



Income Tax Act 2007

2007 CHAPTER 3

PART 13

TAX AVOIDANCE

CHAPTER 5

AVOIDANCE INVOLVING TRADING LOSSES

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—

Status: Point in time view as at 07/02/2019.

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- (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
 - (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.

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- (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.
- (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.

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- (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—
 - (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.

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- (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.
- (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—
- (a) make provision having retrospective effect,
 - (b) contain incidental, supplemental, consequential and transitional provision and savings, and
 - (c) 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.

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- (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—
- (a) 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
 - (b) 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—
 - (i) calculate separately the income received on each chargeable event ignoring the other chargeable events,
 - (ii) add the results from sub-paragraph (i) together, and
 - (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.

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