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# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART IV

#### PROVISIONS RELATING TO THE SCHEDULE D CHARGE

### CHAPTER VII

#### PARTNERSHIPS AND SUCCESSIONS

##### **Modifications etc. (not altering text)**

**C1** See also—1970(M) s.9—*partnership returns*. 1990(C), ss.65, 78—*capital allowances for machinery, etc., used for trade carried on in partnership*.

#### *General*

##### **[<sup>F1</sup>111 Treatment of partnerships.**

- (1) Where a trade or profession is carried on by persons in partnership, the partnership shall not, unless the contrary intention appears, be treated for the purposes of the Tax Acts as an entity which is separate and distinct from those persons.
- (2) So long as a trade or profession is carried on by persons in partnership, and any of those persons is chargeable to income tax, the [<sup>F2</sup>profits] or losses arising from the trade or profession (“the actual trade or profession”) shall be computed for the purposes of income tax in like manner as if—
  - (a) the partnership were an individual; and
  - (b) that individual were an individual resident in the United Kingdom.
- (3) A person’s share in the [<sup>F2</sup>profits] or losses arising from the actual trade or profession which for any period are computed in accordance with subsection (2) above shall be determined according to the interests of the partners during that period.

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- (4) Where a person's share in any [<sup>F2</sup>profits] or losses is determined in accordance with subsection (3) above, sections 60 to 63A shall apply as if—
- (a) that share of the [<sup>F2</sup>profits] or losses derived from a trade or profession carried on by him alone;
  - (b) that trade or profession (“the deemed trade or profession”) had been set up and commenced by him at the time when he became a partner or, where the actual trade or profession was previously carried on by him alone, the time when the actual trade or profession was set up and commenced;
  - (c) as regards each year of assessment, any accounting date or accounting change of the actual trade or profession were also an accounting date or accounting change of the deemed trade or profession;
  - (d) subsection (2) of section 62 applied in relation to any accounting change of the deemed trade or profession if, and only if, on the assumption that the partnership were an individual, that subsection would apply in relation to the corresponding accounting change of the actual trade or profession; and
  - (e) the deemed trade or profession were permanently discontinued by him at the time when he ceases to be a partner or, where the actual trade or profession is subsequently carried on by him alone, the time when the actual trade or profession is permanently discontinued.
- (5) Where section 62(2) does not apply in relation to any accounting change of the deemed trade or profession which is made or treated as made in the year of assessment next following or next but one following the commencement year, sections 60(3)(a) and 61(2)(a) shall apply as if the old date in that year were the accounting date.
- (6) For the purpose of determining whether, on the assumption that the partnership were an individual, section 62(2) would apply in relation to an accounting change of the actual trade or profession—
- (a) a notice may be given under subsection (3) of section 62A; and
  - (b) an appeal may be brought under subsection (6) of that section,
- by such one of the partners as may be nominated by them for the purposes of this subsection.
- (7) Where—
- (a) subsections (2) and (3) above apply in relation to the [<sup>F2</sup>profits] or losses of a trade or profession carried on by persons in partnership; and
  - (b) other income or other relievable losses accrue to those persons by virtue of their being partners,
- those subsections shall apply as if references to the [<sup>F2</sup>profits] or losses arising from the trade or profession included references to that other income or those other relievable losses.
- (8) Where a person's share in any untaxed income from one or more sources, or in any relievable losses, is determined in accordance with subsection (3) as applied by subsection (7) above, sections 60 to 63A shall apply as if—
- (a) that share of that income or of those losses were [<sup>F2</sup>profits] or losses of a trade or profession carried on by that person alone;
  - (b) that trade or profession (“the second deemed trade or profession”) had been set up and commenced by him at the time when he became a partner;

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- (c) paragraphs (c) and (d) of subsection (4) and subsection (5) above applied in relation to the second deemed trade or profession as they apply in relation to the other deemed trade or profession;
  - (d) the second deemed trade or profession were permanently discontinued by him at the time when he ceases to be a partner; and
  - (e) each source of the income were treated as continuing until the second deemed trade or profession is treated as permanently discontinued.
- (9) Where—
- (a) the basis period for any year of assessment is given by section 62(2)(b) in the case of a person's second deemed trade or profession, or such a trade or profession is treated as permanently discontinued in any year of assessment; and
  - (b) the amount falling to be deducted under subsection (1) or (3) of section 63A exceeds that person's share, as determined in accordance with subsection (3) as applied by subsection (7) above, in any untaxed income,  
the amount of the excess shall be deducted in computing that person's income for that year.
- (10) Subsections (1) to (3) above apply in relation to persons in partnership by whom a business which is not a trade or profession is carried on as they apply in relation to persons in partnership by whom a trade or profession is carried on.
- (11) In subsections (2) and (3) above as applied by subsection (10) above, references to the [F<sup>2</sup>profits] or losses arising from the trade or profession shall have effect as references to any income or relievable losses arising from the business.
- (12) In this section—
- “accounting change” and “the old date” have the meanings given by section 62(1);
  - “accounting date” has the meaning given by section 60(5);
  - “the commencement year”, in relation to the deemed trade or profession or the second deemed trade or profession, means the year of assessment in which that trade or profession is deemed to have been set up and commenced;
  - “income” means any income (whether or not chargeable under Schedule D);
  - “untaxed income” means income which is not—
    - (a) income from which income tax has been deducted;
    - (b) income from or on which income tax is treated as having been deducted or paid; or
    - (c) income chargeable under Schedule F.
- (13) In this section—
- (a) any reference to sections 60 to 63A includes a reference to those sections as applied in relation to losses by section 382(3) and (4) and section 385(1); and
  - (b) any reference to a person becoming or ceasing to be a partner is a reference to his beginning or, as the case may be, ceasing to carry on the actual trade or profession in partnership with other persons.]

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### Textual Amendments

- F1** S. 111 substituted (with effect in accordance with s. 215(4)(5) of the 1994 amending Act) by [Finance Act 1994 \(c. 9\), s. 215\(1\)](#) (as amended (retrospectively) by [Finance Act 1995 c. 4, s. 117\(1\)\(a\)\(2\)\(4\)](#)) (with Sch. 20)
- F2** Words in s. 111(2)(3)(4)(7)(8)(a)(11) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\)\(a\)\(b\)](#), Sch. 7 para. 1

### Modifications etc. (not altering text)

- C2** S. 111 modified (1.5.1995) by [Finance Act 1995 c. 4, s. 125\(1\)](#)
- C3** S. 111 excluded (subsection (1) excepted) (with application in accordance with s. 44 of the excluding act) by [Finance Act 1998 \(c. 36\), s. 46\(1\)\(2\), Sch. 6 para. 6\(6\)](#)
- C4** S. 111 excluded (subsection (1) excepted) (with effect in accordance with s. 64 and Sch. 22 paras. 16-18 of the excluding Act) by [Finance Act 2002 \(c. 23\), Sch. 22 para. 13\(6\)](#)

## 112 Partnerships controlled abroad.

[<sup>F3M1</sup>(1) So long as a trade, profession or business is carried on by persons in partnership and any of those persons is not resident in the United Kingdom, section 111 shall have effect for the purposes of income tax in relation to the partner who is not so resident as if—

- (a) the reference in subsection (2)(b) to an individual resident in the United Kingdom were a reference to an individual who is not so resident; and
- (b) in subsection (4)(a), after “carried on” there were inserted “in the United Kingdom”.

(1A) Where—

- (a) any persons are carrying on a trade, profession or business in partnership,
- (b) the trade, profession or business is carried on wholly or partly outside the United Kingdom,
- (c) the control and management of the trade, profession or business is situated outside the United Kingdom, and
- (d) any of the partners who is an individual resident in the United Kingdom satisfies the Board that he is not domiciled in the United Kingdom or that, being a Commonwealth citizen or a citizen of the Republic of Ireland, he is not ordinarily resident in the United Kingdom,

section 111 shall have effect in accordance with subsection (1) above as if that partner were not resident in the United Kingdom and, in addition (as respects that partner as an individual who is in fact resident in the United Kingdom), his interest as a partner, so far as it entitles him to a share of any [<sup>F4</sup>profits] arising from the carrying on of the trade, profession or business otherwise than within the United Kingdom, shall be treated for the purposes of Case V of Schedule D as if it were a possession outside the United Kingdom.

(1B) Where any persons are carrying on a trade or profession in partnership, the trade or profession is carried on wholly or partly outside the United Kingdom and an individual who is one of the partners changes his residence (within the meaning of section 110A), it shall be assumed for income tax purposes—

- (a) that that individual ceased to be a partner at the time of the change and became one again immediately afterwards; and

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- (b) in relation to matters arising after the change, that the time when he became a partner is the time immediately after the change;
- but nothing in this subsection shall, in relation to that individual, prevent any portion of a loss sustained before the change from being carried forward under section 385 and set against [<sup>F4</sup>profits] arising or accruing after the change.]
- (4) In any case where—
- (a) a person resident in the United Kingdom (in this subsection and subsection (5) below referred to as “the resident partner”) is a member of a partnership which resides [<sup>F5</sup>outside the United Kingdom or which carries on any trade, profession or business the control and management of which is situated outside the United Kingdom]; and
- (b) by virtue of any arrangements falling within section 788 any of the income or capital gains of the partnership is relieved from tax in the United Kingdom, the arrangements referred to in paragraph (b) above shall not affect any liability to tax in respect of the resident partner’s share of any income or capital gains of the partnership.
- (5) If, in a case where subsection (4) above applies, the resident partner’s share of the income of the partnership consists of or includes a share in a qualifying distribution made by a company resident in the United Kingdom, then, notwithstanding anything in the arrangements, the resident partner (and not the partnership as a whole) shall be regarded as entitled to that share of the tax credit in respect of the distribution which corresponds to his share of the distribution.
- (6) Section 115(5) has effect as respects the application of [<sup>F6</sup>subsections (4) and (5) above] where the partners in a partnership include a company.

#### Textual Amendments

- F3** S. 112(1)-(1B) substituted for s. 112(1)-(3) (with effect in accordance with s. 125(1) of the amending Act) by Finance Act 1995 (c. 4), s. 125(2)
- F4** Words in s. 112(1A)(1B) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a)(b), Sch. 7 para. 1
- F5** Words in s. 112(4)(a) substituted (with effect in accordance with s. 125(1) of the amending Act) by Finance Act 1995 (c. 4), s. 125(3)(a)
- F6** Words in s. 112(6) substituted (with effect in accordance with s. 125(1) of the amending Act) by Finance Act 1995 (c. 4), s. 125(3)(b)

#### Modifications etc. (not altering text)

- C5** S. 112(4)-(6) modified (with retrospective effect) by Finance Act 2008 (c. 9), s. 58(5)(6)(b)

#### Marginal Citations

- M1** 1970 s.153; 1987 (No.2) s.62

### 113 Effect, for income tax, of change in ownership of trade, profession or vocation.

- <sup>M2</sup>(1) Where there is a change in the persons engaged in carrying on any trade, profession or vocation chargeable under Case I or II of Schedule D, then, subject to the provisions of this section <sup>F7</sup>. . . , the amount of the [<sup>F8</sup>profits] of the trade, profession or vocation on which income tax is chargeable for any year of assessment and the persons on whom it is chargeable, shall be determined as if the trade, profession or vocation had been

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permanently discontinued, and a new one set up and commenced, at the date of the change.

[<sup>F9</sup>(2) Where—

- (a) there is such a change as is mentioned in subsection (1) above, and
- (b) a person engaged in carrying on the trade, profession or vocation immediately before the change continues to be so engaged immediately after it,

subsection (1) above shall not apply to treat the trade, profession or vocation as discontinued or a new one as set up and commenced.]

(3) <sup>F10</sup> .....

(4) <sup>F10</sup> .....

(5) <sup>F10</sup> .....

(6) In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate <sup>F10</sup> . . . .

(7) For the purposes of this section, a change in the personal representatives of any person, or in the trustees of any trust, shall not be treated as a change in the persons engaged in carrying on any trade, profession or vocation carried on by those personal representatives or trustees as such.

#### Textual Amendments

- F7** Words in s. 113(1) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), Sch. 26 Pt. 5(24), Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)
- F8** Words in s. 113(1) substituted (31.7.1998) by Finance Act 1998 (c. 6), s. 46(3)(a)(b), Sch. 7 para. 1
- F9** S. 113(2) substituted (with effect in accordance with s. 215(4)(5) of the amending Act) by Finance Act 1994 (c. 9), s. 216(1) (with Sch. 20) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)
- F10** S. 113(3)-(5) and words in s. 113(6) repealed (with effect in accordance with ss. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(2), Sch. 26 Pt. 5(24), Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)

#### Modifications etc. (not altering text)

- C6** See 1990(C) s.134(4)—*treatment of succession for purposes of capital allowances for dredging.*

#### Marginal Citations

- M2** Source—1970 s.154; 1971 s.17(1)

### *Partnerships involving companies*

#### 114 Special rules for computing profits and losses.

- (1) <sup>M3</sup>So long as a trade [<sup>F11</sup>profession or business] is carried on by persons in partnership, and any of those persons is a company, the profits and losses (including terminal losses) of the trade [<sup>F11</sup>profession or business] shall be computed for the purposes of corporation tax in like manner, and by reference to the like accounting periods, as if

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the partnership were a company [F12]and, subject to section 115(4), as if that company were resident in the United Kingdom], and without regard to any change in the persons carrying on the trade [F11]profession or business], except that—

- (a) references to distributions shall not apply; and
- (b) subject to section 116(5), no deduction or addition shall be made for charges on income, or for capital allowances and charges, nor in any accounting period for losses incurred in any other period nor for any expenditure to which section 401(1) applies; and
- (c) a change in the persons engaged in carrying on the trade [F11]profession or business] shall be treated as the transfer of the trade [F11]profession or business] to a different company if there continues to be a company so engaged after the change, but not a company that was so engaged before the change.

- (2) M4 A company’s share in the profits or loss of any accounting period of the partnership, or in any matter excluded from the computation by subsection (1)(b) above, shall be determined according to the interests of the partners during that period, and corporation tax shall be chargeable as if that share derived from a trade [F11]profession or business] carried on by the company alone in its corresponding accounting period or periods; and the company shall be assessed and charged to tax for its corresponding accounting period or periods accordingly.

In this subsection “corresponding accounting period or periods” means the accounting period or periods of the company comprising or together comprising the accounting period of the partnership, and any necessary apportionment shall be made between corresponding accounting periods if more than one.

- (3) F13 .....
- (4) F14 .....

**Textual Amendments**

- F11** Words in s. 114(1)-(3) inserted (with effect in accordance with s. 215(4)(5) of the amending Act) by Finance Act 1994 (c. 9), s. 215(2) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)
- F12** Words in s. 114(1) inserted (with effect in accordance with s. 125(1) of the amending Act) by Finance Act 1995 (c. 4), s. 125(4)
- F13** S. 114(3) repealed (with effect in accordance with Finance Act 1994 (c. 9), s. 218(1)) by Finance Act 1995 (c. 4), Sch. 29 Pt. 8(15), Note 1
- F14** S. 114(4) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 215(3)(a), Sch. 26 Pt. 5(24), Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)

**Modifications etc. (not altering text)**

- C7** S. 114(1) modified (3.5.1994) by Finance Act 1994 (c. 9), s. 172(4)-(6)

**Marginal Citations**

- M3** Source—1970 s.155(1); 1973 s.31(5); 1980 s.39(3)
- M4** Source—1970 s.155(2); 1972 s.107(2)

**115 Provisions supplementary to section 114.**

- (1) F15 .....

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(2) <sup>F15</sup> .....

(3) <sup>F15</sup> .....

[<sup>F16</sup>(4) So long as a trade, profession or business is carried on by persons in partnership and any of those persons is a company which is not resident in the United Kingdom, section 114 shall have effect in relation to that company as if—

- (a) the reference in subsection (1) to a company resident in the United Kingdom were a reference to a company that is not so resident; and
- (b) in subsection (2), after “carried on” there were inserted “in the United Kingdom through a branch or agency”.

(5) Where the partners in a partnership include a company, subsections (4) and (5) of section 112 shall apply for the purposes of corporation tax as well as for the purposes of income tax, and section 114 shall have effect accordingly.]

[<sup>F17</sup>(5C) For the purposes of subsections (5) to (5B) the members of a partnership include any company which is entitled to a share of income or capital gains of the partnership.]

(6) <sup>F15</sup> .....

(7) For the purposes of this section and section 114 “profits” shall not be taken as including chargeable gains.

#### Textual Amendments

**F15** S. 115(1)-(3)(6) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by [Finance Act 1994 \(c. 9\)](#), s. 215(3)(b), [Sch. 26 Pt. 5\(24\)](#), Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by [1995 c. 4, s. 125\(1\)](#)) (with Sch. 20)

**F16** S. 115(4)(5) substituted (with effect in accordance with s. 125(1) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), s. 125(5)

**F17** S. 115(5C) inserted (retrospectively) by [Finance Act 2008 \(c. 9\)](#), s. 58(1)(4)

#### Modifications etc. (not altering text)

**C8** S. 115(5) modified (with retrospective effect) by [Finance Act 2008 \(c. 9\)](#), s. 58(5)(6)(b)

## 116 Arrangements for transferring relief.

<sup>M5</sup>(1) The provisions of subsection (2) below shall apply in relation to a company (“the partner company”) which is a member of a partnership carrying on a trade if arrangements are in existence (whether as part of the terms of the partnership or otherwise) whereby—

- (a) in respect of the whole or any part of the value of, or of any portion of, the partner company’s share in the profits or loss of any accounting period of the partnership, another member of the partnership or any person connected with another member of the partnership receives any payment or acquires or enjoys, directly or indirectly, any other benefit in money’s worth; or
- (b) in respect of the whole or any part of the cost of, or of any portion of, the partner company’s share in the loss of any accounting period of the partnership, the partner company or any person connected with that company receives any payment or acquires or enjoys, directly or indirectly, any other benefit in money’s worth, other than a payment in respect of group relief to



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the partner company by a company which is a member of the same group as the partner company for the purposes of group relief.

- (2) In any case where the provisions of this subsection apply in relation to the partner company—
- (a) the company’s share in the loss of the relevant accounting period of the partnership and its share in any charges on income, within the meaning of section 338, paid by the partnership in that accounting period shall not be available for set-off for the purposes of corporation tax except against its share in the profits of the trade carried on by the partnership; and
  - (b) except in accordance with paragraph (a) above, no trading losses shall be available for set-off for the purposes of corporation tax against the company’s share in the profits of the relevant accounting period of the partnership; and
  - (c) except in accordance with paragraphs (a) and (b) above, no amount which, apart from this subsection, would be available for relief against profits shall be available for set-off for the purposes of corporation tax against so much of the company’s total profits as consists of its share in the profits of the relevant accounting period of the partnership; and
  - (d) <sup>F18</sup> .....
- (3) In subsection (2) above “relevant accounting period of the partnership” means any accounting period of the partnership in which any such arrangements as are specified in subsection (1) above are in existence or to which any such arrangements apply.
- (4) If a company is a member of a partnership and tax in respect of any profits of the partnership is chargeable under Case VI of Schedule D, this section shall apply in relation to the company’s share in the profits or loss of the partnership as if—
- (a) the profits or loss to which the company’s share is attributable were the profits of, or the loss incurred in, a trade carried on by the partnership; and
  - <sup>F19</sup>(b) any allowance to be given effect under Part 2 of the Capital Allowances Act in respect of a special leasing of plant or machinery were an allowance to be given effect in calculating the profits of that trade.]
- (5) For the purposes of this section, subsection (2) of section 114 shall have effect for determining a company’s share in the profits or loss of any accounting period of a partnership as if, in subsection (1)(b) of that section, the words “ or for capital allowances and charges ” were omitted.
- (6) In this section “arrangements” means arrangements of any kind whether in writing or not.
- (7) Section 839 shall apply for the purposes of this section.

**Textual Amendments**

**F18** S. 116(2)(d) repealed (with effect in accordance with Sch. 3 para. 10(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 10(2), Sch. 27 Pt. 3(2), Note

**F19** S. 116(4)(b) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 21

**Marginal Citations**

**M5** Source—1973 s.31(1)-(5), (9), 32(6)

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### *Limited partners*

#### 117 Restriction on relief: individuals.

(1) <sup>M6</sup>An amount which may be given <sup>F20</sup> . . . to an individual under section 353, 380 or 381 below <sup>F21</sup> . . . —

(a) in respect of a loss sustained by him in a trade, or of interest paid by him in connection with the carrying on of a trade, in a relevant year of assessment; <sup>F22</sup> . . .

(b) <sup>F22</sup> . . . . .

may be given <sup>F20</sup> . . . otherwise than against income consisting of [<sup>F23</sup>profits] arising from the trade only to the extent that the amount given <sup>F20</sup> . . . or (as the case may be) the aggregate amount does not exceed the relevant sum.

(2) <sup>M7</sup>In this section—

“limited partner” means—

(i) a person who is carrying on a trade as a limited partner in a limited partnership registered under the <sup>M8</sup>Limited Partnerships Act 1907;

(ii) a person who is carrying on a trade as a general partner in a partnership, who is not entitled to take part in the management of the trade and who is entitled to have his liabilities, or his liabilities beyond a certain limit, for debts or obligations incurred for the purposes of the trade discharged or reimbursed by some other person; or

(iii) a person who carries on a trade jointly with others and who, under the law of any territory outside the United Kingdom, is not entitled to take part in the management of the trade and is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade;

“relevant year of assessment” means a year of assessment at any time during which the individual carried on the trade as a limited partner;

“the aggregate amount” means the aggregate of any amounts given <sup>F24</sup> . . . to him at any time under section 353, 380 or 381 below <sup>F25</sup> . . . —

(a) in respect of a loss sustained by him in the trade, or of interest paid by him in connection with carrying it on, in a relevant year of assessment; <sup>F26</sup> . . .

(b) <sup>F26</sup> . . . . .

“the relevant sum” means the amount of his contribution to the trade as at the appropriate time; and

“the appropriate time” is the end of the relevant year of assessment in which the loss is sustained or the interest paid or for which the allowance falls to be made (except that where he ceased to carry on the trade during that year of assessment it is the time when he so ceased).

(3) <sup>M9</sup>A person’s contribution to a trade at any time is the aggregate of—

(a) the amount which he has contributed to it as capital and has not, directly or indirectly, drawn out or received back (other than anything which he is or may be entitled so to draw out or receive back at any time when he carries on the trade as a limited partner or which he is or may be entitled to require another person to reimburse to him), and

(b) the amount of any [<sup>F23</sup>profits] of the trade to which he is entitled but which he has not received in money or money’s worth.

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- (4) <sup>M10</sup>To the extent that an allowance is taken into account in computing [<sup>F23</sup>profits] or losses in the year of the loss by virtue of section 383(1) it shall, for the purposes of this section, be treated as falling to be made in the year of the loss (and not the year of assessment for which the year of loss is the basis year).

#### Textual Amendments

- F20** Words in s. 117(1) repealed (with effect in accordance with s. 579 of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 22\(1\)\(a\), Sch. 4](#)
- F21** Words in s. 117(1) repealed (with effect in accordance with s. 579 of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 22\(1\)\(b\), Sch. 4](#)
- F22** S. 117(1)(b) and preceding word repealed (with effect in accordance with s. 579 of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 22\(1\)\(c\), Sch. 4](#)
- F23** Words in s. 117(1)(3)(b)(4) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\)\(a\)\(b\) Sch. 7 para. 1](#)
- F24** Words in s. 117(2) repealed (with effect in accordance with s. 579 of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 22\(2\)\(a\), Sch. 4 \(with Sch. 2 para. 22\(3\)\)](#)
- F25** Words in s. 117(2) repealed (with effect in accordance with s. 579 of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 22\(2\)\(b\), Sch. 4 \(with Sch. 2 para. 22\(3\)\)](#)
- F26** S. 117(2)(b) and preceding word repealed (with effect in accordance with s. 579 of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 22\(2\)\(c\), Sch. 4 \(with Sch. 2 para. 22\(3\)\)](#)

#### Marginal Citations

- M6** Source—1985 Sch.12 2(1)-(3).
- M7** 1985 Sch.12 1, 2(4)
- M8** 1907 c. 24.
- M9** Source—1985 Sch.12 4
- M10** Source—1985 Sch.12 2(5)

### 118 Restriction on relief: companies.

- (1) <sup>M11</sup>An amount which may be given <sup>F27</sup> . . . under section 338, [<sup>F28</sup>393A(1)] or [<sup>F29</sup>403] below <sup>F30</sup> . . . —
- (a) in respect of a loss incurred by a company in a trade, or of charges paid by a company in connection with the carrying on of a trade, in a relevant accounting period; <sup>F31</sup> . . .
- (b) <sup>F31</sup> . . . . .
- may be given <sup>F27</sup> . . . to that company (“the partner company”) otherwise than against [<sup>F32</sup>profits] arising from the trade, or to another company, only to the extent that the amount given <sup>F27</sup> . . . or (as the case may be) the aggregate amount does not exceed the relevant sum.
- (2) <sup>M12</sup>In this section—
- “relevant accounting period” means an accounting period of the partner company at any time during which it carried on the trade as a limited partner (within the meaning of section 117(2));
- “the aggregate amount” means the aggregate of any amounts given <sup>F33</sup> . . . to the partner company or another company at any time under section 338, [<sup>F34</sup>393A(1)] or [<sup>F29</sup>403] below <sup>F35</sup> . . . —

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- (a) in respect of a loss incurred by the partner company in the trade, or of charges paid by it in connection with carrying it on, in any relevant accounting period; <sup>F36</sup> . . .
- (b) <sup>F36</sup> . . . . .

“the relevant sum” means the amount of the partner company’s contribution (within the meaning of section 117(3)) to the trade as at the appropriate time; and

“the appropriate time” is the end of the relevant accounting period in which the loss is incurred or the charges paid or for which the allowance falls to be made (except that where the partner company ceased to carry on the trade during that accounting period it is the time when it so ceased).

#### Textual Amendments

- F27** Words in s. 118(1) repealed (with effect in accordance with s. 579 of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 23\(1\)\(a\), Sch. 4](#)
- F28** Words in s. 118(1) substituted by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 73\(3\)-\(5\), Sch. 15 para. 4\(a\)](#)(in relation to losses incurred in accounting periods ending on or after 1.4.1991)
- F29** Words in s. 118(1)(2) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 5 para. 35](#)
- F30** Words in s. 118(1) repealed (with effect in accordance with s. 579 of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 23\(1\)\(b\), Sch. 4](#)
- F31** S. 118(1)(b) and preceding word repealed (with effect in accordance with s. 579 of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 23\(1\)\(c\), Sch. 4](#)
- F32** Words in s. 118(1) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\)\(a\)\(b\), Sch. 7 para. 1](#)
- F33** Words in s. 118(2) repealed (with effect in accordance with s. 579 of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 23\(2\)\(a\) {Sch. 4} \(with Sch. 2 para. 23\(3\)\)](#)
- F34** Words in s. 118(2) substituted by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 73\(3\)-\(5\), Sch. 15 para. 4\(b\)](#)(in relation to losses incurred in accounting periods ending on or after 1.4.1991)
- F35** Words in s. 118(2)(b) repealed (with effect in accordance with s. 579 of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 23\(2\)\(b\), Sch. 4 \(with Sch. 2 para. 23\(3\)\)](#)
- F36** S. 118(2)(b) and preceding word repealed (with effect in accordance with s. 579 of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 23\(2\)\(c\), Sch. 4 \(with Sch. 2 para. 23\(3\)\)](#)

#### Marginal Citations

- M11** Source—1985 Sch.12 3(1)-(3)
- M12** Source—1985 Sch.12 3(4), 1, 4

VALID FROM 06/04/2001

*<sup>F37</sup>Limited liability partnerships*

#### Textual Amendments

- F37** Ss. 118ZA-118ZD and preceding cross-heading inserted (6.4.2001) by [Limited Liability Partnerships Act 2000 \(c. 12\), ss. 10\(1\), 19\(1\); S.I. 2000/3316, art. 2](#)

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#### **118ZA Treatment of limited liability partnerships.**

For the purposes of the Tax Acts, a trade, profession or business carried on by a limited liability partnership with a view to profit shall be treated as carried on in partnership by its members (and not by the limited liability partnership as such); and, accordingly, the property of the limited liability partnership shall be treated for those purposes as partnership property.

#### **118ZB Restriction on relief.**

Sections 117 and 118 have effect in relation to a member of a limited liability partnership as in relation to a limited partner, but subject to sections 118ZC and 118ZD.

#### **118ZC Member's contribution to trade.**

- (1) Subsection (3) of section 117 does not have effect in relation to a member of a limited liability partnership.
- (2) But, for the purposes of that section and section 118, such a member's contribution to a trade at any time ("the relevant time") is the greater of—
  - (a) the amount subscribed by him, and
  - (b) the amount of his liability on a winding up.
- (3) The amount subscribed by a member of a limited liability partnership is the amount which he has contributed to the limited liability partnership as capital, less so much of that amount (if any) as—
  - (a) he has previously, directly or indirectly, drawn out or received back,
  - (b) he so draws out or receives back during the period of five years beginning with the relevant time,
  - (c) he is or may be entitled so to draw out or receive back at any time when he is a member of the limited liability partnership, or
  - (d) he is or may be entitled to require another person to reimburse to him.
- (4) The amount of the liability of a member of a limited liability partnership on a winding up is the amount which—
  - (a) he is liable to contribute to the assets of the limited liability partnership in the event of its being wound up, and
  - (b) he remains liable so to contribute for the period of at least five years beginning with the relevant time (or until it is wound up, if that happens before the end of that period).

#### **118ZD Carry forward of unrelieved losses.**

- (1) Where amounts relating to a trade carried on by a member of a limited liability partnership are, in any one or more chargeable periods, prevented from being given or allowed by section 117 or 118 as it applies otherwise than by virtue of this section (his "total unrelieved loss"), subsection (2) applies in each subsequent chargeable period in which—
  - (a) he carries on the trade as a member of the limited liability partnership, and
  - (b) any of his total unrelieved loss remains outstanding.

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- (2) Sections 380, 381, 393A(1) and 403 (and sections 117 and 118 as they apply in relation to those sections) shall have effect in the subsequent chargeable period as if—
- (a) any loss sustained or incurred by the member in the trade in that chargeable period were increased by an amount equal to so much of his total unrelieved loss as remains outstanding in that period, or
  - (b) (if no loss is so sustained or incurred) a loss of that amount were so sustained or incurred.
- (3) To ascertain whether any (and, if so, how much) of a member's total unrelieved loss remains outstanding in the subsequent chargeable period, deduct from the amount of his total unrelieved loss the aggregate of—
- (a) any relief given under any provision of the Tax Acts (otherwise than as a result of subsection (2)) in respect of his total unrelieved loss in that or any previous chargeable period, and
  - (b) any amount given or allowed in respect of his total unrelieved loss as a result of subsection (2) in any previous chargeable period (or which would have been so given or allowed had a claim been made).]

VALID FROM 22/07/2004

*<sup>F38</sup>Non-active general partners and non-active members of limited liability partnerships*

#### **Textual Amendments**

**F38** Ss. 118ZE-118ZK and preceding cross-heading inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), s. 124(1)

#### **118ZE Restriction on relief for non-active partners**

- (1) This section applies to an amount which may be given to an individual under section 353, 380 or 381 in respect of a loss sustained by him in a trade, or interest paid by him in connection with the carrying on of a trade, in a qualifying year of assessment.
- (2) The amount may be given otherwise than against income consisting of profits arising from the trade only to the extent that—
  - (a) the amount given, or
  - (b) (as the case may be) the aggregate amount,
 does not exceed the amount of the individual's contribution to the trade as at the end of that year of assessment.
- (3) A “qualifying year of assessment” means a year of assessment—
  - (a) at any time during which the individual carried on the trade as a general partner or a member of a limited liability partnership,
  - (b) in which he did not devote a significant amount of time to the trade (within the meaning given by section 118ZH),

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- (c) which is the year of assessment in which the trade is first carried on by him or any of the next three years of assessment,
  - (d) the basis period for which ends on or after 10 February 2004, and
  - (e) which is not a year of assessment at any time during which he carried on the trade as a limited partner.
- (4) In this section—
- (a) a “general partner” means any partner who is not a limited partner, and
  - (b) “limited partner” has the meaning given by section 117(2),
- and in paragraph (a) “any partner” does not include a member of a limited liability partnership.
- (5) In this section and sections 118ZF to 118ZK, “basis period” means (subject to subsection (6)) the basis period given by sections 60 to 63 as applied by section 111(4) and (5).
- (6) The basis period for a year of assessment to which section 61(1) applies is to be taken for the purposes of this section and sections 118ZF to 118ZK to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment.
- (7) In subsection (1) “a trade” does not include underwriting business within the meaning of section 184 of the Finance Act 1993 (Lloyd’s underwriters).
- (8) This section has effect subject to sections 118ZJ and 118ZK (transitional provision).

#### **118ZF Meaning of “the aggregate amount”**

- (1) In section 118ZE(2) “the aggregate amount” means (subject to section 118ZK) the aggregate of any amounts given to the individual at any time under section 353, 380 or 381 in respect of a loss sustained by him in the trade, or of interest paid by him in connection with carrying it on, in a year of assessment falling within subsection (2).
- (2) A year of assessment falls within this subsection if—
- (a) it is a qualifying year of assessment within the meaning of section 118ZE, or
  - (b) it is a year of assessment—
    - (i) at any time during which the individual carried on the trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2), and
    - (ii) the basis period for which ends on or after 10 February 2004.

#### **118ZG “The individual’s contribution to the trade”**

- (1) For the purposes of section 118ZE(2), the individual’s contribution to the trade at any time (“the relevant time”) is the sum of—
- (a) the amount subscribed by him,
  - (b) the amount of any profits of the trade to which he is entitled but which he has not received in money or money’s worth, and
  - (c) where there is a winding up, the amount that he has contributed to the assets of the partnership on its winding up.
- (2) For the purposes of subsection (1)(a) the “amount subscribed” by an individual is the sum of—

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- (a) the total amount (if any) contributed by him to the trade as capital on or after 10 February 2004, reduced (but not below nil) by his withdrawn capital, and
  - (b) the total amount (if any) contributed by him to the trade as capital before 10 February 2004, reduced (but not below nil) by—
    - (i) the pre-announcement allowance (within the meaning given by section 118ZJ),
    - (ii) the aggregate of any amounts given to him at any time under section 353, 380 or 381 in respect of a loss sustained by him in a trade, or of interest paid by him in connection with carrying it on, in a year of assessment falling within subsection (3), and
    - (iii) the amount (if any) of his withdrawn capital that has not been used in the reduction to nil required by paragraph (a).
- (3) A year of assessment falls within this subsection if—
- (a) it does not fall within section 118ZE(3)(d), and
  - (b) it is either—
    - (i) a year of assessment that would be a qualifying year of assessment but for section 118ZE(3)(d), or
    - (ii) a year of assessment at any time during which the individual carried on the trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2).
- (4) The individual’s “withdrawn capital” is so much, if any, of the amount that he has contributed to the trade as capital as—
- (a) he has previously, directly or indirectly, drawn out or received back,
  - (b) he so draws out or receives back during the period of five years beginning with the relevant time,
  - (c) he is or may be entitled so to draw out or receive back at any time when he carries on the trade as a member of the partnership, or
  - (d) he is or may be entitled to require another person to reimburse to him.
- (5) An amount drawn out or received back that would otherwise fall within subsection (4)(a) or (b), or an entitlement that would otherwise fall within subsection (4)(c), shall be treated as not so falling if the amount drawn out or received back is chargeable to income tax as profits of the trade.
- (6) In relation to a member of a limited liability partnership, references in this section to an amount contributed to the trade as capital shall be read as references to an amount contributed to the limited liability partnership as capital.

#### **118ZH “A significant amount of time”**

- (1) For the purposes of section 118ZE the individual shall be treated as having “devoted a significant amount of time to the trade” in a given year of assessment if, for the whole of the relevant period, he spent an average of at least ten hours a week personally engaged in activities carried on for the purposes of the trade.
- (2) “The relevant period” means the basis period for the year of assessment in question, except that—
  - (a) if the basis period is less than six months and begins with the date when the individual first carried on the trade, “the relevant period” means six months beginning with that date, and



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- (b) if the basis period is less than six months and ends with the date when the individual ceased to carry on the trade, “the relevant period” means six months ending with that date.
- (3) Where relief has been given on the assumption that an individual will meet the condition in subsection (1) and he fails to do so, the relief shall be withdrawn by the making of an assessment under Case VI of Schedule D.

#### **118ZI Carry forward of unrelieved losses of non-active partners**

- (1) Where amounts relating to a trade carried on by an individual in a qualifying year of assessment are prevented from being given by section 118ZE as it applies otherwise than by virtue of this section or section 118ZD, subsection (3) of this section applies as respects each subsequent year of assessment in which—
  - (a) the individual carries on the trade in partnership or makes a contribution to the assets of the partnership on its winding up, and
  - (b) any of his total restricted loss remains outstanding.
- (2) His “total restricted loss” means the total of any amounts, relating to any one or more qualifying years of assessment, that have been prevented from being given by section 118ZE as it applies otherwise than by virtue of this section or section 118ZD.
- (3) Sections 380 and 381 (and section 118ZE as it applies in relation to those sections) shall have effect in the subsequent year of assessment as if—
  - (a) any loss sustained by the individual in the trade in that year of assessment were increased by an amount equal to so much of his total restricted loss as remains outstanding in that year of assessment, or
  - (b) (if no loss is sustained) a loss of that amount were so sustained.
- (4) To ascertain whether any (and, if so, how much) of the individual’s total restricted loss remains outstanding in the subsequent year of assessment, deduct from the amount of his total restricted loss the aggregate of—
  - (a) any relief given (otherwise than as a result of subsection (3)) under any provision of the Tax Acts, in that or any previous year of assessment, in respect of any of his total restricted loss, and
  - (b) any amount which was given as a result of subsection (3), in any previous year of assessment, in respect of any of his total restricted loss (or which would have been so given had a claim been made).
- (5) For the purposes of sections 118ZE and 118ZF (and of sections 117 and 118ZB(2))—
  - (a) any additional amount of loss deemed by subsection (3)(a) to have been sustained in the subsequent year of assessment, and
  - (b) any loss deemed by subsection (3)(b) to have been so sustained,shall be treated as having been sustained in a qualifying year of assessment.
- (6) Subsection (7) applies where the subsequent year of assessment—
  - (a) is one in which the trade is not carried on in partnership by the individual, but
  - (b) is one in which he contributes to the assets of the partnership on its winding up.
- (7) Where this subsection applies, nothing in section 381(4) or 384 (restrictions on right of set-off) applies to—

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(a) an additional amount of loss deemed by subsection (3)(a) to have been sustained in the subsequent year of assessment, or

(b) a loss deemed by subsection (3)(b) to have been so sustained.

(8) In this section “qualifying year of assessment” has the meaning given by section 118ZE.

### **18ZJ Commencement: the first restricted year**

(1) This section applies where the year of assessment referred to in section 118ZE(1) is a year of assessment the basis period for which includes 10 February 2004 (“the first restricted year”).

(2) If this section would (but for this subsection) apply in relation to more than one year of assessment as respects the same individual and the same trade, it applies only in relation to the first of those years of assessment and “the first restricted year” means that year of assessment.

(3) Where this section applies, section 118ZE(2) shall have effect as if for the words from “only to the extent that” there were substituted only to the extent that the total amount given under section 353, 380 and 381 in respect of losses sustained by him in the trade, and interest paid by him in connection with carrying it on, in that year of assessment does not exceed the sum of—

(a) the pre-announcement allowance, and

(b) the post-announcement allowance.

(4) The “pre-announcement allowance” is the sum of—

(a) the loss (if any) sustained by the individual in the trade in the period beginning with the start of the basis period for the first restricted year and ending with 9 February 2004, and

(b) any interest paid by him in that period in connection with the carrying on of the trade.

(5) The “post-announcement allowance” is so much of—

(a) the loss (if any) sustained by the individual in the trade in the period beginning with 10 February 2004 and ending with the end of the basis period for the first restricted year, and

(b) any interest paid by him in that period in connection with the carrying on of the trade,

as does not exceed the individual’s contribution to the trade as at the end of the year of assessment, computed in accordance with section 118ZG.

(6) In each of subsections (4)(a) and (5)(a), the reference to the loss sustained by the individual in the trade in the period there mentioned is a reference to his share of any losses of the partnership arising for that period from the trade, and—

(a) subject to subsection (7), the losses of the partnership arising for that period from the trade shall be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 111(2), and

(b) subject to subsection (8), the individual’s share of the losses shall be determined according to his interest in the partnership during that period.

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- (7) In computing for the purposes of subsection (6) the losses of the partnership arising for the period mentioned in subsection (4)(a) or (5)(a)—
- (a) any capital allowance treated as an expense of the trade for the purposes of the computation required by section 111(2) for the first restricted year is to be regarded as belonging to the period mentioned in subsection (4)(a) unless the capital expenditure to which it relates is incurred after 9 February 2004, and
  - (b) any amount deducted under section 42(1) of the Finance (No. 2) Act 1992 for the purposes of that computation is to be regarded as belonging to the period mentioned in subsection (4)(a) unless the expenditure to which it relates is incurred after 9 February 2004.
- (8) If the individual had an interest in the partnership at any time that falls within—
- (a) the basis period for the first restricted year, and
  - (b) the period beginning with 10 February 2004 and ending with 25 March 2004,
- he shall be deemed for the purposes of subsection (6)(b) to have had the interest on 9 February 2004.

#### **118ZK Transitional provision for years after the first restricted year**

- (1) This section applies where the year of assessment referred to in section 118ZE(1) is a year of assessment later than the first restricted year.
- (2) Section 118ZE(2) shall not apply to any part of the amount mentioned in section 118ZE(1) that—
- (a) derives from a capital allowance treated as an expense of the trade where the capital expenditure to which the allowance relates was incurred before 10 February 2004, or
  - (b) derives from a deduction made under section 42(1) of the Finance (No. 2) Act 1992 where the expenditure to which the deduction relates was incurred before 10 February 2004.
- (3) In computing for the purposes of section 118ZE(2)(a) or (b) the amount given or (as the case may be) the aggregate amount, any part of an amount given that falls within subsection (2)(a) or (b) of this section shall be left out of account.
- (4) In computing the aggregate amount for the purposes of section 118ZE(2), any amount given in respect of the pre-announcement allowance shall be left out of account.
- (5) For the purposes of subsections (2) and (3) the part of an amount that derives from a capital allowance or a deduction made under section 42(1) of the Finance (No. 2) Act 1992 shall be determined on such basis as is just and reasonable.
- (6) In this section “the first restricted year” and “the pre-announcement allowance” have the meanings given by section 118ZJ.]

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VALID FROM 22/07/2004

### *f<sup>F39</sup> Partnerships exploiting films*

#### Textual Amendments

**F39** Ss. 118ZL, 118ZM and preceding cross-heading inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 125

#### **118ZL Partnerships exploiting films**

- (1) Where (apart from this section) an amount may be given to an individual under section 380 or 381 in respect of a loss (“the loss in question”) sustained by him—
  - (a) in a trade consisting of or including the exploitation of films, and
  - (b) in an affected year of assessment,
 none of that amount may be given otherwise than against income consisting of profits arising from the trade; but this is subject to subsection (4).
- (2) An “affected year of assessment” means a year of assessment at any time during which the individual carried on the trade in partnership which is also—
  - (a) the year of assessment in which the trade is first carried on by him or any of the next three years of assessment,
  - (b) a year of assessment in which he did not devote a significant amount of time to the trade, and
  - (c) a year of assessment at any time during which there existed a relevant agreement guaranteeing him an amount of income.
- (3) For the purposes of subsection (2)(c)—
  - (a) “a relevant agreement” means—
    - (i) an agreement that was made with a view to the individual’s carrying on the trade or in the course of his carrying it on (including any agreement under which he is or may be required to contribute an amount to the trade), or
    - (ii) an agreement related to an agreement falling within subparagraph (i),
  - (b) an agreement “guarantees” the individual an amount of income if the agreement, or any part of it, is designed to secure the receipt by the individual of that amount (or at least that amount) of income, and
  - (c) it is immaterial when the amount of income would be received under the agreement.
- (4) If the loss in question derives to any extent from exempt expenditure, amounts that (apart from this section) may be given under section 380 or 381 in respect of the loss otherwise than against income consisting of profits arising from the trade may be so given to the extent that the total of the amounts so given does not exceed the exempt part of the loss.
- (5) The exempt part of the loss is so much of the loss in question as derives from exempt expenditure.

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- (6) Expenditure is exempt expenditure for the purposes of this section if it is—
- (a) expenditure incurred before 26 March 2004 in a case where this paragraph applies, or
  - (b) expenditure that, for the purposes of the computation required by section 111(2), was deducted under section 41 or 42 of the Finance (No. 2) Act 1992, or
  - (c) incidental expenditure that, although deductible apart from section 41 or 42 of that Act, was incurred in connection with the production or acquisition of a film in relation to which expenditure was deducted under either of those sections.
- (7) Subsection (6)(a) applies where the individual carried on the trade before 26 March 2004.

### **118ZM Partnerships exploiting films: supplementary**

- (1) In section 118ZL and this section any reference to a film is to be construed in accordance with paragraph 1 of Schedule 1 to the Films Act 1985.
- (2) Section 118ZH (meaning of “a significant amount of time” etc) applies for the purposes of section 118ZL as it applies for the purposes of section 118ZE.
- (3) For the purposes of section 118ZL(3) agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).
- (4) The reference in section 118ZL(6) to the acquisition of a film is a reference to the acquisition of the master negative or any master tape or master disc of the film; and this subsection is to be construed in accordance with section 43(1) and (2)(b) of the Finance (No. 2) Act 1992.
- (5) In section 118ZL(6) “incidental expenditure” means expenditure on management, administration or obtaining finance.
- (6) The part of the loss in question that derives from exempt expenditure shall be determined on such basis as is just and reasonable.
- (7) The extent to which any expenditure falls within section 118ZL(6)(c) shall be determined on such basis as is just and reasonable.
- (8) In any case where sections 380 and 381 have effect as mentioned in section 118ZD(2) or 118ZI(3) (cases where sections 380 and 381 have effect as if loss carried forward from earlier year sustained in subsequent year), section 118ZL also has effect as mentioned in section 118ZD(2) or (as the case may be) section 118ZI(3).]

#### **Modifications etc. (not altering text)**

- C9 S. 118ZM modified (retrospective to 2.12.2004) by [Finance Act 2005 \(c.7\), Sch. 3 paras. 17, 31\(3\)](#)

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VALID FROM 02/12/2004

### *F<sup>40</sup>Partners: meaning of “contribution to the trade”*

#### **Textual Amendments**

**F40** Ss. 118ZN, 118ZO and preceding cross-heading inserted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\), s. 73\(1\)\(5\)](#)

#### **118ZN Partners: meaning of “contribution to the trade”**

- (1) This section applies for the purposes of the application of any of the following provisions (“the relevant provisions”)—
  - (a) section 117 (restriction on relief for limited partners),
  - (b) that section as applied by section 118ZB in relation to a member of a limited liability partnership, and
  - (c) section 118ZE (restriction on relief for non-active partners),
 to an amount which may be given to an individual under section 380 or 381 in respect of a relevant loss sustained by him in a trade (“the relevant trade”).
- (2) The Board may by regulations provide that, for those purposes, any amount of a description specified in the regulations is to be excluded when computing the amount of the individual's contribution to the relevant trade at any time for the purposes of the relevant provisions.
- (3) Regulations under this section may—
  - (a) make provision having effect before the date on which the regulations are made,
  - (b) make such supplementary, incidental, consequential or transitional provision as appears to the Board to be necessary or expedient, and
  - (c) make different provision for different cases or different purposes.
- (4) The provision mentioned in subsection (3)(b) may include provision amending or repealing any provision of an Act passed before the passing of the Finance Act 2005.
- (5) No regulations may be made under this section unless a draft has been laid before and approved by a resolution of the House of Commons.

#### **118ZO Meaning of “relevant loss” in section 118ZN**

- (1) For the purposes of section 118ZN a “relevant loss” means—
  - (a) a loss sustained by the individual in the relevant trade in a year of assessment the basis period for which begins on or after 2nd December 2004, or
  - (b) a post-announcement loss sustained by the individual in the relevant trade in a straddling year of assessment.
- (2) For the purposes of this section—
 

“basis period” means the basis period given by Chapter 15 of Part 2 of ITTOIA 2005, as applied by section 853 of that Act, except that the basis period for a year of assessment to which section 199(1) of that Act applies

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is to be taken to be the period beginning with the date when the individual first carried on the relevant trade and ending with the end of the year of assessment;

“post-announcement loss”, in relation to a straddling year of assessment, means the loss (if any) sustained by the individual in the relevant trade in the period which—

- (a) begins with 2nd December 2004, and
- (b) ends with the end of the basis period for that straddling year of assessment;

“straddling year of assessment” means a year of assessment the basis period for which begins before and includes 2nd December 2004.

- (3) In the definition of “post-announcement loss” in subsection (2), the reference to the loss sustained by the individual in the relevant trade in a period is a reference to his share of any losses of the partnership arising for that period from the trade, and—
  - (a) the losses of the partnership arising for that period from the trade are to be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 849 of ITTOIA 2005, and
  - (b) the individual's share of the losses is to be determined according to his interest in the partnership during that period.
- (4) In subsection (3) the references to “the partnership” are to the partnership as a member of which the individual carries on the relevant trade.
- (5) In relation to years of assessment which are before the year 2005-06, this section has effect as if—
  - (a) in subsection (2) for the definition of “basis period” there were substituted—

““basis period” means the basis period given by sections 60 to 63 as applied by section 111(4) and (5), except that the basis period for a year of assessment to which section 61(1) applies is to be taken to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment;”, and
  - (b) the reference in subsection (3)(a) to section 849 of ITTOIA 2005 were a reference to section 111(2) of this Act.]

**Status:**

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