



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 in partnership: restriction of relief

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,

Status: This is the original version (as it was originally enacted).

- (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.
- (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).”