief is not covered if it is given for a loss made in a trade in a tax year the basis period for which ends before 10 February 2004.
- (3) Sub-paragraphs (4) to (9) apply if the individual carried on a trade in a tax year the basis period for which includes 10 February 2004.
- (4) Relief given for a loss made in the trade is not covered so far as the loss derives from an allowance or deduction within sub-paragraph (5).
- (5) An allowance or deduction is within this sub-paragraph if it is—
- (a) a capital allowance in respect of expenditure incurred before 10 February 2004 which is treated as an expense of the trade, or
 - (b) a deduction in respect of expenditure incurred before 10 February 2004 under section 42(1) of F(No.2)A 1992 or any of sections 138 to 140 of ITTOIA 2005.
- (6) For the purposes of sub-paragraph (4) the amount of a loss that derives from an allowance or deduction within sub-paragraph (5) is determined on a just and reasonable basis.
- (7) Relief given for a loss made in the trade is not covered so far as it is given for the pre-announcement allowance in relation to the trade.
- (8) “Pre-announcement allowance” is to be read in accordance with section 118ZJ(4) and (6) to (8) of ICTA.
- (9) For that purpose, references to the first restricted year are to be read as references to the tax year mentioned in sub-paragraph (3).
- If sub-paragraph (3) covers more than one tax year, the first restricted year is the first of the tax years covered.
- (10) Sub-paragraph (11) applies for the purpose of applying the restriction in section 110(4) (relevant relief not to exceed contribution to the firm) in relation to an individual if before 10 February 2004 the individual contributed an amount of capital to the firm.
- (11) That amount of capital is reduced (but not below nil)—
- (a) by the amount of relief (if any) to be left out of account for the purposes of section 110(5) as a result of paragraph 32 or this paragraph (ignoring sub-paragraph (4)), and
 - (b) by any pre-announcement allowance so far as—
 - (i) relief has not been given for the allowance, and
 - (ii) had relief been given for the allowance, the relief would have to be left out of account for the purposes of section 110(5)(b) as mentioned in paragraph (a).

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Regulations under section 114

- 34 (1) The provision which may be made in regulations under section 114 does not include provision affecting the amount of relief that may be given for a loss made in a trade that is not a post-1 December 2004 loss (as determined in accordance with section 795).
- (2) The repeal by this Act of sections 118ZN and 118ZO of ICTA (or any provision inserting or amending, or affecting the application of, those sections) does not affect the power of the Commissioners for Her Majesty's Revenue and Customs to make regulations under section 118ZN having effect before the tax year 2007-08.

Application of existing regulations under sections 114 and 802

- 35 (1) After the commencement of sections 114 and 802, the Partnerships (Restrictions on Contributions to a Trade) Regulations 2005 (S.I. 2005/2017) have effect as if made under those sections.
- (2) The Regulations so have effect subject to the following modifications.
- (3) They have effect as if in regulation 2—
- (a) in the definition of “bank” for “section 840A of ICTA” there were substituted “section 991 of ITA 2007”,
- (b) for the definition of “contribution to the relevant trade” there were substituted—
- ““capital contribution”—
- (a) for the purposes of section 114 of ITA 2007, means the contribution to the firm for the purposes of section 104 or 110 of that Act or the contribution to the LLP for the purposes of section 107 of that Act, and
- (b) for the purposes of section 802 of ITA 2007, has the meaning given by section 801(3) of that Act;”, and
- (c) for the definition of “ICTA” there were substituted—
- ““ITA 2007” means the Income Tax Act 2007;”.
- (4) They have effect as if in regulations 3 to 6 for “contribution to the relevant trade”, wherever occurring, there were substituted “capital contribution”.
- (5) They have effect as if—
- (a) in regulation 3(a) for “section 118ZN of ICTA” there were substituted “section 114(1)(a) and (b) of ITA 2007”, and
- (b) in regulation 3(b) for the words from “section 119” to the end there were substituted “section 797 of ITA 2007 as mentioned in section 802(2) of that Act”.
- (6) They have effect as if in regulation 6(c) for “the trade” there were substituted “a trade”.

Losses in an employment or office

- 36 (1) This paragraph applies for the purposes of section 128 if the loss is made in the tax year 2007-08.

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- (2) Relief for the loss can be given for the tax year 2006-07.
- (3) Sub-paragraphs (4) and (5) apply if relief for the loss is claimed for the tax year 2006-07.
- (4) If relief is to be given, the relief is given in the way it would have been given had it been given under section 380(1)(b) of ICTA ignoring this Act (and section 129 of this Act is to be read accordingly).
- (5) Section 72 of FA 1991 applies as if the relief had been claimed under section 380(1)(b) of ICTA.

Loss relief against miscellaneous income: Case VI losses

- 37
- (1) This paragraph applies if a person makes a loss in any transaction—
 - (a) which was of such a nature that, if any profits had arisen from it, the person would have been liable to income tax under Case VI of Schedule D for any tax year before the tax year 2005-06, and
 - (b) which did not fall within section 34, 35 or 36 of ICTA.
 - (2) So far as relief for the loss has not previously been given, the loss (or the unused part of it) is to be treated as a loss available for deduction in accordance with section 153.

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