



# Finance Act 2004

## 2004 CHAPTER 12

### PART 3

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

### CHAPTER 9

#### AVOIDANCE INVOLVING LOSS RELIEF OR PARTNERSHIP

##### *Individuals benefited by film relief*

#### **119 Individuals benefited by film relief**

- (1) This section applies if—
  - (a) an individual has made a claim under section 380 or 381 of the Taxes Act 1988 in respect of a film-related loss sustained by him in a trade carried on solely or in partnership (“a relevant claim”);
  - (b) there is a disposal on or after 10 December 2003 of a right of the individual to profits arising from the trade (a “relevant disposal”); and
  - (c) an exit event occurs.
- (2) An “exit event” occurs when any of the following happens—
  - (a) on or after 10 December 2003 the individual receives any non-taxable consideration for a relevant disposal (whether or not he also receives any taxable consideration for it);
  - (b) on or after 10 December 2003 the losses claimed become greater than the individual’s capital contribution to the trade (whether because of a claim or a decrease in that capital contribution);
  - (c) on or after 10 December 2003 there is an increase in the amount (if any) by which the losses claimed exceed the individual’s capital contribution to the trade.

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- (3) A “chargeable event” occurs whenever—
- (a) the individual makes a relevant claim, if by the time the claim has been made a relevant disposal and an exit event have occurred; or
  - (b) a relevant disposal occurs, if by the time it has occurred an exit event has occurred and the individual has made a relevant claim; or
  - (c) an exit event occurs, if by the time it has occurred a relevant disposal has occurred and the individual has made a relevant claim.
- (4) Where a chargeable event occurs, the individual shall be treated as receiving at the time of that event annual profits or gains which are—
- (a) of an amount equal to the chargeable amount; and
  - (b) chargeable to income tax under Case VI of Schedule D.
- (5) The “chargeable amount” is an amount equal to the sum of the following (computed as at the time immediately after the chargeable event)—
- (a) so much of the total amount or value of any consideration received by the individual for the relevant disposal (or, if there has been more than one, for relevant disposals) as is non-taxable; and
  - (b) the amount (if any) by which the losses claimed exceed the individual’s capital contribution to the trade;
- but this is subject to section 122(2).
- (6) For the purposes of subsection (1)(a) it is immaterial when the claim is made.
- (7) It is immaterial whether the trade is still being carried on by the individual (or by anyone else) when a chargeable event occurs.

## **120 “Disposal of a right of the individual to profits arising from the trade”**

- (1) The reference in section 119(1)(b) to a disposal of a right of the individual to profits arising from the trade includes, in particular—
- (a) the disposal, giving up or loss by the individual, or by a partnership of which he is a member, of any right to any income (or any part of any income) where the right arises from the trade;
  - (b) any default in the payment of income to which the individual, or a partnership of which he is a member, has a right arising from the trade;
  - (c) a change in the individual’s entitlement to any profits arising from the trade such that his share of the profits is reduced or extinguished;
  - (d) a change in the individual’s entitlement to any losses arising from the trade such that he becomes entitled to a share, or a greater share, of the losses without becoming entitled to a corresponding share of profits;
  - (e) the disposal, giving up or loss of the individual’s interest in a partnership that carries on the trade, including the dissolution of the partnership.
- (2) It is immaterial for the purposes of subsection (1)(a) whether the right is disposed of alone or as part of a larger disposal (and the references here to disposal include giving up or loss).
- (3) If there is an agreement under which the individual is entitled—
- (a) to a particular share of any profits or losses arising from the trade in a period, and

- (b) to a different share of any profits or losses arising from the trade in a succeeding period (“the later period”),

his entitlement to the profits or losses arising in the later period shall be treated for the purposes of subsection (1)(c) and (d) as changing at the beginning of the later period; and in paragraphs (a) and (b) of this subsection a “share” of profits or losses includes a nil share.

## **121 “The losses claimed” and “the individual’s capital contribution to the trade”**

- (1) In section 119 “the losses claimed” means the total amount of any film-related losses sustained by the individual in the trade in any years of assessment, to the extent that they are losses—
- (a) in respect of which the individual has (at any time) claimed relief under section 380 or 381 of the Taxes Act 1988; or
  - (b) that he has (at any time) claimed as allowable losses under section 72 of the Finance Act 1991 (c. 31).
- (2) In section 119 “the individual’s capital contribution to the trade” means (subject to section 122(1)) the amount that the individual has contributed to the trade as capital, less so much of that amount (if any) as—
- (a) he has directly or indirectly drawn out or received back;
  - (b) he is entitled so to draw out or receive back;
  - (c) he has had directly or indirectly reimbursed to him by any person;
  - (d) he is entitled to require any person so to reimburse to him.
- (3) In relation to a member of a limited liability partnership, the reference in subsection (2) to the amount contributed to the trade as capital shall be read as a reference to the amount contributed to the limited liability partnership as capital.
- (4) In subsection (2) references to reimbursement include reimbursement effected by discharging or assuming all or part of a liability of the individual.
- (5) Subsection (4) shall not be taken to limit what is to be treated for the purposes of subsection (2) as the receipt back or reimbursement of an amount.
- (6) An amount drawn out or received back that would otherwise fall within subsection (2) (a), or an entitlement that would otherwise fall within subsection (2)(b), 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.

## **122 Computing the chargeable amount**

- (1) Where a chargeable event occurs, anything treated for the purposes of section 119(5) (a) as consideration received by the individual for a relevant disposal shall not also be deducted under section 121(2)(a) to (d) in computing the individual’s capital contribution to the trade for the purposes of section 119(5)(b).
- (2) Where successive chargeable events occur as respects the individual and the trade—
- (a) any consideration that is taken into account under section 119(5)(a) in computing the chargeable amount on an earlier chargeable event shall not be included again in computing the chargeable amount on a later chargeable event; and

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- (b) in computing the chargeable amount on a later chargeable event, any amount found under section 119(5)(b) shall be reduced (but not below nil) by the total of any amounts found under section 119(5)(b) (read with this paragraph) on earlier chargeable events.
- (3) In computing the chargeable amount in any case, any consideration given to the individual for a relevant disposal shall be treated as if it had been received free of any deduction actually made from it in consideration of any person's agreeing to or facilitating a relevant disposal or exit event.

### **123 “Film-related losses” and “non-taxable consideration”**

- (1) For the purposes of sections 119 and 121 a loss is a “film-related loss” if the computation of profits or losses that it results from is made in accordance with any of the following—
  - sections 40A to 40C of the Finance (No. 2) Act 1992 (c. 48);
  - sections 41 to 43 of that Act;
  - section 48 of the Finance (No. 2) Act 1997 (c. 58).
- (2) References in section 119 to “non-taxable” consideration are to consideration that (apart from section 119) is not chargeable to income tax; and the reference to “taxable” consideration is to be read accordingly.

*Individuals in partnership: restriction of relief*

### **124 Restriction of relief: non-active partners**

- (1) After section 118ZD of the Taxes Act 1988 there is inserted—

*“Non-active general partners and non-active members of limited liability partnerships*

#### **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),

- (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

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- (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—
- (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
  - (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

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- (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—
  - (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.
- (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

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- (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.”
- (2) In section 117(2) of the Taxes Act 1988, in paragraph (a) of the definition of “the aggregate amount”, after “a relevant year of assessment” there is inserted “or a qualifying year of assessment within the meaning of section 118ZE”.
- (3) Section 118ZB of the Taxes Act 1988 (restriction on relief: members of limited liability partnerships) is renumbered as subsection (1) of that section and after that provision there is added—
  - “(2) However, section 117 does not apply in relation to a loss sustained by an individual in a trade, or interest paid by him in connection with the carrying on of a trade, in a qualifying year of assessment within the meaning of section 118ZE.”
- (4) In section 118ZD of the Taxes Act 1988 (carry forward of unrelieved losses by members of limited liability partnerships), in subsection (2), for “and 118” there is substituted “, 118 and 118ZE”.

## **125 Partnerships exploiting films**

After section 118ZK of the Taxes Act 1988 (inserted by section 124) there is inserted—

*“Partnerships exploiting films*

### **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.
- (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.

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- (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).”

*Individuals in partnership: exit charge*

**126 Losses derived from exploiting licence: introductory**

- (1) Section 127 (charge to income tax) applies in relation to an individual who carries on or has carried on a trade in partnership if—
  - (a) there is a disposal on or after 10 February 2004 of—
    - (i) any licence acquired in carrying on the trade; or
    - (ii) any rights to income under any agreement that is related to or contains such a licence;
  - (b) the individual receives any non-taxable consideration for the disposal (“relevant consideration”); and
  - (c) he has made a claim under section 380 or 381 of the Taxes Act 1988 in respect of a licence-related loss sustained in the trade in a qualifying year (“a relevant claim”).
- (2) A “licence-related loss” means a loss that derives to any extent from expenditure incurred in the trade in exploiting the licence.
- (3) In relation to an individual who carried on the trade at any time before 26 March 2004, the reference in subsection (2) to expenditure does not include expenditure incurred before 10 February 2004.
- (4) A “qualifying year” 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; and
  - (b) a year of assessment in which he did not devote a significant amount of time to the trade (within the meaning given by section 130).
- (5) The reference in subsection (1)(b) to “non-taxable” consideration is to consideration—
- (a) that (apart from section 127) is not chargeable to income tax; and
  - (b) whose receipt is not an exit event for the purposes of section 119;
- and it is immaterial for the purposes of subsection (1)(b) whether the non-taxable consideration is the only consideration received by the individual for the disposal.
- (6) For the purposes of this section and sections 127 to 129, an agreement is related to a licence if they are entered into in pursuance of the same arrangement (regardless of the date on which either is entered into).
- (7) For the purposes of this section and sections 127 to 129 an agreement, or part of an agreement, that imposes an obligation to do a thing (rather than merely conferring authority to do it) is not for that reason to be regarded as not being a licence; and references to “exploiting” a licence shall be construed accordingly.

## **127 Charge to income tax**

- (1) A chargeable event occurs whenever, on or after 10 February 2004, an individual who carries on or has carried on a trade in partnership—
- (a) receives relevant consideration, if by the time he has received it he has (at any time) made a relevant claim; or
  - (b) makes a relevant claim, if by the time he has made it he has received relevant consideration.
- (2) Where, as respects an individual, one or more chargeable events occurs in a year of assessment in relation to a licence (“the licence in question”), so much of the total consideration as does not exceed the chargeable amount shall be treated as—
- (a) annual profits or gains of the individual of that year of assessment; and
  - (b) chargeable to income tax under Case VI of Schedule D.
- (3) The “total consideration” means the total amount or value of the relevant consideration that by the end of that year of assessment has been received by the individual (whether or not in that year of assessment).
- (4) To find the chargeable amount—
- (a) take so much of the total consideration as does not exceed the net-licence related loss; and
  - (b) reduce the amount found under paragraph (a) (but not below nil) by the amount of any relevant consideration that by reason of this section has been treated as annual profits or gains of previous years of assessment.
- (5) The net licence-related loss is the amount, computed as at the end of the year of assessment in which the chargeable event occurs, by which A exceeds B, where—
- A is the total of the individual’s claimed licence-related losses for qualifying years; and
  - B is the total of his licence-related profits for any years of assessment.

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- (6) In subsections (3) and (4), the references to relevant consideration are to relevant consideration received on or after 10 February 2004 and relating to the licence in question (and where relevant consideration is received for a disposal of rights to income under any agreement related to or containing a licence, the consideration shall be regarded for the purposes of this section as relating to the licence).
- (7) In this section “relevant consideration”, “relevant claim” and “qualifying year” have the meanings given by section 126.

## **128 Definitions for purposes of section 127**

- (1) This section applies for the purposes of section 127(5).
- (2) The individual’s “claimed licence-related loss” for a qualifying year is so much of the loss (if any) sustained by him in the trade in that year as derives from expenditure incurred in the trade in exploiting the licence in question and is loss—
- (a) in respect of which he has claimed relief under section 380 or 381 of the Taxes Act 1988; or
  - (b) that he has claimed as an allowable loss under section 72 of the Finance Act 1991 (c. 31).
- (3) For the purposes of subsection (2) the part of a loss that falls within that subsection shall be determined on such basis as is just and reasonable.
- (4) In relation to an individual who carried on the trade at any time before 26 March 2004, the reference in subsection (2) to expenditure does not include expenditure incurred before 10 February 2004.
- (5) As respects any year of assessment, the individual’s “licence-related profit” is such part of his profit (if any) from the trade for that year of assessment as derives from income arising from any agreement that is related to or contains the licence in question.
- (6) The part of a profit that derives from such income shall be determined on such basis as is just and reasonable.

## **129 Disposals to which section 126 applies**

- (1) The reference in section 126(1)(a) to a disposal of such a licence or rights as are there mentioned includes, in particular—
- (a) the revocation of the licence;
  - (b) the disposal, giving up or loss by the individual, or by a partnership of which he is a member, of any right under the licence;
  - (c) any disposal, giving up or loss by the individual, or by a partnership of which he is a member, of any right to any income (or any part of any income) under an agreement that is related to or contains the licence (“a licence-related agreement”);
  - (d) any default in the payment of income to which the individual, or a partnership of which he is a member, has a right under a licence-related agreement;
  - (e) a change in the individual’s entitlement to any profits deriving to any extent from such income, such that his share of the profits is reduced or extinguished;
  - (f) a change in the individual’s entitlement to any losses deriving to any extent from expenditure incurred in exploiting the licence, such that he becomes

entitled to a share, or a greater share, of the losses without becoming entitled to a corresponding share of profits;

- (g) the disposal, giving up or loss of the individual's interest in a partnership that has the licence or a right to income under a licence-related agreement, including the dissolution of the partnership.

(2) It is immaterial for the purposes of section 126(1)(a) and subsection (1)(b) and (c) whether the licence or right is disposed of alone or as part of a larger disposal (and the references here to disposal of a right include giving up or loss).

(3) If there is an agreement under which the individual is entitled—

- (a) to a particular share of any profits or losses arising in a period, and  
(b) to a different share of any profits or losses arising in a succeeding period (“the later period”),

his entitlement to the profits or losses arising in the later period shall be treated for the purposes of subsection (1)(e) and (f) as changing at the beginning of the later period; and in paragraphs (a) and (b) of this subsection a “share” of profits or losses includes a nil share.

### **130 “A significant amount of time”**

(1) For the purposes of section 126(4)(b) 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  
(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) In this section “basis period” means (subject to subsection (4)) the basis period given by sections 60 to 63 of the Taxes Act 1988 as applied by section 111(4) and (5) of that Act.

(4) The basis period for a year of assessment to which section 61(1) of that Act applies is to be taken for the purposes of this section 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.

### *Companies in partnership*

### **131 Companies in partnership**

(1) This section applies if—

- (a) on or after 17 March 2004, a company that is or has been a member of a partnership—

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*Status: This is the original version (as it was originally enacted).*

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- (i) directly or indirectly draws out or receives back any capital from the partnership; or
  - (ii) receives consideration for a disposal on or after 17 March 2004 of all or any of its interest in the partnership;
  - (b) as at the relevant time, the sum of—
    - (i) the total amount of any relevant withdrawals, and
    - (ii) the total amount or value of any relevant consideration, exceeds the company’s contribution to the partnership;
  - (c) that excess (or any part of it) results directly or indirectly from an arrangement under which any relevant profit was shared in such a way that the company was not allocated all or part of its due share of the profit; and
  - (d) if the company’s due shares of relevant profits had been allocated to the company, some or all of them would have been chargeable to corporation tax.
- (2) For the purposes of this section—
- (a) “the relevant time” means the time immediately after the capital is drawn out or received back or (as the case may be) the consideration is received;
  - (b) a “relevant withdrawal” means any capital that the company has, directly or indirectly, drawn out or received back from the partnership at any time on or after 17 March 2004;
  - (c) “relevant consideration” means consideration received by the company at any time on or after 17 March 2004 for the disposal on or after that date of all or any of its interest in the partnership;
  - (d) “the company’s contribution to the partnership” means the sum of—
    - (i) the amount that it has contributed to the partnership as capital (excluding any amount originally contributed by a person from whom the company acquired an interest in the partnership); and
    - (ii) any amount paid by the company to such a person for such an interest;
  - (e) a “relevant profit” is the profit of the partnership computed for any period, but does not include any profit, or any part of a profit, that derives from income arising before 17th March 2004;
  - (f) the company’s “due share” of any relevant profit is the share of the profit that the company would have been allocated if it had been allocated a share calculated by reference to the percentage of the total capital contributed (as defined by subsection (3)) that was contributed by it.
- (3) To find “the total capital contributed” for the purposes of subsection (2)(f)—
- (a) find, as respects the end of each day in the period for which the profit was computed, the total amount of capital that as at that time had been contributed to the partnership and had not been drawn out or received back;
  - (b) aggregate those amounts; and
  - (c) divide by the number of days in that period.
- (4) Where this section applies, the company shall be treated as receiving, at the relevant time, annual profits or gains which are of an amount equal to the chargeable amount and chargeable to tax under Case VI of Schedule D.
- (5) The chargeable amount is (subject to subsections (8) and (9)) so much of A as does not exceed B, where—



A is the amount by which, at the relevant time, the sum of the total amount of any relevant withdrawals and the total amount or value of any relevant consideration exceeds the company's contribution to the partnership; and

B is the amount by which, at the relevant time, the total amount of the company's due shares of relevant profits exceeds the total amount of the shares of relevant profits that were actually allocated to the company.

- (6) If any non-income amount is taken into account in computing a relevant profit, then for the purposes of subsection (5) the amount of the company's due share of the relevant profit and the amount of the share of the relevant profit that was actually allocated to the company shall be taken to be what they would have been if all non-income amounts had been left out of account in computing the relevant profit.
- (7) In subsection (6) a "non-income amount" means an amount that for the purposes of corporation tax would not be taken into account as income or in computing income.
- (8) Subsection (9) applies if this section applies on more than one occasion in relation to the same company and partnership (whether because of two or more receipts by the company of consideration relating to the same disposal or for any other reason).
- (9) On each occasion after the first, the amount found under subsection (5) shall be reduced (but not below nil) by the total of the chargeable amounts found (under that subsection read with this) on the previous occasions.

### **132 Companies in partnership: supplementary**

- (1) In section 131 and this section "capital" includes—
  - (a) anything accounted for as partners' capital, or partners' equity, in the accounts of the partnership drawn up in accordance with generally accepted accountancy practice; or
  - (b) if no such accounts are drawn up, anything that would be so accounted for if such accounts had been drawn up.
- (2) Where a partnership is dissolved by reason of one of the partners acquiring the interests of the others, the remaining partner is to be treated for the purposes of section 131 as having drawn out his and the others' shares of capital from the partnership.
- (3) For the purposes of section 131(2)(e), where a profit for a period derives partly from income arising before 17th March 2004, the part of the profit that derives from such income shall be determined on such basis as is just and reasonable.
- (4) For the purposes of section 131(2)(f) the capital contributed by the company shall be taken to include amounts originally contributed as mentioned in section 131(2)(d)(i).
- (5) In section 131(3) the reference to capital that had been contributed includes amounts purporting to be provided by way of loan where the loan—
  - (a) carries no interest; or
  - (b) carries interest at a rate less than that which might have been expected if the loan had been between independent persons dealing at arm's length.
- (6) For the purposes of section 131 a partnership is to be treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after it.

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*Status: This is the original version (as it was originally enacted).*

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### **133 Relationship with chargeable gains**

- (1) Subsection (3) below applies if—
  - (a) section 131 applies as a result of a receipt on or after 17 March 2004, by a company that is or has been a member of a partnership, of any consideration for a disposal on or after that date of all or any of its interest in the partnership (“the section 131 disposal”);
  - (b) a chargeable gain accrues to the company on a relevant disposal; and
  - (c) the total amount of chargeable gains accruing to the company on relevant disposals exceeds the total amount of any allowable losses accruing to it on such disposals.
- (2) References in this section to a “relevant disposal” are to any disposal of an asset that, alone or together with other disposals of assets, constitutes the section 131 disposal; and references in this subsection to a disposal of an asset are to be construed in accordance with the 1992 Act.
- (3) Where this subsection applies—
  - (a) any chargeable gain accruing to the company on a relevant disposal must be excluded in computing, for the purposes of section 8(1) of the 1992 Act, the total amount of chargeable gains accruing to the company in the accounting period in which that gain accrued;
  - (b) the relevant net gain (defined by subsection (4) below) must be included in computing for those purposes the total amount of chargeable gains accruing to the company in the accounting period in which the receipt mentioned in subsection (1) above occurred; and
  - (c) any allowable loss accruing to the company on a relevant disposal must be excluded in computing for the purposes of section 8(1) of the 1992 Act the amount of any allowable losses.
- (4) To find “the relevant net gain” for the purposes of this section—
  - (a) take the amount by which the total amount of chargeable gains accruing to the company on relevant disposals exceeds the total amount of allowable losses accruing to it on such disposals; and
  - (b) reduce it (but not below nil) by an amount equal to the chargeable amount.
- (5) Where section 131 applies as mentioned in subsection (1)(a) above, in computing any chargeable gain or allowable loss accruing to the company on a relevant disposal—
  - (a) neither the chargeable amount, nor any amount taken into account in computing it, shall be excluded by section 37(1) of the 1992 Act (exclusions from consideration); and
  - (b) an amount that has been taken into account in computing the chargeable amount shall not by reason of that fact be excluded by section 39(1) of that Act (exclusions from allowable deductions).
- (6) If section 131 and this section apply more than once as a result of two or more receipts by a company of consideration relating to the same section 131 disposal—
  - (a) subsection (3)(b) above does not apply in relation to any of the receipts after the first; and
  - (b) in relation to the first receipt, the amount to be deducted under subsection (4) (b) above is an amount equal to the total of the chargeable amounts found in relation to the receipts.

- (7) Subsection (8) below applies if subsection (3) above prevents an allowable loss that accrued to a company otherwise than on a relevant disposal from being deductible from a chargeable gain accruing to the company on a relevant disposal.
- (8) That loss (to the extent that it has not been deducted from any other chargeable gain) shall instead be deductible from the total amount of chargeable gains accruing to the company in the accounting period in which the receipt mentioned in subsection (1) above occurred.
- (9) But if, in any case where subsection (3) above applies, there are one or more allowable losses—
- (a) that are losses to which section 18(3) of the 1992 Act applies, and
  - (b) that accrued to the company otherwise than on a relevant disposal and are prevented by subsection (3) above from being deductible from a chargeable gain accruing to the company on a relevant disposal,
- the total amount deducted under subsection (8) above in respect of those losses must not exceed the relevant net gain.
- (10) In this section—
- “the 1992 Act” means the Taxation of Chargeable Gains Act 1992 (c. 12);
  - “the chargeable amount” means the amount found under section 131 in relation to the receipt mentioned in subsection (1) above; and
- references to chargeable gains, or allowable losses, accruing on disposals are to be construed in accordance with the 1992 Act.