



Finance Act 2005

2005 CHAPTER 7

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 7

AVOIDANCE INVOLVING PARTNERSHIP

Partners: recovery of excess relief

74 Recovery of excess relief given under section 380 or 381 of ICTA

- (1) This section applies where—
- (a) an individual makes one or more claims for relief under section 380 or 381 of ICTA at any time in respect of any relevant losses sustained by him in a trade (“the relevant trade”),
 - (b) the whole or part of that relief has been claimed against income other than income consisting of profits arising from the relevant trade,
 - (c) the amount of the relief which could be given against such income was determined in accordance with one or more of the restriction provisions (whether or not any of those provisions prevented any amount of relief being given), and
 - (d) at any time after the claim or claims mentioned in paragraph (a) has or have been made, a chargeable event occurs in relation to the individual.
- (2) The “restriction provisions” are—
- (a) section 117 of ICTA (restriction on relief for limited partners),
 - (b) that section as applied by section 118ZB of ICTA in relation to a member of a limited liability partnership, and
 - (c) section 118ZE of ICTA (restriction on relief for non-active partners).

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- (3) A “chargeable event” occurs in relation to an individual at any time when a relevant decrease in the individual's contribution to the relevant trade occurs which immediately results in—
- (a) the total losses claimed (less any reclaimed relief) becoming greater than the individual's contribution to the relevant trade, or
 - (b) an increase in the amount (if any) by which the total losses claimed (less any reclaimed relief) exceeds the individual's contribution to the relevant trade.
- (4) Where a chargeable event occurs in relation to an individual—
- (a) the individual is to be treated as receiving at the time of the occurrence of the chargeable event an amount of income equal to the chargeable amount,
 - (b) that income is not to be treated as profits of the relevant trade and is to be chargeable to income tax for the year of assessment in which the chargeable event occurs, and
 - (c) the individual is to be liable for any tax so chargeable.
- (5) The “total losses claimed” means the total amount of any losses sustained by the individual in the relevant trade in any eligible year 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 ICTA, or
 - (b) that he has at any time claimed as allowable losses under section 72 of FA 1991.
- (6) “Reclaimed relief” means the total of the amounts which the individual has been treated as receiving under subsection (4) as a result of the occurrence of any previous chargeable event in relation to the individual in respect of the relevant trade.
- (7) The “individual's contribution to the relevant trade” at any time means the amount of the individual's contribution to that trade at that time within the meaning given for the purposes of the relevant restriction provision and computed at that time in accordance with that provision.
- (8) The “relevant restriction provision” means—
- (a) the restriction provision which applied as mentioned in subsection (1)(c), or
 - (b) where more than one restriction provision so applied, the restriction provision which so applied to the amount of relief which could be given in respect of the relevant loss which was most recently sustained by the individual in the relevant trade.
- (9) A “relevant decrease in the individual's contribution to the relevant trade” occurs when the amount of that contribution becomes, as a result of the application of any regulations made under section 118ZN of ICTA (partners: meaning of “contribution to the trade”), less than the amount it would otherwise be apart from the application of those regulations.
- (10) The “amount of the relevant decrease in the individual's contribution to the relevant trade” is the difference between those two amounts.
- (11) An “eligible year of assessment” is—
- (a) a year of assessment at any time during which the individual carried on the relevant trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2) of ICTA, or

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- (b) a qualifying year of assessment within the meaning of section 118ZE of that Act.
- (12) In sections 75 to 77 references to expressions which are defined in this section are to be construed in accordance with this section.
- (13) This section is deemed to have come into force on 2nd December 2004.

Status:

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