



Income Tax Act 2007

2007 CHAPTER 3

PART 13

TAX AVOIDANCE

CHAPTER 5

AVOIDANCE INVOLVING TRADING LOSSES

Introduction

790 Overview of Chapter

- (1) This Chapter imposes charges to income tax on—
 - (a) individuals who are treated as receiving income under section 792 (individuals in partnership claiming excess relief),
 - (b) individuals who are treated as receiving income under section 797 (individuals claiming relief for film-related trading losses), and
 - (c) individuals who are treated as receiving income under section 805 (individuals in partnership claiming relief for licence-related trading losses).
- (2) The charges apply if (among other things) the individual makes a loss in a trade for which the individual claims sideways relief or capital gains relief.
- (3) For the purposes of this Chapter sideways relief is—
 - (a) trade loss relief against general income (see sections 64 to 70), or
 - (b) early trade losses relief (see sections 72 to 74).
- (4) For the purposes of this Chapter—
 - (a) capital gains relief is, in relation to a loss, the treatment of the loss as an allowable loss by virtue of section 261B of TCGA 1992 (use of trading loss as a CGT loss), and

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(b) capital gains relief is claimed for a loss when a claim under that section is made in relation to the loss.

(5) References in this Chapter to a firm are to be read in the same way as references to a firm in Part 9 of ITTOIA 2005 (which contains special provision about partnerships).

Individuals in partnership: recovery of excess relief

791 Charge to tax on income treated as received under section 792

- (1) Income tax is charged on income treated as received by an individual under section 792.
- (2) Tax is charged under this section on the amount of the income treated as received in the tax year.
- (3) The person liable for any tax charged under this section is the individual treated as receiving the income.

792 Partners claiming excess sideways or capital gains relief

- (1) This section applies if—
 - (a) an individual carrying on a trade (“the relevant trade”) as a partner in a firm makes post-1 December 2004 losses in the relevant trade for which the individual claims relief within subsection (2),
 - (b) any of sections 104, 107 and 110 applies in relation to the relief (whether or not any of those sections restricts the amount of the relief), and
 - (c) after the individual makes the claim or claims, a chargeable event occurs.
- (2) The relief within this subsection is—
 - (a) sideways relief but only if the whole or part of the relief is claimed against income of the individual apart from profits of the relevant trade, and
 - (b) capital gains relief.
- (3) A chargeable event occurs whenever—
 - (a) the amount of the individual's contribution to the firm is reduced as a result of the application of regulations made under section 114, and
 - (b) that reduction in the individual's contribution to the firm immediately results in—
 - (i) the total amount of trade losses claimed (less any reclaimed relief) becoming greater than the contribution, or
 - (ii) an increase in the amount by which the total amount of trade losses claimed (less any reclaimed relief) exceeds the contribution.
- (4) The individual is treated as receiving an amount of income every time a chargeable event occurs.

The income is treated as arising otherwise than as profits of a trade.

(5) The amount of the income is calculated in accordance with section 793.

(6) If—

- (a) the firm is carrying on, or has carried on, more than one trade, and

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(b) subsection (1)(a) and (b) applies in relation to losses made by the individual in one or more of those trades as a partner in the firm,

the firm's trades are taken together for the purpose of determining whether a chargeable event occurs at any time after a claim in relation to any of those losses has been made and, if one does occur, the amount of income treated as received by the individual at that time.

See section 794(6) for modifications giving effect to this.

- (7) References in this section to an individual being a partner in a firm include a reference to an individual being a limited partner within the meaning of section [F¹103A] as a result of subsection (1)(c) of that section.
- (8) And, accordingly, in the case of an individual who is such a limited partner, in this section and in sections 793 to 795 references to the individual's firm are references to the relationship between the individual and the other persons mentioned in section [F²103A(3)(a)].

Textual Amendments

- F1** Word in s. 792(7) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 4 paras. 17\(a\), 21](#)
- F2** Word in s. 792(8) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 4 paras. 17\(b\), 21](#)

793 Calculating the amount of income treated as received

- (1) The amount of income treated as received by the individual under section 792 when the chargeable event occurs is the lowest of amounts A to C.
- (2) Amount A is the amount by which the individual's contribution to the firm is reduced as a result of the application of regulations made under section 114.
- (3) Amount B is the amount given by—
- (a) taking, at the time immediately after the chargeable event occurs, the total amount of trade losses claimed that are post-1 December 2004 losses, and
 - (b) reducing that amount (but not below nil) by any reclaimed relief.
- (4) Amount C is the amount given by—
- (a) taking the amount by which, at the time immediately after the chargeable event occurs, the total amount of trade losses claimed exceeds the individual's contribution to the firm, and
 - (b) reducing that amount (but not below nil) by any reclaimed relief.

794 Meaning of “the total amount of trade losses claimed” etc

- (1) In sections 792 and 793 “the total amount of trade losses claimed” means the total amount of losses within subsection (2) for which the individual has claimed sideways relief or capital gains relief.
- (2) The losses within this subsection are losses made by the individual in the relevant trade—

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- (a) in a tax year at a time during which the individual carries on the relevant trade as a limited partner or as a member of an LLP, or
- (b) in an early tax year during which the individual carries on the relevant trade as a non-active partner.

Expressions used in this subsection are to be read as if contained in Chapter 3 of Part 4.

- (3) In sections 792 and 793 “reclaimed relief” means the total amount of income treated as received by the individual under section 792 as a result of that section being previously applied in relation to claims for relief for losses made by the individual in the relevant trade.
- (4) In sections 792 and 793 “the individual's contribution to the firm” at any time means the individual's contribution to the firm or the LLP (as the case may be) at that time as calculated for the purposes of the relevant restriction provision.
- (5) The “relevant restriction provision” means—
 - (a) whichever of sections 104, 107 and 110 applied as mentioned in section 792(1)(b), or
 - (b) if more than one of those sections applied as mentioned in section 792(1)(b), the section which so applied to the amount of relief which could be given for the loss most recently made by the individual in the relevant trade.
- (6) In a case to which section 792(6) applies, for the purpose of determining the total amount of trade losses claimed, the amount of the reclaimed relief and the relevant restriction provision—
 - (a) apply subsections (1) and (2) in relation to each of the trades that the firm is carrying on, or has carried on, and then add the results together, and
 - (b) apply subsections (3) and (5)(b) as if references to the relevant trade were references to any of the trades that the firm is carrying on, or has carried on.

But if a trade is of the kind mentioned in section 110(8), do not apply subsection (2)(b) in relation to it.

795 Meaning of “post-1 December 2004 loss”

- (1) For the purposes of sections 792 and 793 a “post-1 December 2004 loss” means—
 - (a) any loss made by an individual in a trade in a tax year the basis period for which begins on or after 2 December 2004, or
 - (b) the post-1 December 2004 part of any loss made by an individual in a trade in a tax year the basis period for which includes 2 December 2004 (but begins before that date).
- (2) The “post-1 December 2004 part” of any loss made by an individual in a trade means the individual's share of any losses made by the relevant firm in the trade in the period—
 - (a) beginning with 2 December 2004, and
 - (b) ending with the end of the basis period for the tax year concerned.
- (3) For this purpose “the relevant firm” means the firm in which the individual carried on the trade, and—

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- (a) the losses of that firm are calculated as if that period were one for which profits and losses had to be calculated for the purposes of section 849 of ITTOIA 2005 (calculation of firm's profits or losses), and
 - (b) the individual's share of the losses is determined in accordance with the individual's interest in the firm during that period.
- (4) In this section “basis period”, in relation to an individual with a notional trade, means the basis period for the notional trade (within the meaning of Part 9 of ITTOIA 2005).

Individuals claiming relief for film-related trading losses

796 Charge to tax on income treated as received under section 797

- (1) Income tax is charged on income treated as received by an individual under section 797.
- (2) Tax is charged under this section on the amount of the income treated as received in the tax year.
- (3) The person liable for any tax charged under this section is the individual treated as receiving the income.

797 Individuals claiming sideways or capital gains relief for film-related losses

- (1) This section applies if—
 - (a) an individual makes a film-related loss (see section 800) in a trade for which the individual claims sideways relief or capital gains relief (a “relevant claim”),
 - (b) there is a disposal of a right of the individual to profits arising from the trade (a “relevant disposal”) (see section 799), and
 - (c) an exit event occurs.
- (2) An exit event occurs whenever—
 - (a) the individual receives any non-taxable consideration (see section 798) for a relevant disposal, or
 - (b) an increase in the individual's claimed film-related losses (see section 800) or a decrease in the individual's capital contribution (see section 801) results in—
 - (i) those losses becoming greater than that contribution, or
 - (ii) an increase in the amount by which those losses exceed that contribution.
- (3) The individual is treated as receiving an amount of income every time a chargeable event occurs.

The income is treated as arising otherwise than as profits of the trade.

- (4) A chargeable event occurs whenever—
 - (a) the individual makes a relevant claim (if by that time a relevant disposal and an exit event have occurred),
 - (b) a relevant disposal occurs (if by that time an exit event has occurred and the individual has made a relevant claim), or

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- (c) an exit event occurs (if by that time a relevant disposal has occurred and the individual has made a relevant claim).
- (5) The amount of income treated as received when a chargeable event occurs is equal to the sum of—
- (a) the total amount or value of all non-taxable consideration received by the individual for relevant disposals, and
 - (b) the amount (if any) by which the individual's claimed film-related losses exceed the individual's capital contribution.

The calculation in this subsection is made immediately after the chargeable event occurs and is subject to section 803.

- (6) For the purposes of this section it does not matter—
- (a) if the individual (or anyone else) is still carrying on the trade when a chargeable event occurs, or
 - (b) if the individual receives both non-taxable and taxable consideration for a relevant disposal.

798 Meaning of “non-taxable consideration” etc

- (1) This section applies for the purposes of section 797.
- (2) Consideration is non-taxable if (apart from section 796) it is not chargeable to income tax.
- (3) Non-taxable consideration from which a deduction within subsection (4) is made is treated as received free of the deduction.
- (4) A deduction is within this subsection if it is in consideration of any person's agreeing to, or facilitating, any relevant disposal or exit event.

799 Meaning of “disposal of a right of the individual to profits” etc

- (1) For the purposes of section 797 any reference to a disposal of a right of an individual to profits arising from a trade includes, in particular, any of events A to D.
- (2) Event A is the disposal, giving up or loss by—
 - (a) the individual, or
 - (b) a firm in which the individual is a partner,
 of a right arising from the trade to income (or any part of any income).

It does not matter if the right is disposed of, given up or lost as part of a larger disposal, giving up or loss.

- (3) Event B is the disposal, giving up or loss of the individual's interest in a firm that carries on the trade (including the dissolution of the firm).
- (4) Event C is a default in the payment of income to which—
 - (a) the individual, or
 - (b) a firm in which the individual is a partner,
 has a right arising from the trade.

Status: Point in time view as at 19/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 5. (See end of Document for details)

- (5) Event D is a change in the individual's entitlement to any profits or losses arising from the trade the effect of which is that—
 - (a) the individual's share of any profits is reduced (including to nil), or
 - (b) the individual becomes entitled to a share, or a greater share, of any losses without becoming entitled to a corresponding share of profits.
- (6) The changes covered by event D include cases where 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 (including a nil share), and
 - (b) to a different share of any such profits or losses in a succeeding period (including a nil share).
- (7) In such cases the change in the individual's entitlement is treated for the purposes of section 797 as occurring at the beginning of the succeeding period.

800 Meaning of “film-related losses” etc

- (1) This section applies for the purposes of sections 797, 801 and 802.
- (2) A loss is a “film-related loss” if the calculation of profits or losses that it results from is made in accordance with any provision of Chapter 9 of Part 2 of ITTOIA 2005.
- (3) “The individual's claimed film-related losses” means—
 - (a) the total amount of film-related losses made by the individual in the trade so far as they are losses for which the individual has made a relevant claim, less
 - (b) the amount of any relevant recovered relief.
- (4) “The amount of any relevant recovered relief” means—
 - (a) amount A, or
 - (b) if less, amount B.
- (5) Amount A is the total amount of income treated as received by the individual under section 792 (recovery of excess relief) as a result of the application of that section in relation to claims for relief for losses made by the individual in the trade.
- (6) Amount B is the total amount of film-related losses within subsection (7) for which the individual has made a relevant claim.
- (7) A loss is within this subsection if it is made by the individual in the trade—
 - (a) in a tax year at a time during which the individual carries on the trade as a member of an LLP or as a limited partner, or
 - (b) in an early tax year during which the individual carries on the trade as a non-active partner.
- (8) Expressions used in subsection (7) are to be read as if contained in Chapter 3 of Part 4.
- (9) Subsection (10) applies if—
 - (a) the individual has made a relevant claim for a film-related loss made in the trade as a partner in a firm, and
 - (b) the firm is carrying on, or has carried on, more than one trade.
- (10) For the purpose of determining the individual's claimed film-related losses—

Status: Point in time view as at 19/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 5. (See end of Document for details)

- (a) apply subsection (3)(a) in relation to each of the trades and then add the results together,
- (b) apply subsection (5) as if the reference to the trade were a reference to any of the trades, and
- (c) apply subsections (6) and (7) in relation to each of the trades and then add the results together.

801 Meaning of “capital contribution”

- (1) This section applies for the purposes of section 797.
- (2) The individual's capital contribution is the amount which the individual has contributed to the trade as capital less so much of that amount (if any) as is within subsection (6).

This is subject to subsection (3).

- (3) If the individual has made a relevant claim for a film-related loss made in the trade as a partner in a firm, the individual's capital contribution is the amount which the individual has contributed to the firm as capital less so much of that amount (if any) as is within subsection (6).
- (4) In particular, the individual's share of any profits of the firm is to be included for the purposes of subsection (3) in the amount which the individual has contributed to the firm as capital so far as that share has been added to the firm's capital.
- (5) In subsection (4) the reference to profits are to profits calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits for income tax purposes).
- (6) An amount of capital is within this subsection if it is an amount which—
 - (a) the individual has previously drawn out or received back,
 - (b) the individual is entitled to draw out or receive back,
 - (c) another person has reimbursed to the individual, or
 - (d) the individual is entitled to require another person to reimburse to the individual.
- (7) But if a chargeable event occurs, anything treated for the purposes of section 797(5)(a) as consideration received by the individual for a relevant disposal is not to be treated as capital within subsection (6) in calculating the individual's capital contribution for the purposes of section 797(5)(b).
- (8) In this section—
 - (a) any reference to drawing out, receiving back or reimbursing an amount is to doing so directly or indirectly,
 - (b) any reference to drawing out or receiving back an amount does not include drawing out or receiving back an amount which, because of its being drawn out or received back, is chargeable to income tax as profits of a trade, and
 - (c) any reference to reimbursing an amount includes discharging or assuming all or part of a liability of the individual,

but the express provision made by paragraph (c) does not affect what counts as the receipt back or reimbursement of an amount.

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 5. (See end of Document for details)

- (9) This section needs to be read with any regulations made under section 802 (specified amounts to be excluded in calculating a partner's capital contribution for the purposes of section 797).

802 Exclusion of amounts in calculating capital contribution by a partner

- (1) This section applies if an individual makes a relevant claim for a film-related loss made by the individual in a trade as a partner in a firm.
- (2) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that any amount of a specified description is to be excluded in calculating the individual's capital contribution for the purposes of section 797.
- (3) "Specified" means specified in the regulations.
- (4) The regulations may—
- make provision having retrospective effect,
 - contain incidental, supplemental, consequential and transitional provision and savings, and
 - make different provision for different cases or purposes.
- (5) The provision which may be made as a result of subsection (4)(b) includes provision amending or repealing any provision of an Act passed before FA 2005.
- (6) No regulations may be made under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

803 Prohibition against double counting

- (1) Subsections (2) and (3) apply for the purpose of calculating the amount of income received under section 797 on a chargeable event in respect of the individual and the trade.
- (2) If chargeable events have previously occurred in respect of the individual and the trade, any consideration taken into account in calculating the amount of income received on an earlier chargeable event is left out of account.
- (3) If chargeable events have previously occurred in respect of the individual and the trade, the amount of income received as a result of section 797(5)(b) is reduced (but not below nil) by the total amount of income received on earlier chargeable events as a result of that provision.
- (4) In a case to which section 800(10) (cases in which firm is carrying on, or has carried on, more than one trade) applies—
- subsections (2) and (3) of this section have effect as if references to the trade were references to any of the firm's trades, and
 - if chargeable events in respect of the individual and any of the firm's trades occur at the same time, to find the total amount of income received under section 797 at that time on those chargeable events—
 - calculate separately the income received on each chargeable event ignoring the other chargeable events,
 - add the results from sub-paragraph (i) together, and

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- (iii) reduce the total amount of income resulting from sub-paragraph (ii) so far as necessary to ensure that no amount is included more than once in that total.

Individuals in partnership claiming relief for licence-related trading losses

804 Charge to tax on income treated as received under section 805

- (1) Income tax is charged on income treated as received by an individual under section 805.
- (2) Tax is charged under this section on the amount of the income treated as received in the tax year.
- (3) The person liable for any tax charged under this section is the individual treated as receiving the income.

805 Partners claiming relief for licence-related trading losses

- (1) This section applies if—
 - (a) an individual carries on a trade as a non-active partner during an early tax year,
 - (b) the individual makes a loss in the trade in that tax year for which the individual claims sideways relief or capital gains relief (a “relevant claim”),
 - (c) the loss derives to any extent from expenditure incurred in the trade in exploiting a licence acquired in carrying on the trade, and
 - (d) there is a relevant disposal of the licence.
- (2) For the purposes of this section and section 806 there is a relevant disposal of the licence whenever the individual receives non-taxable consideration for—
 - (a) a disposal of the licence, or
 - (b) a disposal of a right to income under an agreement related to or containing the licence.
- (3) If one or more chargeable events occur in any tax year, the individual is treated as receiving an amount of income in the tax year.

The income is treated as arising otherwise than as profits of the trade.

- (4) For the purposes of this section and section 806 a chargeable event occurs whenever—
 - (a) there is a relevant disposal of the licence (if by that time the individual has made a relevant claim), or
 - (b) the individual makes a relevant claim (if by that time there has been a relevant disposal of the licence).
- (5) For the purposes of this section and section 806 consideration is non-taxable if—
 - (a) (apart from section 804) it is not chargeable to income tax, and
 - (b) its receipt is not an exit event for the purposes of section 797.
- (6) For the purposes of this section and section 806 it does not matter—
 - (a) if the individual (or anyone else) is still carrying on the trade when a chargeable event occurs,

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- (b) if the individual receives both non-taxable and taxable consideration for a relevant disposal of the licence, or
- (c) if a relevant disposal of the licence is part of a larger disposal.

806 Calculation of amount of income treated as received by the individual

The amount of income treated under section 805 as received by the individual in the tax year is calculated by taking the following steps. *Step 1*

Calculate, at the end of the tax year, the total amount of the claimed losses (so far as relating to the licence) made by the individual in the trade in any early tax year during which the individual carried on the trade as a non-active partner.

Step 2

Calculate, at the end of the tax year, the total amount of the profits (so far as relating to the licence) made by the individual in the trade in any tax year.

Step 3

Deduct the total calculated at Step 2 from the total calculated at Step 1.

The result is “the net licence-related loss”.

If the net licence-related loss is nil or a negative figure—

- (a) the income treated as received in the tax year is nil, and
- (b) ignore Steps 4 and 5.

Step 4

Calculate, at the end of the tax year, the total amount or value of all non-taxable consideration received by the individual for relevant disposals (including consideration received in previous tax years).

Step 5

Deduct from—

- (a) the net licence-related loss, or
- (b) if less, the total calculated at Step 4,

the total amount of all income treated under section 805 as received by the individual in previous tax years as a result of chargeable events.

The result is the amount of the income treated as received in the tax year.

(If the result is a negative figure, the income is nil.)

807 Supplementary provision relating to calculation in section 806

- (1) This section applies for the purposes of section 806.
- (2) For the purposes of Step 1, the amount of a loss made in a tax year that relates to the licence is so much of the loss in the tax year as derives from expenditure incurred in the trade in exploiting the licence.
- (3) The amount of the loss that derives from such expenditure is determined on a just and reasonable basis.

Status: Point in time view as at 19/07/2012.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 5. (See end of Document for details)

- (4) For the purposes of Step 1, a loss is a claimed loss if the individual has claimed sideways relief or capital gains relief for the loss.
- (5) For the purposes of Step 2, the amount of profits made in a tax year that relates to the licence is so much of the individual's profits from the trade in the tax year as derives from income arising from an agreement related to or containing the licence.
- (6) The amount of the profits that derives from such income is determined on a just and reasonable basis.

808 Meaning of “disposal of the licence” etc

- (1) For the purposes of section 805 any reference to—
 - (a) a disposal of a licence acquired in carrying on a trade, or
 - (b) a disposal of a right to income under an agreement related to or containing a licence acquired in carrying on a trade (“a licence-related agreement”),
 includes, in particular, any of events A to E.
- (2) Event A is the revocation of the licence.
- (3) Event B is the disposal, giving up or loss of—
 - (a) a right under the licence, or
 - (b) a right to income (or any part of any income) under a licence-related agreement,
 by the individual or by a firm in which the individual is a partner.

 It does not matter if the right is disposed of, given up or lost as part of a larger disposal, giving up or loss.
- (4) Event C is the disposal, giving up or loss of the individual's interest in a firm that has the licence or a right to income under a licence-related agreement (including the dissolution of the firm).
- (5) Event D is a default in the payment of income to which—
 - (a) the individual, or
 - (b) a firm in which the individual is a partner,
 has a right under a licence-related agreement.
- (6) Event E is a change in the individual's entitlement to any profits or losses relating to the licence the effect of which is that—
 - (a) the individual's share of any profits is reduced (including to nil), or
 - (b) the individual becomes entitled to a share, or a greater share, of any losses without becoming entitled to a corresponding share of profits.
- (7) The changes covered by event E include cases where there is an agreement under which the individual is entitled—
 - (a) to a particular share of any profits or losses relating to the licence in a period (including a nil share), and
 - (b) to a different share of any such profits or losses in a succeeding period (including a nil share).
- (8) In such cases the change in the individual's entitlement is treated for the purposes of section 805 as occurring at the beginning of the succeeding period.

Status: Point in time view as at 19/07/2012.

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- (9) For the purposes of this section—
- (a) references to any profits relating to the licence are to any profits deriving to any extent from income to which the individual has a right under a licence-related agreement, and
 - (b) references to any losses relating to the licence are to losses deriving to any extent from expenditure incurred in exploiting the licence.

809 Other definitions

- (1) References in sections 805 and 806 to an individual carrying on a trade as a non-active partner in an early tax year are to be read as if those sections were contained in Chapter 3 of Part 4 (see, in particular, section [F³103B]).
- (2) But for that purpose, section [F⁴103B(1)(b)] (which contains a requirement that the individual does not carry on the trade as a limited partner at any time during the tax year) is treated as if it were omitted.
- (3) For the purposes of sections 805 to 808 an agreement is related to a licence if the agreement and licence are entered into under the same arrangement (regardless of when the agreement or licence is entered into).
- (4) For the purposes of sections 805 to 808 an agreement, or part of an agreement, is not prevented from being a licence merely because it imposes an obligation to do a thing (rather than merely gives authority to do it).

References to exploiting a licence are to be read in that light.

Textual Amendments

- F3** Word in s. 809(1) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 18\(a\)](#), 21
- F4** Word in s. 809(2) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 18\(b\)](#), 21

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