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## SCHEDULES

### SCHEDULE 4

#### RESTRICTIONS ON TRADE LOSS RELIEF FOR PARTNERS

##### *Consequential amendments*

- 4 ITA 2007 is amended as follows.
- 5 In section 32 (liability not dealt with in the calculation), for “section 112(5)” substitute “ section 103B(5) ”.
- 6 In section 82(a) (exploitation of films), for “sections 115 and 116” substitute “ section 115 ”.
- 7 (1) Section 102 (overview of Chapter 3 of Part 4) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), for “104 to 106 and section 114)” substitute “ 103A, 103C to 105, 113A and 114) ”,
- (b) in paragraph (b), for “107 to 109 and section 114)” substitute “ 103C, 103D, 107 to 109, 113A and 114) ”, and
- (c) in paragraph (c), for “in an early tax year (see sections 110 to 114)” substitute “ (see sections 103B to 103D and 110 to 114) ”.
- (3) In subsection (2), for “sections 115 and 116” substitute “ section 115 ”.
- 8 After section 103 insert—

##### **“103A Meaning of “limited partner”**

- (1) In this Chapter “limited partner” means an individual who carries on a trade—
- (a) as a limited partner in a limited partnership registered under the Limited Partnerships Act 1907,
- (b) as a partner in a firm who in substance acts as a limited partner in relation to the trade (see subsection (2)), or
- (c) while the condition mentioned in subsection (3) is met in relation to the individual.
- (2) An individual in substance acts as a limited partner in relation to a trade if the individual—
- (a) is not entitled to take part in the management of the trade, and
- (b) is entitled to have any liabilities (or those beyond a certain limit) for debts or obligations incurred for the purposes of the trade met or reimbursed by some other person.
- (3) The condition referred to in subsection (1)(c) is that—
- (a) the individual carries on the trade jointly with other persons,

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- (b) under the law of a territory outside the United Kingdom, the individual is not entitled to take part in the management of the trade, and
  - (c) under that law, the individual is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade.
- (4) In the case of an individual who is a limited partner as a result of subsection (1)(c), references in this Chapter to the individual's firm are to be read as references to the relationship between the individual and the other persons mentioned in subsection (3)(a).

### **103B Meaning of “non-active partner” etc**

- (1) For the purposes of this Chapter an individual carries on a trade as a non-active partner during a tax year if the individual—
- (a) carries on the trade as a partner in a firm at a time during the year,
  - (b) does not carry on the trade as a limited partner at any time during the year, and
  - (c) does not devote a significant amount of time to the trade in the relevant period for the year.
- (2) For the purposes of this Chapter an individual devotes a significant amount of time to a trade in the relevant period for a tax year if, in that period, the individual spends an average of at least 10 hours a week personally engaged in activities carried on for the purposes of the trade.
- (3) For this purpose “the relevant period” means the basis period for the tax year (unless the basis period is shorter than 6 months).
- (4) If the basis period for the tax year is shorter than 6 months, “the relevant period” means—
- (a) the period of 6 months beginning with the date on which the individual first started to carry on the trade (if the basis period begins with that date), or
  - (b) the period of 6 months ending with the date on which the individual permanently ceased to carry on the trade (if the basis period ends with that date).
- (5) If—
- (a) any relief is given on the assumption that the individual devoted or will devote a significant amount of time to the trade in the relevant period for a tax year, but
  - (b) the individual in fact failed or fails to do so,
- the relief is withdrawn by the making of an assessment to income tax under this section.”

9 After section 103C (as inserted by paragraph 1(1) above) insert—

### **“103D Meaning of “qualifying film expenditure”**

- (1) For the purposes of this Chapter expenditure is qualifying film expenditure if—

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- (a) it is deducted under a relevant film provision for the purposes of the calculation required by section 849 of ITTOIA 2005 (calculation of firm's profits or losses), or
- (b) it is incidental expenditure which (although not deducted under a relevant film provision) is incurred in connection with the production of a film, or the acquisition of the original master version of a film, in relation to which expenditure is so deducted.
- (2) Expenditure is incidental if it is on management, administration or obtaining finance.
- (3) The extent to which expenditure is within subsection (1)(b) is determined on a just and reasonable basis.
- (4) For the purposes of this Chapter the amount of any loss that derives from qualifying film expenditure is determined on a just and reasonable basis.
- (5) In this section—
- “the acquisition of the original master version of a film” has the same meaning as in Chapter 9 of Part 2 of ITTOIA 2005 (see sections 130 and 132 of that Act),
- “film” is to be read in accordance with paragraph 1 of Schedule 1 to the Films Act 1985, and
- “a relevant film provision” means any one of sections 137 to 140 of ITTOIA 2005 (relief for certified master versions of films).”
- 10 In—
- (a) section 104(5) (restriction on reliefs for limited partners),
- (b) section 107(2) (restriction on reliefs for members of LLPs),
- (c) section 110(1)(a) (restriction on reliefs for non-active partners in early tax years), and
- (d) section 115(1)(d) (restrictions on relief for firms exploiting films),
- omit “(see section 112)”.
- 11 In—
- (a) section 105(11) (meaning of “contribution to the firm” for purposes of section 104),
- (b) section 108(9) (meaning of “contribution to the LLP” for purposes of section 107), and
- (c) section 111(12) (meaning of “contribution to the firm” for purposes of section 110),
- for the words from “any regulations” to “excluded” substitute “section 113A and any regulations made under section 114 (exclusion of amounts)”.
- 12 Omit section 106 (meaning of “limited partner”).
- 13 In section 112 (meaning of “non-active partner” and “early tax year” etc)—
- (a) omit subsections (1) to (5), and
- (b) the heading accordingly becomes “Meaning of “early tax year””.
- 14 Omit the italic-cross heading before section 114 (regulations: exclusion of amounts in calculating contribution to the firm or LLP) and for the heading of that section substitute “Power to exclude other amounts”.

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- 15 In section 115 (restrictions on reliefs for firms exploiting films), for subsection (4) substitute—
- “(4) The restrictions under this section do not apply to so much of the loss (if any) as derives from qualifying film expenditure.”
- 16 Omit section 116 (exclusion from restrictions under section 115: certain film expenditure).
- 17 In section 792 (partners claiming excess sideways or capital gains relief)—
- (a) in subsection (7), for “106” substitute “ 103A ”, and
- (b) in subsection (8), for “106(3)(a)” substitute “ 103A(3)(a) ”.
- 18 In section 809 (individuals in partnership claiming relief for licence-related trading losses: other definitions)—
- (a) in subsection (1), for “112” substitute “ 103B ”, and
- (b) in subsection (2), for “112(1)(b)” substitute “ 103B(1)(b) ”.
- 19 In paragraph 148(3)(b) of Schedule 2 (transitionals and savings: tax avoidance)—
- (a) for “106” substitute “ 103A ”, and
- (b) for “112” substitute “ 103B ”.
- 20 In Schedule 4 (index of defined expressions)—
- (a) in the definition of “limited partner”, for “106” substitute “ 103A ”,
- (b) in the definition of “non-active partner”, for “112” substitute “ 103B ”, and
- (c) after the definition of “qualifying donation (in Chapter 2 of Part 8)” insert—
- 
- “qualifying film expenditure (in section 103D”.  
Chapter 3 of Part 4)
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- 21 The amendments made by paragraphs 5 to 20 are deemed always to have had effect.

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