



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 4

#### LOSS RELIEF

#### CHAPTER 1

#### INTRODUCTION

### 59 Overview of Part

- (1) This Part provides for income tax relief for—
  - (a) losses in a trade, profession or vocation (and certain post-cessation payments and events) (see Chapters 2 and 3),
  - (b) losses in a UK property business or overseas property business (and, in the case of a UK property business, certain post-cessation payments and events) (see Chapter 4),
  - (c) losses in an employment or office (see Chapter 5),
  - (d) losses on a disposal of certain shares (see Chapter 6), and
  - (e) losses in certain miscellaneous transactions (see Chapter 7).
- (2) This Part needs to be read with Chapter 3 of Part 2 (calculation of income tax liability).
- (3) For rules about the calculation of losses for the purposes of this Part, see—
  - (a) section 26 of ITTOIA 2005 (losses of a trade, profession or vocation calculated on same basis as profits),
  - (b) section 272 of ITTOIA 2005 (which applies section 26 of that Act, so that losses of a UK property business or overseas property business are calculated on the same basis as profits),
  - (c) section 11 of ITEPA 2003 (calculation of “net taxable earnings”), and
  - (d) section 872 of ITTOIA 2005 (losses from miscellaneous transactions calculated on same basis as miscellaneous income).

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

## CHAPTER 2

### TRADE LOSSES

#### *Introduction*

## 60 Overview of Chapter

- (1) This Chapter—
  - (a) provides for trade loss relief against general income (see sections 64 to 70),
  - (b) provides for early trade losses relief (see sections 72 to 74),
  - (c) contains provision restricting both those reliefs [<sup>F1</sup>and capital gains relief (see sections 74ZA] to 82),
  - (d) provides for carry-forward trade loss relief (see sections 83 to 88),
  - (e) provides for terminal trade loss relief (see sections 89 to 94),
  - (f) contains restrictions on the above reliefs for trades, professions and vocations carried on wholly outside the United Kingdom (see section 95), and
  - (g) provides for post-cessation trade relief (see sections 96 to 100).
- (2) This Chapter is subject to paragraph 2 of Schedule 1B to TMA 1970 (claims for loss relief involving two or more years).
- (3) For a rule treating an individual as starting or permanently ceasing to carry on a trade, profession or vocation for income tax purposes (including those of this Part), see—
  - (a) section 17 of ITTOIA 2005 (effect of becoming or ceasing to be a UK resident), and
  - (b) section 852(6) and (7) of ITTOIA 2005 (corresponding rule in the case of a trade or profession carried on by a firm).
- (4) For the purposes of this Chapter sideways relief is—
  - (a) trade loss relief against general income, or
  - (b) early trade losses relief.
- (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).

#### Textual Amendments

- F1** Words in s. 60(1)(c) substituted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 3 para. 2](#)

## 61 Non-partners: losses of a tax year

- (1) This section applies if a trade, profession or vocation is carried on by a person otherwise than as a partner in a firm.
- (2) For the purposes of this Chapter any reference to the person making a loss in the trade, profession or vocation in a tax year is to the person making a loss in the trade, profession or vocation in the basis period for the tax year.

*Status: Point in time view as at 31/01/2013.*

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- (3) This section is subject to section 70 (restriction on trade loss relief against general income in case of farming or market gardening).
- (4) For the rules about basis periods, see Chapter 15 of Part 2 of ITTOIA 2005.
- (5) In particular, see the rule in section 206 of ITTOIA 2005 (restriction on bringing losses into account twice).

**Modifications etc. (not altering text)**

C1 Ss. 61-63 modified (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 2\(4\)](#)

## 62 Partners: losses of a tax year etc

- (1) This section applies if a trade or profession is carried on by a person as a partner in a firm.
- (2) Any reference to a person making a loss in a trade or profession in a tax year is to the partner making a loss in the partner's notional trade in the basis period for the tax year (as to which, see sections 852 and 853 of ITTOIA 2005).
- (3) Further—
  - (a) any reference to a person making a claim for relief for a loss made in a trade or profession is to the partner making a claim for relief for a loss made in the partner's notional trade,
  - (b) any reference to a basis period for a tax year is to the basis period for the partner's notional trade for the tax year,
  - (c) any reference to the profits or losses of a partner's notional trade of a tax year is to the partner's share of the firm's profits or losses of the trade or profession treated for the purposes of Chapter 15 of Part 2 of ITTOIA 2005 as the profits or losses of the partner's notional trade in the basis period for the tax year,
  - (d) any reference to a person starting to carry on a trade or profession is to the partner starting to carry on the notional trade in accordance with section 852(2) or (3) of ITTOIA 2005, and
  - (e) any reference to a person permanently ceasing to carry on a trade or profession is to the partner permanently ceasing to carry on the notional trade in accordance with section 852(4) to (6) of ITTOIA 2005.
- (4) In this section a partner's “notional trade” has the same meaning as in Part 9 of ITTOIA 2005.
- (5) This section applies for the purposes of this Chapter and Chapter 3, except that it does not apply for the purposes of section 67(2) or sections 68 to 70 (restriction on trade loss relief against general income in case of farming or market gardening).

**Modifications etc. (not altering text)**

C1 Ss. 61-63 modified (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 2\(4\)](#)

C2 S. 62 applied (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 para. 1\(13\)](#)

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

**63 Prohibition against double counting**

If relief is given under any provision of this Chapter for a loss or part of a loss, relief is not to be given for—

- (a) the same loss, or
- (b) the same part of the loss,

under any other provision of this Chapter or of the Income Tax Acts.

**Modifications etc. (not altering text)**

C1 Ss. 61-63 modified (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 2\(4\)](#)

*Trade loss relief against general income*

**64 Deduction of losses from general income**

- (1) A person may make a claim for trade loss relief against general income if the person—
  - (a) carries on a trade in a tax year, and
  - (b) makes a loss in the trade in the tax year (“the loss-making year”).
- (2) The claim is for the loss to be deducted in calculating the person's net income—
  - (a) for the loss-making year,
  - (b) for the previous tax year, or
  - (c) for both tax years.

(See Step 2 of the calculation in section 23.)
- (3) If the claim is made in relation to both tax years, the claim must specify the tax year for which a deduction is to be made first.
- (4) Otherwise the claim must specify either the loss-making year or the previous tax year.
- (5) The claim must be made on or before the first anniversary of the normal self-assessment filing date for the loss-making year.
- (6) Nothing in this section prevents a person who makes a claim specifying a particular tax year in respect of a loss from making a further claim specifying the other tax year in respect of the unused part of the loss.
- (7) This section applies to professions and vocations as it applies to trades.
- (8) This section needs to be read with—
  - (a) section 65 (how relief works),
  - (b) sections 66 to 70 (restrictions on the relief),
  - [<sup>F2</sup>(ba) sections [<sup>F3</sup>74ZA] to 74D (general restrictions on relief),]
  - (c) sections 75 to 79 (restrictions on the relief and early trade losses relief in relation to capital allowances), [<sup>F4</sup> and]
  - (d) section 80 (restrictions on those reliefs in relation to ring fence income),
  - <sup>F5</sup>(e) .....
  - <sup>F6</sup>(f) .....

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

### Textual Amendments

- F2** S. 64(8)(ba) inserted (21.7.2008 with effect in accordance with Sch. 21 paras. 6, 7 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 21 para. 4](#)
- F3** Word in s. 64(8)(ba) substituted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 3 para. 3\(a\)](#)
- F4** Word in s. 64(8)(c) inserted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 3 para. 3\(b\)](#)
- F5** S. 64(8)(e) omitted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 3 para. 3\(c\)](#)
- F6** S. 64(8)(f) and word omitted (21.7.2008 with effect in accordance with s. 66(8) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [s. 66\(4\)\(l\)\(i\)](#)

## 65 How relief works

- (1) This subsection explains how the deductions are to be made.

The amount of the loss to be deducted at any step is limited in accordance with section 25(4) and (5).

### *Step 1*

Deduct the loss in calculating the person's net income for the specified tax year.

### *Step 2*

This step applies only if the claim is made in relation to both tax years.

Deduct the part of the loss not deducted at Step 1 in calculating the person's net income for the other tax year.

### *Other claims*

If the loss has not been deducted in full at Steps 1 and 2, the person may use the part not so deducted in giving effect to any other relief under this Chapter (depending on the terms of the relief).

- (2) There is a priority rule if a person—
- makes a claim for trade loss relief against general income (“the first claim”) in relation to the loss-making year, and
  - makes a separate claim in respect of a loss made in the following tax year in relation to the same tax year as the first claim.
- (3) The rule is that priority is given to making deductions under the first claim.
- (4) For this purpose a “separate claim” means—
- a claim for trade loss relief against general income, or
  - a claim for employment loss relief against general income under section 128.

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### *Restriction on relief for uncommercial trades*

#### **66 Restriction on relief unless trade is commercial**

- (1) Trade loss relief against general income for a loss made in a trade in a tax year is not available unless the trade is commercial.
- (2) The trade is commercial if it is carried on throughout the basis period for the tax year—
  - (a) on a commercial basis, and
  - (b) with a view to the realisation of profits of the trade.
- (3) If at any time a trade is carried on so as to afford a reasonable expectation of profit, it is treated as carried on at that time with a view to the realisation of profits.
- (4) If the trade forms part of a larger undertaking, references to profits of the trade are to be read as references to profits of the undertaking as a whole.
- (5) If there is a change in the basis period in the way in which the trade is carried on, the trade is treated as carried on throughout the basis period in the way in which it is carried on by the end of the basis period.
- (6) The restriction imposed by this section does not apply to a loss made in the exercise of functions conferred by or under an Act.
- (7) This section applies to professions and vocations as it applies to trades.

**Modifications etc. (not altering text)**

**C3** Ss. 66-70 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(a\)](#)

### *Restriction on relief for “hobby” farming or market gardening*

#### **67 Restriction on relief in case of farming or market gardening**

- (1) This section applies if a loss is made in a trade of farming or market gardening in a tax year (“the current tax year”).
- (2) Trade loss relief against general income is not available for the loss if a loss, calculated without regard to capital allowances, was made in the trade in each of the previous 5 tax years (see section 70).
- (3) This section does not prevent relief for the loss from being given if—
  - (a) the carrying on of the trade forms part of, and is ancillary to, a larger trading undertaking,
  - (b) the farming or market gardening activities meet the reasonable expectation of profit test (see section 68), or
  - (c) the trade was started, or treated as started, at any time within the 5 tax years before the current tax year (see section 69 below, as well as section 17 of ITTOIA 2005).

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**Modifications etc. (not altering text)**

C3 Ss. 66-70 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(a\)](#)

## 68 Reasonable expectation of profit

- (1) This section explains how the farming or market gardening activities (“the activities”) meet the reasonable expectation of profit test for the purposes of section 67.
- (2) The test is decided by reference to the expectations of a competent farmer or market gardener (a “competent person”) carrying on the activities.
- (3) The test is met if—
  - (a) a competent person carrying on the activities in the current tax year would reasonably expect future profits (see subsection (4)), but
  - (b) a competent person carrying on the activities at the beginning of the prior period of loss (see subsection (5)) could not reasonably have expected the activities to become profitable until after the end of the current tax year.
- (4) In determining whether a competent person carrying on the activities in the current tax year would reasonably expect future profits regard must be had to—
  - (a) the nature of the whole of the activities, and
  - (b) the way in which the whole of the activities were carried on in the current tax year.
- (5) “The prior period of loss” means—
  - (a) the 5 tax years before the current tax year, or
  - (b) if losses in the trade, calculated without regard to capital allowances, were also made in successive tax years before those 5 tax years (see section 70), the period comprising both the successive tax years and the 5 tax years.

**Modifications etc. (not altering text)**

C3 Ss. 66-70 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(a\)](#)

## 69 Whether trade is the same trade

- (1) This section applies for the purposes of sections 67 and 68.
- (2) If there is a change in the persons carrying on a trade which involves all of the persons carrying it on before the change permanently ceasing to carry it on—
  - (a) the trade is treated as permanently ceasing to be carried on, and
  - (b) a new trade is treated as starting to be carried on, at the date of the change (but see subsections (3) to (6)).
- (3) A husband and wife are treated as the same person.
- (4) Persons who are civil partners of each other are treated as the same person.
- (5) A husband or wife is treated as the same person as—
  - (a) a company of which either one of them has control, or

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- (b) a company of which both have control.
- (6) A person's civil partner is treated as the same person as—
  - (a) a company of which either of the civil partners has control, or
  - (b) a company of which both have control.
- (7) “Control” <sup>F7</sup>is to be read in accordance with sections 450 and 451 of CTA 2010].

#### Textual Amendments

**F7** Words in s. 69(7) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 495** (with Sch. 2)

#### Modifications etc. (not altering text)

**C3** Ss. 66-70 applied (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 6 para. 1(11)(a)**

## 70 Determining losses in previous tax years

- (1) This section applies for the purposes of sections 67(2) and 68(5) in determining whether a loss, calculated without regard to capital allowances, is made in the trade in any tax year before the current tax year.
- (2) The loss made in a tax year before the current tax year is not taken to be the loss (if any) made in the basis period for the tax year, but is instead the loss made in the tax year itself.
- (3) This loss is determined by reference to—
  - (a) the profits or losses of periods of account of the trade (calculated for income tax purposes, but without regard to capital allowances), or
  - (b) if (as a result of section 69) a person claiming the relief is treated as the same person as a company within the charge to corporation tax, the profits or losses of the company's accounting periods (calculated for corporation tax purposes, but without regard to capital allowances),
 or by reference to both.
- (4) If—
  - (a) a period of account does not coincide with a tax year, or
  - (b) an accounting period does not coincide with a tax year,
 any of the steps in section 203(2) of ITTOIA 2005 may be taken to arrive at the profits or losses made in a tax year.
 

For this purpose references in section 203(2) of that Act to basis periods are read as references to tax years and references to periods of account are read as including accounting periods.
- (5) The steps must be taken in accordance with section 203(3) or (4) of ITTOIA 2005.
- (6) A loss in a trade is calculated without regard to capital allowances by ignoring—
  - (a) the allowances treated as expenses of the trade under CAA 2001, and
  - (b) the charges treated as receipts of the trade under that Act.



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**Modifications etc. (not altering text)**

- C3** Ss. 66-70 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(a\)](#)
- C4** S. 70(2)(3)(a)(4)(a)(5) applied (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 51\(4\)](#), 1184(1) (with [Sch. 2](#))

*Use of trading loss as CGT loss*

**71 Treating trade losses as CGT losses**

A person who cannot deduct all of a loss under a claim for trade loss relief against general income may be able to treat the unused part as an allowable loss for capital gains tax purposes: see sections 261B and 261C of TCGA 1992.

*Early trade losses relief*

**72 Relief for individuals for losses in first 4 years of trade**

- (1) An individual may make a claim for early trade losses relief if the individual makes a loss in a trade—
  - (a) in the tax year in which the trade is first carried on by the individual, or
  - (b) in any of the next 3 tax years.
- (2) The claim is for the loss to be deducted in calculating the individual's net income for the 3 tax years before the one in which the loss is made (see Step 2 of the calculation in section 23).
- (3) The claim must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the loss is made.
- (4) This section applies to professions and vocations as it applies to trades.
- (5) This section needs to be read with—
  - (a) section 73 (how relief works),
  - (b) section 74 (restrictions on the relief [<sup>F8</sup>unless trade is commercial etc] ),
  - <sup>F9</sup>(ba) sections [<sup>F10</sup>74ZA] to 74D (general restrictions on relief),
  - (c) sections 75 to 79 (restrictions on the relief and trade loss relief against general income in relation to capital allowances), [<sup>F11</sup> and]
  - (d) section 80 (restrictions on those reliefs in relation to ring fence income),
  - <sup>F12</sup>(e) .....
  - <sup>F13</sup>(f) .....

**Textual Amendments**

- F8** Words in s. 72(5)(b) inserted (21.7.2008 with effect in accordance with Sch. 21 paras. 6, 7 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 21 para. 5\(a\)](#)
- F9** S. 72(5)(ba) inserted (21.7.2008 with effect in accordance with Sch. 21 paras. 6, 7 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 21 para. 5\(b\)](#)
- F10** Word in s. 72(5)(ba) substituted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 3 para. 4\(a\)](#)

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- F11** Word in s. 72(5)(c) inserted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), **Sch. 3 para. 4(b)**
- F12** S. 72(5)(e) omitted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), **Sch. 3 para. 4(c)**
- F13** S. 72(5)(f) and word omitted (21.7.2008 with effect in accordance with s. 66(8) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **s. 66(4)(1)(ii)**

### 73 How relief works

This section explains how the deductions are made for the 3 tax years mentioned in section 72(2). The amount of the loss to be deducted at any step is limited in accordance with section 25(4) and (5).

#### *Step 1*

Deduct the loss in calculating the individual's net income for the earliest of the 3 tax years.

#### *Step 2*

Deduct any part of the loss not deducted at Step 1 in calculating the individual's net income for the next tax year.

#### *Step 3*

Deduct any part of the loss not deducted at Step 1 or 2 in calculating the individual's net income for the latest of the 3 tax years.

#### *Other claims*

If the loss has not been deducted in full at Steps 1 to 3, the individual may use the part not so deducted in giving effect to any other relief under this Chapter (depending on the terms of the relief).

### 74 Restrictions on relief unless trade is commercial etc

- (1) Early trade losses relief for a loss made by an individual in a trade in a tax year is not available unless the trade is commercial.
- (2) The trade is commercial if it is carried on throughout the basis period for the tax year—
  - (a) on a commercial basis, and
  - (b) in such a way that profits of the trade could reasonably be expected to be made in the basis period or within a reasonable time afterwards.
- (3) If the trade forms part of a larger undertaking, the reference to profits of the trade is to be read as a reference to profits of the undertaking as a whole.
- (4) Early trade losses relief for a loss made by an individual is not available if—
  - (a) the individual first carries on the trade at a time when the individual has a spouse or civil partner and is living with the spouse or civil partner,
  - (b) the spouse or civil partner previously carried on the trade, and
  - (c) the loss is made in a tax year falling after the relevant 4 year period.
- (5) The relevant 4 year period comprises—
  - (a) the tax year in which the spouse or civil partner first carried on the trade, and

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(b) the next 3 tax years.

(6) This section applies to professions and vocations as it applies to trades.

*F14* *General restrictions on sideways relief and capital gains relief*

**Textual Amendments**

**F14** Ss. 74A-74D and cross-heading inserted (21.7.2008 with effect in accordance with Sch. 21 paras. 6, 7 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 21 para. 2](#)

**No relief for tax-generated losses**

**F15** **74ZA**

- (1) This section applies if—
- (a) during a tax year a person carries on (alone or in partnership) a trade, profession or vocation (“the relevant activity”),
  - (b) the person makes a loss in the relevant activity in that tax year, and
  - (c) the loss arises directly or indirectly in consequence of, or otherwise in connection with, relevant tax avoidance arrangements.
- (2) No sideways relief or capital gains relief may be given to the person for the loss (but subject to subsection (5)).
- (3) In subsection (1) “relevant tax avoidance arrangements” means arrangements—
- (a) to which the person is a party, and
  - (b) the main purpose, or one of the main purposes, of which is the obtaining of a reduction in tax liability by means of sideways relief or capital gains relief.
- (4) In subsection (3) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (5) This section has no effect in relation to any loss that derives wholly from qualifying film expenditure (see section 74D).
- (6) For the purposes of this section—
- (a) capital gains relief is, in relation to a loss, the treatment of a loss as an allowable loss by virtue of section 261B of TCGA 1992 (use of trading loss as a CGT loss), and
  - (b) capital gains relief is given for a loss when it is so treated.]

**Textual Amendments**

**F15** S. 74ZA inserted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 3 para. 5](#)

**74A Reliefs in any tax year not to exceed cap for tax year**

- (1) This section applies if—
- (a) during a tax year an individual carries on one or more trades, otherwise than as a partner in a firm, in a non-active capacity (see section 74C), and

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- (b) the individual makes a loss in any of those trades (an “affected loss”) in that tax year.
- (2) There is a restriction on the amount of sideways relief and capital gains relief which (after applying the restrictions under the other provisions of this Chapter) may be given to the individual for any affected loss (but see subsections (7) and (8)).
- (3) The restriction is that the total amount of the sideways relief and capital gains relief given to the individual for all the affected losses must not exceed the cap for that tax year.
- (4) The cap for any tax year is £25,000.
- (5) The Treasury may by order amend the sum for the time being specified in subsection (4).
- (6) If—
- (a) in a tax year an individual makes a loss to which the restriction under section 103C (losses in trade carried on by non-active or limited partner) applies, and
  - (b) sideways relief or capital gains relief is given to the individual for that loss, the amount of the cap under this section for the tax year in the case of the individual is reduced by the amount of that loss.
- (7) The restriction under this section does not apply to so much of any affected loss as derives from qualifying film expenditure (see section 74D).
- (8) The restriction under this section does not affect the giving of sideways relief for a loss made in a trade against the profits of that trade.
- (9) In this section “trade” does not include a trade which consists of the underwriting business of a member of Lloyd's (within the meaning of section 184 of FA 1993).
- (10) For the purposes of this section—
- (a) capital gains relief is, in relation to a loss, the treatment of a loss as an allowable loss by virtue of section 261B of TCGA 1992 (use of trading loss as a CGT loss), and
  - (b) capital gains relief is given for a loss when it is so treated.

**<sup>F16</sup>74B No relief for tax-generated losses**

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**Textual Amendments**

**F16** S. 74B omitted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 3 para. 6](#)

**74C Meaning of “non-active capacity” for purposes of [<sup>F17</sup>section 74A]etc**

- (1) For the purposes of [<sup>F18</sup>section 74A] an individual carries on a trade in a non-active capacity during a tax year if the individual—
- (a) carries on the trade at a time during the year, and

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- (b) does not devote a significant amount of time to the trade in the relevant period for the tax year.
- (2) For the purposes of this section an individual devotes a significant amount of time to a trade in the relevant period for a tax year if, in the relevant period, the individual spends an average of at least 10 hours a week personally engaged in activities of the trade and those activities are carried on—
- (a) on a commercial basis, and
  - (b) with a view to the realisation of profits as a result of the activities.
- (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.

#### **Textual Amendments**

**F17** Words in s. 74C heading substituted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 3 para. 7\(3\)](#)

**F18** Words in s. 74C(1) substituted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 3 para. 7\(2\)](#)

#### **Modifications etc. (not altering text)**

**C5** Ss. 74B-74D applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(b\)](#)

### **74D Meaning of “qualifying film expenditure” for purposes of sections [<sup>F19</sup>74ZA and 74A]**

- (1) For the purposes of sections [<sup>F20</sup>74ZA and 74A] expenditure is qualifying film expenditure if—
- (a) it is deducted under a relevant film provision for the purposes of calculating the profits of a trade, 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.

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- (3) The extent to which expenditure is within subsection (1)(b) is determined on a just and reasonable basis.
- (4) For the purposes of sections [F21 74ZA and 74A] 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).]

#### **Textual Amendments**

- F19** Words in s. 74D heading substituted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 3 para. 8\(3\)](#)
- F20** Words in s. 74D(1) substituted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 3 para. 8\(2\)](#)
- F21** Words in s. 74D(4) substituted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 3 para. 8\(2\)](#)

#### **Modifications etc. (not altering text)**

- C5** Ss. 74B-74D applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(b\)](#)

### *Restrictions on sideways relief for certain capital allowances*

## **75 Trade leasing allowances given to individuals**

- (1) Sideways relief is not available to an individual for so much of a loss as derives from a trade leasing allowance unless the individual meets the time commitment test.
- (2) A trade leasing allowance is an allowance made under Part 2 of CAA 2001 in respect of—
- (a) expenditure incurred on the provision of plant or machinery for leasing in the course of a trade, or
  - (b) expenditure incurred on the provision for the purposes of a trade of an asset which is not to be leased but which is fee-producing.
- (3) An asset is fee-producing if payments in the nature of—
- (a) royalties, or
  - (b) licence fees,
- are to arise from rights granted by the individual in connection with the asset.
- (4) To meet the time commitment test conditions A and B must be met.
- (5) Condition A is that the individual must carry on the trade for a continuous period of at least 6 months beginning or ending in the basis period for the tax year in which the loss was made (“the loss-making basis period”).

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- (6) Condition B is that substantially the whole of the individual's time must be given to carrying on the trade—
- (a) for a continuous period of at least 6 months beginning or ending in the loss-making basis period (if the individual starts or permanently ceases to carry on the trade in the tax year (or does both)), or
  - (b) throughout the loss-making basis period (in any other case).

**Modifications etc. (not altering text)**

C6 Ss. 75-79 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(c\)](#)

**76 First-year allowances [<sup>F22</sup> and annual investment allowances]: introduction**

Sideways relief is not available to an individual for so much of a loss as derives from [<sup>F23</sup>an annual investment allowance or] a first-year allowance under Part 2 of CAA 2001 if either section 77 or 78 applies.

**Textual Amendments**

**F22** Words in s. 76 heading inserted (21.7.2008 with effect in accordance with Sch. 24 para. 23 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 24 para. 21\(b\)](#)

**F23** Words in s. 76 inserted (21.7.2008 with effect in accordance with Sch. 24 para. 23 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 24 para. 21\(a\)](#)

**Modifications etc. (not altering text)**

C6 Ss. 75-79 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(c\)](#)

**77 First-year allowances: partnerships with companies**

- (1) This section applies if—
- (a) the first-year allowance is in respect of expenditure incurred at any time on the provision of plant or machinery for leasing in the course of a qualifying activity, and
  - (b) either the qualifying activity was at that time carried on by the individual in partnership with a company or arrangements have been made with a view to the activity being so carried on.
- (2) It does not matter—
- (a) if the firm includes other partners, or
  - (b) when the arrangements were made.
- (3) For the purposes of this section—
- (a) letting a ship on charter is treated as leasing the ship, and
  - (b) references to making arrangements include effecting schemes.

**Modifications etc. (not altering text)**

C6 Ss. 75-79 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(c\)](#)



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## 78 **First-year allowances [<sup>F24</sup> and annual investment allowances]: arrangements to reduce tax liabilities**

- (1) This section applies if—
  - (a) the [<sup>F25</sup> annual investment allowance or] first-year allowance is made in connection with a relevant qualifying activity or a relevant asset (see subsections (2) and (3)), and
  - (b) arrangements within subsection (4) have been made.
- (2) A qualifying activity is a relevant one if—
  - (a) at the time when the expenditure was incurred, the activity was carried on by the individual as a partner in a firm, or
  - (b) at a later time, it has been carried on by the individual as a partner in a firm or transferred to a person connected with the individual.
- (3) An asset is a relevant one if, after the time when the expenditure was incurred, the asset was transferred by the individual—
  - (a) to a person connected with the individual, or
  - (b) to a person at a price lower than its market value.
- (4) Arrangements are within this subsection if as a result of them—
  - (a) the sole benefit, or
  - (b) the main benefit,
 that might be expected to arise to the individual from the transaction under which the expenditure was incurred is the obtaining of a reduction in tax liability by means of sideways relief.
- (5) It does not matter when the arrangements were made.
- (6) References to making arrangements include effecting schemes.

### Textual Amendments

- F24** Words in s. 78 heading inserted (21.7.2008 with effect in accordance with Sch. 24 para. 23 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 24 para. 22\(b\)](#)
- F25** Words in s. 78(1)(a) inserted (21.7.2008 with effect in accordance with Sch. 24 para. 23 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 24 para. 22\(a\)](#)

### Modifications etc. (not altering text)

- C6** Ss. 75-79 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(c\)](#)

## 79 **Capital allowances restrictions: supplementary**

- (1) If relief is given in a case to which section 75 or 76 applies, the relief is withdrawn by the making of an assessment to income tax under this section.
- (2) Expressions which are used—
  - (a) in any of sections 75 to 78, and
  - (b) in Part 2 of CAA 2001,
 have the same meaning in those sections as in that Part.



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**Modifications etc. (not altering text)**

C6 Ss. 75-79 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(c\)](#)

*Restriction on sideways relief for specific trades*

**80 Ring fence income**

- (1) This section applies if—
  - (a) a person has income arising from oil extraction activities or oil rights (“ring fence income”), and
  - (b) the person makes a loss in any trade.
- (2) Sideways relief for the loss is not to be given against the person's ring fence income except so far as the loss arises from oil extraction activities or oil rights.
- (3) “Oil extraction activities” and “oil rights” have the <sup>F26</sup>meaning given by sections 225A and 225B of ITTOIA 2005].

**Textual Amendments**

F26 Words in s. 80(3) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 193](#) (with [Sch. 9 paras. 1-9, 22](#))

**Modifications etc. (not altering text)**

C7 S. 80 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(d\)](#)

<sup>F27</sup>**81 Dealings in commodity futures**

**Textual Amendments**

F27 S. 81 omitted (8.4.2010 with effect in accordance with Sch. 3 para. 11 of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 3 para. 9](#)

**82 Exploitation of films**

In the case of a trade carried on by an individual which consists of or includes the exploitation of films—

- (a) see <sup>F28</sup>section 115] for a restriction on sideways relief if the trade was carried on by the individual as a partner in a firm, and
- (b) see section 796 for a charge to income tax if the individual made a loss in the trade (whether carried on alone or as a partner in a firm) for which sideways relief is claimed.

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### Textual Amendments

**F28** Words in s. 82(a) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 6, 21](#)

## *Carry-forward trade loss relief*

### 83 Carry forward against subsequent trade profits

- (1) A person may make a claim for carry-forward trade loss relief if—
  - (a) the person has made a loss in a trade in a tax year, and
  - (b) relief for the loss has not been fully given under this Chapter or any other provision of the Income Tax Acts or under section 261B of TCGA 1992 (use of trading loss as a CGT loss).
- (2) The claim is for the part of the loss for which relief has not been given under any such provision (“the unrelieved loss”) to be deducted in calculating the person's net income for subsequent tax years (see Step 2 of the calculation in section 23).
- (3) But a deduction for that purpose is to be made only from profits of the trade.
- (4) In calculating a person's net income for a tax year, deductions under this section from the profits of a trade are to be made before deductions of any other reliefs from those profits.
- (5) This section applies to professions and vocations as it applies to trades (and section 84 is to be read accordingly).
- (6) This section needs to be read with—
  - (a) section 84 (how relief works),
  - (b) section 85 (use of trade-related interest and dividends if trade profits insufficient),
  - (c) section 86 (trade transferred to a company),
  - (d) section 87 (ring fence trades),
  - (e) section 88 (carry forward of certain interest as loss), and
  - (f) sections 17(3) and 852(7) of ITTOIA 2005 (effect of becoming or ceasing to be UK resident).

### 84 How relief works

This section explains how the deductions are to be made. The amount of the unrelieved loss to be deducted at any step is limited in accordance with section 25(4) and (5).

#### *Step 1*

Deduct the unrelieved loss from the profits of the trade of the next tax year.

#### *Step 2*

Deduct from the profits of the trade of the following tax year the amount of the unrelieved loss not previously deducted.

#### *Step 3*

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Continue to apply Step 2 in relation to the profits of the trade of subsequent tax years until all the unrelieved loss is deducted.

## **85 Use of trade-related interest and dividends if trade profits insufficient**

- (1) This section applies if carry-forward trade loss relief cannot be fully given in relation to the profits of a trade of a tax year because (apart from this section) there are no profits, or insufficient profits, of the trade of the tax year.
- (2) For the purposes of the relief any interest or dividends for the tax year that relate to the trade are treated as profits of the trade of the tax year.
- (3) Interest or dividends for the tax year relate to the trade if they—
  - (a) arise in the tax year, and
  - (b) would be brought into account in calculating the profits of the trade but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts.

## **86 Trade transferred to a company**

- (1) This section applies if—
  - (a) a trade is carried on by an individual otherwise than as a partner in a firm or by individuals in partnership,
  - (b) the trade is transferred to a company,
  - (c) the consideration for the transfer is wholly or mainly the allotment of shares to the individual or individuals, and
  - (d) in the case of any individual to whom, or to whose nominee or nominees, shares are so allotted, the individual's total income for a relevant tax year includes income derived by the individual from the company.
- (2) For the purposes of carry-forward trade loss relief, the income so derived is treated as—
  - (a) profits of the trade of the relevant tax year carried on by the individual, or
  - (b) if the trade was carried on by the individual in partnership, profits of the individual's notional trade of the relevant tax year.
- (3) The tax year in which the transfer is made is a relevant one if—
  - (a) the individual is the beneficial owner of the shares allotted as mentioned above, and
  - (b) the company carries on the trade,  
throughout the period beginning with the date of the transfer and ending with the next 5 April.
- (4) Otherwise a tax year is a relevant one if—
  - (a) the individual is the beneficial owner of the shares allotted as mentioned above, and
  - (b) the company carries on the trade,  
throughout the tax year.
- (5) The income derived from the company may be by way of dividends on the shares or otherwise.

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(6) This section applies to businesses which are not trades as it applies to trades.

## **87 Ring fence trades**

- (1) This section applies if—
- (a) a person makes a loss in a tax year carrying on oil-related activities (within the meaning of section 16 of ITTOIA 2005),
  - (b) those activities are treated under that section as a separate trade for the tax year or a subsequent tax year,
  - (c) the person makes profits in a subsequent tax year from other activities, and
  - (d) the other activities and the oil-related activities would, but for that section, together form a single trade.
- (2) For the purposes of carry-forward trade loss relief for the loss, the person may treat profits from the other activities in a subsequent tax year as if they were profits of the separate trade (despite section 16 of ITTOIA 2005).

## **88 Carry forward of certain interest as loss**

- (1) This section applies if—
- (a) an individual pays interest in a tax year which is eligible for relief under section 383 (as a result of section 388 or 398),
  - (b) the interest is an expense incurred wholly and exclusively for the purposes of a trade carried on wholly or partly in the United Kingdom, and
  - (c) relief under section 383 cannot be fully given in respect of the interest because there is no income or insufficient income in the tax year.
- (2) For the purposes of carry-forward trade loss relief, the amount for which relief has not been given may be carried forward to subsequent tax years as if it were a loss made in the trade.
- (3) This section applies to professions and vocations as it applies to trades.

### *Terminal trade loss relief*

## **89 Carry back of losses on a permanent cessation of a trade**

- (1) A person may make a claim for terminal trade loss relief if the person—
- (a) permanently ceases to carry on a trade in a tax year (“the final tax year”), and
  - (b) makes a terminal loss in the trade (see section 90).
- (2) The claim is for the total amount of terminal losses made in the trade by the person (“the relievable loss”) to be deducted in calculating the person's net income for the final tax year and the 3 previous tax years (see Step 2 of the calculation in section 23).
- (3) But a deduction for that purpose is to be made only from profits of the trade.
- (4) This section applies to professions and vocations as it applies to trades (and sections 90 and 91 are to be read accordingly).
- (5) This section needs to be read with—
- (a) section 91 (how relief works),

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- (b) section 92 (use of trade-related interest and dividends if trade profits insufficient),
- (c) section 93 (mineral extraction trade and carry back of balancing allowances), and
- (d) section 94 (carry back of certain interest as loss).

## **90 Losses that are “terminal losses”**

- (1) Each of the following is a terminal loss made in the trade—
  - (a) the loss (if any) made in the trade in the period beginning with the start of the final tax year and ending with the cessation, and
  - (b) the loss (if any) made in the trade in the period consisting of so much of the previous tax year as falls in the 12 months prior to the cessation.
- (2) The profit or loss of a period mentioned in subsection (1)(a) or (b) (a “terminal loss period”) is determined by reference to the profits or losses of periods of account of the trade (calculated for income tax purposes).
- (3) If no period of account coincides with a terminal loss period, any of the following steps may be taken if they are necessary in order to arrive at the profit or loss of the terminal loss period—
  - (a) apportioning the profit or loss of a period of account between the part of the period that falls in the terminal loss period and the part that does not, and
  - (b) adding the profit or loss of a period of account (or part of a period) to profits or losses of other periods of account (or parts).
- (4) Section 203(3) and (4) of ITTOIA 2005 applies for the purposes of subsection (3) as it applies for the purposes of section 203(2) of that Act.
- (5) If as a result of section 205 of ITTOIA 2005 a deduction is allowed for overlap profit in calculating the profits of the trade of the final tax year, that deduction is to be made in calculating the loss (if any) mentioned in subsection (1)(a) (and is therefore irrelevant for the purposes of subsection (1)(b)).
- (6) In the case of a notional trade carried on by a partner in a firm—
  - (a) the periods of account of the notional trade are taken to be the periods of account of the actual trade, and
  - (b) the references in subsections (2) and (3) to the profits or losses of periods of account of the trade are to the partner's share of the profits or losses of the actual trade determined in accordance with sections 849 and 850 of ITTOIA 2005.

## **91 How relief works**

This section explains how the deductions are to be made. The amount of the relievable loss to be deducted at any step is limited in accordance with section 25(4) and (5).

### *Step 1*

Deduct the relievable loss from the profits of the trade of the final tax year.

### *Step 2*

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Deduct any part of the relievable loss not deducted at Step 1 from the profits of the trade of the previous tax year.

*Step 3*

Deduct any part of the relievable loss not deducted at Step 1 or 2 from the profits of the trade of the tax year before the previous one.

*Step 4*

Deduct any part of the relievable loss not deducted at Step 1, 2 or 3 from the profits of the trade of the tax year before that one.

*Other claims*

If the relievable loss has not been deducted in full at Steps 1 to 4, the person may use the part not so deducted in giving effect to any other relief under this Chapter (depending on the terms of the relief).

**92 Use of trade-related interest and dividends if trade profits insufficient**

- (1) This section applies if terminal trade loss relief cannot be fully given in relation to the profits of a trade of a tax year because (apart from this section) there are no profits, or insufficient profits, of the trade of the tax year.
- (2) For the purposes of the relief any interest or dividends for the tax year that relate to the trade are treated as profits of the trade of the tax year.
- (3) Interest or dividends for the tax year relate to the trade if they—
  - (a) arise in the tax year, and
  - (b) would be brought into account in calculating the profits of the trade but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts.

**93 Mineral extraction trade and carry back of balancing allowances**

- (1) This section applies if—
  - (a) a person permanently ceases to carry on a mineral extraction trade, and
  - (b) the person makes a claim for terminal trade loss relief and a claim in respect of a balancing allowance under section 355 of CAA 2001.
- (2) Terminal trade loss relief must be given before relief under section 355 of CAA 2001.
- (3) In giving effect to the terminal trade loss relief, the balancing allowance is to be ignored.
- (4) “Mineral extraction trade” has the same meaning as in Part 5 of CAA 2001 (see section 394 of that Act).

**94 Carry back of certain interest as loss**

- (1) This section applies if—
  - (a) an individual pays interest in a tax year which is eligible for relief under section 383 (as a result of section 388 or 398),

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- (b) the interest is an expense incurred wholly and exclusively for the purposes of a trade carried on wholly or partly in the United Kingdom, and
  - (c) relief under section 383 cannot be fully given in respect of the interest because there is no income or insufficient income in the tax year.
- (2) For the purposes of terminal trade loss relief, the amount for which relief has not been given may be treated as a loss made in the trade at the date of payment.
- (3) This section applies to professions and vocations as it applies to trades.

#### *Wholly foreign trades*

### **95 Foreign trades etc: reliefs only against foreign income**

- (1) This section applies if a person—
- (a) carries on a trade, profession or vocation wholly outside the United Kingdom, and
  - (b) makes a loss in the trade, profession or vocation.
- (2) In that case—
- (a) sideways relief for the loss is available only against the person's qualifying foreign income,
  - (b) trade income relief for the loss is available only against the person's qualifying foreign trade income, and
  - (c) section 261B of TCGA 1992 (use of trading loss as a CGT loss) does not apply in relation to the loss.
- (3) “Trade income relief” means—
- (a) carry-forward trade loss relief, or
  - (b) terminal trade loss relief.
- (4) “Qualifying foreign income” means—
- (a) qualifying foreign trade income, or
  - (b) income falling within section 23, 355, 575, 613, 615, 631 or 635 of ITEPA 2003 (foreign employment or pension income).
- (5) “Qualifying foreign trade income” means the profits of any trade, profession or vocation carried on wholly outside the United Kingdom.
- (6) But “qualifying foreign income” and “qualifying foreign trade income” do not include any income which is charged to income tax in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis).

#### *Post-cessation trade relief*

### **96 Post-cessation trade relief**

- (1) A person may make a claim for post-cessation trade relief if, after permanently ceasing to carry on a trade—
- (a) the person makes a qualifying payment, or
  - (b) a qualifying event occurs in relation to a debt owed to the person,

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and the payment is made, or the event occurs, within 7 years of that cessation.

- (2) If the claim is made in respect of a payment, the claim is for the payment to be deducted in calculating the person's net income for the tax year in which the payment is made (see Step 2 of the calculation in section 23).
- (3) If the claim is made in respect of an event, the claim is for the appropriate amount of the debt to be deducted in calculating the person's net income for the relevant tax year (see Step 2 of the calculation in section 23).
- (4) The claim must be made on or before the first anniversary of the normal self-assessment filing date for the tax year for which the deduction is to be made.
- (5) If—
  - (a) the person is a company within the charge to income tax under Chapter 2 of Part 2 of ITTOIA 2005 in respect of a trade, and
  - (b) the company ceases at any time to be within that tax charge in respect of the trade,
 the company is treated for the purposes of this section as permanently ceasing to carry on the trade at that time.
- (6) This section applies to professions and vocations as it applies to trades (and sections 97 and 98 are to be read accordingly).
- (7) This section needs to be read with—
  - (a) section 97 (meaning of “qualifying payment”),
  - (b) section 98 (meaning of “qualifying event” etc),
  - [<sup>F29</sup>(ba) section 98A (denial of relief for tax-generated payments or events),]
  - (c) section 99 (reduction of relief for unpaid trade expenses), and
  - (d) section 100 (prohibition against double counting).

#### Textual Amendments

**F29** S. 96(7)(ba) inserted (17.7.2012) (with effect in accordance with s. 9(5) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 9\(2\)](#)

## 97 Meaning of “qualifying payment”

- (1) For the purposes of section 96 a person makes a “qualifying payment” after permanently ceasing to carry on a trade if the person makes a payment wholly and exclusively for any of purposes A to D.
- (2) A payment is made for purpose A if it is made—
  - (a) in remedying defective work done, goods supplied or services provided in the course of the trade, or
  - (b) by way of damages (whether awarded or agreed) in respect of defective work done, goods supplied or services provided in the course of the trade.
- (3) A payment is made for purpose B if it is made in meeting the expenses of legal or other professional services in connection with a claim (a “claim about defects”) that—
  - (a) work done in the course of the trade was defective,
  - (b) goods supplied in the course of the trade were defective, or



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*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

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- (c) services provided in the course of the trade were defective.
- (4) A payment is made for purpose C if it is made in insuring—
  - (a) against liabilities arising out of any claim about defects, or
  - (b) against the liability to meet the expenses of legal or other professional services in connection with any claim about defects.
- (5) A payment is made for purpose D if it is made for the purpose of collecting a debt which was brought into account in calculating the profits of the trade.

## **98 Meaning of “qualifying event” etc**

- (1) This section explains for the purposes of section 96 what is meant by—
  - (a) a “qualifying event” occurring in relation to a debt owed to a person who has permanently ceased to carry on a trade, and
  - (b) “the appropriate amount of the debt” to be deducted in calculating a person's net income for “the relevant tax year”.
- (2) A qualifying event occurs in relation to a debt owed to the person if—
  - (a) an unpaid debt was brought into account in calculating the profits of the trade,
  - (b) the person is entitled to the benefit of the debt, and
  - (c) the debt is released (in whole or in part) as part of a statutory insolvency arrangement (within the meaning of Part 2 of ITTOIA 2005).

The event occurs when the debt is released.

- (3) The appropriate amount of the debt to be deducted is—
  - (a) the amount released, or
  - (b) if the person was entitled to only part of the benefit of the debt, the corresponding part of the amount released.
- (4) The relevant tax year is the tax year in which the debt is released.
- (5) A qualifying event also occurs in relation to a debt owed to the person if—
  - (a) an unpaid debt was brought into account in calculating the profits of the trade,
  - (b) the person is entitled to the benefit of the debt, and
  - (c) the debt proves to be bad.

The event occurs when the debt proves to be bad.

- (6) The appropriate amount of the debt to be deducted is—
  - (a) the amount of the debt, or
  - (b) if the person was entitled to only part of the benefit of the debt, the corresponding part of the amount of the debt.
- (7) The relevant tax year is the tax year specified in the claim.
- (8) The person making the claim may specify—
  - (a) the tax year in which the debt proves to be bad, or
  - (b) a subsequent tax year throughout which the debt remains bad (so long as the tax year begins within 7 years of the cessation),but, if the person has previously made a claim specifying a tax year in respect of the debt, the person may not specify another tax year in respect of it.

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

#### **Modifications etc. (not altering text)**

**C8** S. 98 applied (17.7.2012) by [Finance Act 2012 \(c. 14\), s. 9\(8\)](#)

### [<sup>F30</sup>**98A Denial of relief for tax-generated payments or events**

- (1) Post-cessation trade relief is not available to a person in respect of a payment or an event which is made or occurs directly or indirectly in consequence of, or otherwise in connection with, relevant tax avoidance arrangements (and, accordingly, no section 261D claim may be made in respect of the payment or event).
- (2) For this purpose “relevant tax avoidance arrangements” means arrangements—
  - (a) to which the person is a party, and
  - (b) the main purpose, or one of the main purposes, of which is the obtaining of a reduction in tax liability as a result of the availability of post-cessation trade relief (whether by making a claim for that relief or a section 261D claim).
- (3) In this section—
  - (a) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and
  - (b) “section 261D claim” means a claim under section 261D of TCGA 1992.]

#### **Textual Amendments**

**F30** S. 98A inserted (17.7.2012) (with effect in accordance with s. 9(5)(7)(8) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 9\(3\)](#)

### **99 Reduction of relief for unpaid trade expenses**

- (1) This section applies for the purposes of post-cessation trade relief in respect of a person's trade if a deduction was made in calculating the profits of the trade for an expense not actually paid (an “unpaid expense”).
- (2) The amount of the person's relief for a tax year is reduced (but not below nil) by—
  - (a) the total amount of unpaid expenses at the end of the tax year, or
  - (b) if the person carried on the trade as a partner in a firm, the person's share of the total amount of unpaid expenses at the end of the tax year.
- (3) But any unpaid expense which is taken into account in reducing the amount of the person's relief for a tax year is left out of account in making reductions for subsequent tax years.
- (4) If the person actually pays an amount in respect of an unpaid expense taken into account in reducing the amount of the person's relief, the person is treated as making a qualifying payment for the purposes of section 96.
- (5) The amount of the qualifying payment is—
  - (a) the amount actually paid, or
  - (b) if less, the amount of the reduction.
- (6) This section applies to professions and vocations as it applies to trades.

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*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

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## **100 Prohibition against double counting**

- (1) Post-cessation trade relief is not available for an amount for which relief is given, or is available, under any other provision of the Income Tax Acts.
- (2) For this purpose—
  - (a) relief available under section 254 of ITTOIA 2005 (allowable deductions against post-cessation receipts) is treated as given for other amounts before any amount for which post-cessation trade relief is available, and
  - (b) relief under that section is treated as available if it would have been available but for the fact that the post-cessation receipts (against which the deductions would have been allowed) are exempt under section 524 of this Act.

## **101 Treating excess post-cessation trade relief as CGT loss**

A person who cannot deduct all of an amount under a claim for post-cessation trade relief may be able to treat the unused part as an allowable loss for capital gains tax purposes: see sections 261D and 261E of TCGA 1992.

# **CHAPTER 3**

## **RESTRICTIONS ON TRADE LOSS RELIEF FOR CERTAIN PARTNERS**

### *Introduction*

## **102 Overview of Chapter**

- (1) This Chapter restricts the amount of relief that may be given for any loss made by an individual in a trade carried on by the individual as—
  - (a) a limited partner in any tax year (see sections [F<sup>31</sup>103A, 103C to 105, 113A and 114]),
  - (b) a member of a limited liability partnership (an “LLP”) in any tax year (see sections [F<sup>32</sup>103C, 103D, 107 to 109, 113A and 114]), or
  - (c) a non-active partner [F<sup>33</sup>(see sections 103B to 103D and 110 to 114) ].
- (2) This Chapter also restricts the amount of relief that may be given for any loss made by an individual in a trade carried on by the individual as a partner in a firm if the trade consists of or includes the exploitation of films (see [F<sup>34</sup>section 115 ]).
- (3) This Chapter needs to be read with sections 791 to 795 (income tax charge recovering excess relief for losses made by individuals carrying on a trade in partnership).
- (4) See also—
  - (a) sections 796 to 803 (income tax charge in relation to individuals claiming relief for film-related trading losses), and
  - (b) sections 804 to 809 (income tax charge in relation to individuals carrying on a trade in partnership claiming relief for licence-related trading losses).

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

### Textual Amendments

- F31** Words in s. 102(1)(a) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 4 paras. 7\(2\)\(a\), 21](#)
- F32** Words in s. 102(1)(b) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 4 paras. 7\(2\)\(b\), 21](#)
- F33** Words in s. 102(1)(c) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 4 paras. 7\(2\)\(c\), 21](#)
- F34** Words in s. 102(2) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 4 paras. 7\(3\), 21](#)

### 103 Meaning of “sideways relief”, “capital gains relief” and “firm”

- (1) For the purposes of this Chapter sideways relief is—
- trade loss relief against general income (see sections 64 to 70), or
  - early trade losses relief (see sections 72 to 74).
- (2) For the purposes of this Chapter—
- 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
  - capital gains relief is given for a loss when it is so treated.
- (3) 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).

### [<sup>F35</sup>103A Meaning of “limited partner”

- (1) In this Chapter “ limited partner ” means an individual who carries on a trade—
- as a limited partner in a limited partnership registered under the Limited Partnerships Act 1907,
  - as a partner in a firm who in substance acts as a limited partner in relation to the trade (see subsection (2)), or
  - 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—
- is not entitled to take part in the management of the trade, and
  - 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—
- the individual carries on the trade jointly with other persons,
  - 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
  - under that law, the individual is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade.

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

- (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).

#### Textual Amendments

**F35** Ss. 103A, 103B inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 8, 21](#)

### 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 [<sup>F36</sup>of the trade and those activities are carried on—
- (a) on a commercial basis, and
  - (b) with a view to the realisation of profits as a result of the activities.]
- (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.]

#### Textual Amendments

**F35** Ss. 103A, 103B inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 8, 21](#)

**F36** Words in s. 103B(2) substituted (21.7.2008 with effect in accordance with s. 61(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [s. 61\(1\)](#)

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

*[<sup>F37</sup>Limit on amount of sideways relief and capital gains relief*

**Textual Amendments**

**F37** S. 103C and cross-heading inserted (with effect in accordance with Sch. 4 para. 1(2)-(13) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 para. 1\(1\)](#)

**103C Limit on reliefs in any tax year not to exceed cap for tax year**

- (1) This section applies if an individual carries on one or more trades—
  - (a) as a non-active partner in a firm during a tax year, or
  - (b) as a limited partner in a firm at a time in that tax year,
 and the individual makes a loss in any of those trades (an “affected loss”) in that tax year.
- (2) There is a restriction on the amount of sideways relief and capital gains relief which (after applying the restrictions under the other provisions of this Chapter) may be given to the individual for any affected loss (but see subsections (6) and (7)).
- (3) The restriction is that the total amount of the sideways relief and capital gains relief given to the individual for all the affected losses must not exceed the cap for that tax year.
- (4) The cap for any tax year is £25,000.
- (5) The Treasury may by order amend the sum for the time being specified in subsection (4).
- (6) The restriction under this section does not apply to so much of any affected loss as derives from qualifying film expenditure (see section 103D).
- (7) The restriction under this section does not affect the giving of sideways relief for a loss made in a trade against the profits of that trade.
- (8) In this section “trade ” does not include a trade which consists of the underwriting business of a member of Lloyd's (within the meaning of section 184 of FA 1993). ]

**[<sup>F38</sup>103D Meaning of “qualifying film expenditure”**

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

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

- (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). ]

#### Textual Amendments

**F38** S. 103D inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 9, 21](#)

### *Limited partners*

#### **104 Restriction on reliefs for limited partners**

- (1) This section applies if—
- (a) at a time in a tax year (“the relevant tax year”) an individual carries on a trade (“the relevant trade”) as a limited partner in a firm, and
  - (b) the individual makes a loss in the relevant trade in the relevant tax year.
- (2) There is a restriction on the amount of relief within subsection (3) which may be given to the individual for the loss.
- (3) The relief within this subsection is—
- (a) sideways relief against the individual's income apart from profits of the relevant trade, and
  - (b) capital gains relief.
- (4) The restriction is that—
- (a) the sum of the amount of the relief given and the total amount of all other relevant relief given, less
  - (b) the total amount of recovered relief,
- must not exceed the individual's contribution to the firm as at the end of the basis period for the relevant tax year (see section 105).
- (5) “Relevant relief” means sideways relief or capital gains relief given to the individual for—
- (a) a loss made in the relevant trade in a tax year at a time during which the individual carries on that trade as a limited partner, or
  - (b) a loss made in the relevant trade in an early tax year during which the individual carries on that trade as a non-active partner<sup>F39</sup> ....
- (6) “The total amount of recovered relief” means 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 relevant trade.

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

- (7) If the firm is carrying on, or has carried on, other trades apart from the relevant trade, for the purpose of determining the total amount of all other relevant relief and the total amount of recovered relief—
- (a) apply subsection (5) in relation to each other trade as well as the relevant trade and then add the results together, and
  - (b) apply subsection (6) as if the reference to the relevant trade were a reference to the relevant trade or any of the other trades.

#### **Textual Amendments**

**F39** Words in s. 104(5) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 10\(a\), 21](#), [Sch. 27 Pt. 2\(1\)](#)

### **105 Meaning of “contribution to the firm”**

- (1) For the purposes of section 104 the individual's contribution to the firm is the sum of amounts A and B.
- (2) Amount A 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 (4).
- (3) In particular, the individual's share of any profits of the firm is to be included 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.
- (4) 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 or may be entitled to draw out or receive back at any time when the individual is carrying on a trade as a limited partner in the firm, or
  - (c) the individual is or may be entitled to require another person to reimburse to the individual.
- (5) In subsection (4) any reference to drawing out or receiving back an amount is to doing so directly or indirectly but 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.
- (6) Amount B is the amount of the individual's total share of profits within subsection (7) except so far as—
  - (a) that share has been added to the firm's capital, or
  - (b) the individual has received that share in money or money's worth.
- (7) Profits are within this subsection if they are from the relevant trade.
- (8) In determining the amount of the individual's total share of profits within subsection (7) ignore the individual's share of any losses from the relevant trade which would (apart from this subsection) reduce that amount.
- (9) In subsections (3), (7) and (8) any reference to profits or losses are to profits or losses calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits or losses for income tax purposes).



*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

- (10) If the firm is carrying on, or has carried on, other trades apart from the relevant trade, subsections (7) and (8) have effect as if references to the relevant trade were references to the relevant trade or any of the other trades.
- (11) This section needs to be read with <sup>F40</sup>section 113A and any regulations made under section 114 (exclusion of amounts) in calculating the individual's contribution to the firm for the purposes of section 104).

**Textual Amendments**

**F40** Words in s. 105(11) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 11\(a\), 21](#)

**<sup>F41</sup>106 Meaning of “limited partner”**

.....

**Textual Amendments**

**F41** S. 106 repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 12, 21](#), [Sch. 27 Pt. 2\(1\)](#)

*Members of LLPs*

**107 Restriction on reliefs for members of LLPs**

- (1) This section applies if—
- (a) an individual carries on a trade (“the relevant trade”) as a member of an LLP at a time in a tax year, and
  - (b) the individual makes a loss in the relevant trade in the tax year (“the relevant tax year”).
- (2) But if the relevant tax year is an early tax year during which the individual carries on the relevant trade as a non-active partner <sup>F42</sup>...—
- (a) this section does not apply, and
  - (b) section 110 applies instead.
- (3) There is a restriction on the amount of relief within subsection (4) which may be given to the individual for the loss.
- (4) The relief within this subsection is—
- (a) sideways relief against the individual's income apart from profits of the relevant trade, and
  - (b) capital gains relief.
- (5) The restriction is that—
- (a) the sum of the amount of the relief given and the total amount of all other relevant relief given, less
  - (b) the total amount of recovered relief,

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

must not exceed the individual's contribution to the LLP as at the end of the basis period for the relevant tax year (see section 108).

- (6) “Relevant relief” means sideways relief or capital gains relief given to the individual for—
- (a) a loss made in the relevant trade in a tax year at a time during which the individual carries on that trade as a member of an LLP, or
  - (b) a loss made in the relevant trade in an early tax year during which the individual carries on that trade as a non-active partner.
- (7) “The total amount of recovered relief” means 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 relevant trade.
- (8) If the LLP is carrying on, or has carried on, other trades apart from the relevant trade, for the purpose of determining the total amount of all other relevant relief and the total amount of recovered relief—
- (a) apply subsection (6) in relation to each other trade as well as the relevant trade and then add the results together, and
  - (b) apply subsection (7) as if the reference to the relevant trade were a reference to the relevant trade or any of the other trades.

#### **Textual Amendments**

**F42** Words in s. 107(2) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 4 paras. 10\(b\), 21, Sch. 27 Pt. 2\(1\)](#)

### **108 Meaning of “contribution to the LLP”**

- (1) For the purposes of section 107 the individual's contribution to the LLP at any time (“the relevant time”) is the sum of amounts A and B.
- (2) Amount A is the amount which the individual has contributed to the LLP as capital less so much of that amount (if any) as is within subsection (5).
- (3) In particular, the individual's share of any profits of the LLP is to be included in the amount which the individual has contributed to the LLP as capital so far as that share has been added to the LLP's capital.
- (4) In subsection (3) the reference to profits is 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).
- (5) 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 draws out or receives back during the period of 5 years beginning with the relevant time,
  - (c) the individual is or may be entitled to draw out or receive back at any time when the individual is a member of the LLP, or
  - (d) the individual is or may be entitled to require another person to reimburse to the individual.

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

- (6) In subsection (5) any reference to drawing out or receiving back an amount is to doing so directly or indirectly but 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.
- (7) Amount B is the amount of the individual's liability on a winding up of the LLP so far as that amount is not included in amount A.
- (8) For the purposes of subsection (7) the amount of the individual's liability on a winding up of the LLP is the amount which—
  - (a) the individual is liable to contribute to the assets of the LLP in the event of its being wound up, and
  - (b) the individual remains liable to contribute for the period of at least 5 years beginning with the relevant time (or until the LLP is wound up, if that happens before the end of that period).
- (9) This section needs to be read with <sup>F43</sup>section 113A and any regulations made under section 114 (exclusion of amounts) in calculating the individual's contribution to the LLP for the purposes of section 107).

#### Textual Amendments

**F43** Words in s. 108(9) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 11\(b\), 21](#)

### 109 Unrelieved losses brought forward

- (1) This section applies for the purpose of determining an individual's entitlement to sideways relief and capital gains relief if—
  - (a) the individual carries on a trade as a member of an LLP at a time during a tax year (“the current tax year”), and
  - (b) as a result of section 107, sideways relief or capital gains relief has not been given to the individual for amounts of loss made in the trade in previous tax years as a member of the LLP.
- (2) So far as they are not excluded by subsection (3), the amounts of loss mentioned in subsection (1)(b) are treated as having been made in the current tax year.
- (3) An amount of loss is excluded so far as—
  - (a) as a result of this section, sideways relief or capital gains relief has been given to the individual for the amount for years prior to the current tax year or would have been so given had a claim been made, or
  - (b) other than as a result of this section, relief under the Income Tax Acts has been given to the individual for the amount for years prior to the current tax year or for the current tax year.

*Non-active members of LLPs or other partnerships (apart from limited partnerships)*

### 110 Restriction on reliefs for non-active partners in early tax years

- (1) This section applies if—

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

- (a) an individual carries on a trade (“the relevant trade”) as a non-active partner in a firm during an early tax year <sup>F44</sup> ..., and
  - (b) the individual makes a loss in the relevant trade in that tax year (“the relevant tax year”).
- (2) There is a restriction on the amount of relief within subsection (3) which may be given to the individual for the loss.
- (3) The relief within this subsection is—
- (a) sideways relief against the individual's income apart from profits of the relevant trade, and
  - (b) capital gains relief.
- (4) The restriction is that—
- (a) the sum of the amount of the relief given and the total amount of all other relevant relief given, less
  - (b) the total amount of recovered relief,
- must not exceed the individual's contribution to the firm as at the end of the basis period for the relevant tax year (see section 111).
- (5) “Relevant relief” means sideways relief or capital gains relief given to the individual for—
- (a) a loss made in the relevant trade in a tax year at a time during which the individual carries on that trade as a limited partner or as a member of an LLP, or
  - (b) a loss made in the relevant trade in an early tax year during which the individual carries on that trade as a non-active partner.
- (6) “The total amount of recovered relief” means 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 relevant trade.
- (7) If the firm is carrying on, or has carried on, other trades apart from the relevant trade, for the purpose of determining the total amount of all other relevant relief and the total amount of recovered relief—
- (a) apply subsection (5) in relation to each other trade as well as the relevant trade and then add the results together, and
  - (b) apply subsection (6) as if the reference to the relevant trade were a reference to the relevant trade or any of the other trades.
- (8) In this section “trade” does not include a trade which consists of the underwriting business of a member of Lloyd's (within the meaning of section 184 of FA 1993).

#### Textual Amendments

**F44** Words in s. 110(1)(a) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 10\(c\), 21](#), [Sch. 27 Pt. 2\(1\)](#)

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*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

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## **111 Meaning of “contribution to the firm”**

- (1) For the purposes of section 110 the individual's contribution to the firm at any time (“the relevant time”) is the sum of amount A and amount B and, if there is a winding up of the firm, amount C.
- (2) Amount A 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 (4).
- (3) In particular, the individual's share of any profits of the firm is to be included 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.
- (4) 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 draws out or receives back during the period of 5 years beginning with the relevant time,
  - (c) the individual is or may be entitled to draw out or receive back at any time when the individual is carrying on a trade as a partner in the firm, or
  - (d) the individual is or may be entitled to require another person to reimburse to the individual.
- (5) In subsection (4) any reference to drawing out or receiving back an amount is to doing so directly or indirectly but 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.
- (6) Amount B is the amount of the individual's total share of profits within subsection (7) except so far as—
  - (a) that share has been added to the firm's capital, or
  - (b) the individual has received that share in money or money's worth.
- (7) Profits are within this subsection if they are from the relevant trade.
- (8) In determining the amount of the individual's total share of profits within subsection (7) ignore the individual's share of any losses from the relevant trade which would (apart from this subsection) reduce that amount.
- (9) In subsections (3), (7) and (8) any reference to profits or losses are to profits or losses calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits or losses for income tax purposes).
- (10) If the firm is carrying on, or has carried on, other trades apart from the relevant trade, subsections (7) and (8) have effect as if references to the relevant trade were references to the relevant trade or any of the other trades.

Subsection (8) of section 110 applies for the purposes of this subsection as it applies for the purposes of that section.
- (11) Amount C is the amount which the individual has contributed to the assets of the firm on its winding up so far as it is not included in amount A or B.
- (12) This section needs to be read with [F45] section 113A and any regulations made under section 114 (exclusion of amounts] in calculating the individual's contribution to the firm for the purposes of section 110).

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

**Textual Amendments**

**F45** Words in s. 111(12) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 11\(c\), 21](#)

**112** [<sup>F46</sup>Meaning of “early tax year”]

- F47(1) .....
- F47(2) .....
- F47(3) .....
- F47(4) .....
- F47(5) .....

- (6) In this Chapter “early tax year” means, in relation to an individual carrying on a trade—
  - (a) the tax year in which the individual first started to carry on the trade, or
  - (b) one of the next 3 tax years.

**Textual Amendments**

**F46** S. 112 heading substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 13\(b\), 21](#)

**F47** S. 112(1)-(5) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 13\(a\), 21](#), [Sch. 27 Pt. 2\(1\)](#)

**113 Unrelieved losses brought forward**

- (1) This section applies for the purpose of determining an individual's entitlement to sideways relief and capital gains relief in relation to a trade if—
  - (a) at a time during a tax year (“the current tax year”) the individual carries on the trade as a partner in a firm or makes a contribution to the assets of a firm within subsection (2) on the firm's winding up, and
  - (b) as a result of section 110, sideways relief or capital gains relief has not been given to the individual for amounts of loss made in the trade in previous tax years.
- (2) A firm is within this subsection if the individual has carried on the trade as a partner in the firm.
- (3) So far as they are not excluded by subsection (4), the amounts of loss mentioned in subsection (1)(b) are treated as having been made in the current tax year.
- (4) An amount of loss is excluded so far as—
  - (a) as a result of this section, sideways relief or capital gains relief has been given to the individual for the amount for years prior to the current tax year or would have been so given had a claim been made, or
  - (b) other than as a result of this section, relief under the Income Tax Acts has been given to the individual for the amount for years prior to the current tax year or for the current tax year.

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

- (5) For the purpose of applying sections 107 and 110 in relation to the amounts of loss treated by this section as having been made in the current tax year—
- (a) the individual is treated as having carried on the trade during the current tax year as a non-active partner in the firm, and
  - (b) the current tax year is treated as if it were an early tax year in relation to the individual's carrying on of the trade.
- (6) Subsection (7) applies if the individual—
- (a) made a contribution in the current tax year to the assets of the firm on its winding up, but
  - (b) did not carry on the trade as a partner in the firm in the current tax year.
- (7) If this subsection applies—
- (a) the restrictions under sections 66 and 74(1) do not apply in relation to the amounts of loss treated by this section as having been made in the current tax year, and
  - (b) in the application of this Chapter in relation to those amounts of loss, section 110(4) has effect as if the words “the basis period for” were omitted.
- (8) In subsection (1)(b) the reference to amounts of loss does not include amounts of loss which have been treated by section 109 as having been made in any previous tax year.

*<sup>F48</sup>Exclusion of amounts in calculating contribution to the firm or LLP*

#### Textual Amendments

**F48** S. 113A and cross-heading inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 para. 2](#)

### 113A Exclusion of amounts contributed to access relief

- (1) An amount which an individual contributes to a firm as capital is to be excluded in calculating the individual's contribution to the firm for the purposes of section 104 or 110 if the contribution was made for a prohibited purpose (but see subsection (4)).
- (2) If—
- (a) an individual carries on a trade as a member of an LLP at a time in a tax year,
  - (b) the individual does not devote a significant amount of time to the trade in the relevant period for that year, and
  - (c) the individual contributes an amount to the LLP as capital at any time in that year,
- that amount is to be excluded in calculating the individual's contribution to the LLP for the purposes of section 107 if the contribution was made for a prohibited purpose (but see subsection (4)).
- (3) For the purposes of this section a contribution is made for a prohibited purpose if the main purpose, or one of the main purposes, of making the contribution is the obtaining of a reduction in tax liability by means of sideways relief or capital gains relief.
- (4) This section has no effect in relation to the application of any restriction under section 104, 107 or 110 to any loss that derives wholly from qualifying film expenditure.]

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

F49 ...

#### Textual Amendments

**F49** S. 114 cross-heading omitted and s. 114 heading substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 14, 21](#)

### 114 [F49 Power to exclude other amounts ]

- (1) 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—
  - (a) the individual's contribution to the firm for the purposes of section 104 or 110, or
  - (b) the individual's contribution to the LLP for the purposes of section 107.
- (2) “Specified” means specified in the regulations.
- (3) 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.
- (4) The provision which may be made as a result of subsection (3)(b) includes provision amending or repealing any provision of an Act passed before FA 2005.
- (5) 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.

*Restrictions for film trades carried on in partnership*

### 115 Restrictions on reliefs for firms exploiting films

- (1) This section applies if—
  - (a) an individual carries on a trade as a partner in a firm at a time during a tax year,
  - (b) the trade consists of or includes the exploitation of films,
  - (c) the individual makes a loss in the trade in the tax year (“the affected tax year”),
  - (d) the individual does not devote a significant amount of time to the trade in the relevant period for the affected tax year <sup>F50</sup> ...,
  - (e) the affected tax year is the one in which the individual first started to carry on the trade or is one of the next 3 tax years, and
  - (f) a relevant agreement existed at a time during the affected tax year which guaranteed the individual an amount of income (see subsections (5) to (9)).
- (2) Sideways relief for the loss is not available to the individual, except against any of the individual's income which consists of profits of the trade.
- (3) Capital gains relief for the loss is not available to the individual.
- [F51(4) The restrictions under this section do not apply to so much of the loss (if any) as derives from qualifying film expenditure.]



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- (5) An agreement is relevant if—
  - (a) it is an agreement made with a view to the individual's carrying on the trade,
  - (b) it is an agreement made in the course of the individual's carrying it on, or
  - (c) it is related to an agreement falling within paragraph (a) or (b).
- (6) An agreement is relevant whether or not the individual is or may be required under the agreement to contribute an amount to the trade.
- (7) Agreements are related to one another if they are entered into under the same arrangement (regardless of when either agreement is entered into).
- (8) A relevant agreement guarantees the individual an amount of income if it (or any part of it) is designed to secure the receipt by the individual of that amount (or at least that amount) of income.
- (9) It does not matter when the amount of income is (or is to be) received.
- (10) In this section “film” is to be read in accordance with paragraph 1 of Schedule 1 to the Films Act 1985 (c. 21).

**Textual Amendments**

**F50** Words in s. 115(1)(d) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 10\(d\), 21](#), [Sch. 27 Pt. 2\(1\)](#)

**F51** S. 115(4) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 15, 21](#)

<sup>F52</sup> **116 Exclusion from restrictions under section 115: certain film expenditure**

.....

**Textual Amendments**

**F52** S. 116 repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 16, 21](#), [Sch. 27 Pt. 2\(1\)](#)

**CHAPTER 4**

LOSSES FROM PROPERTY BUSINESSES

*Introduction*

**117 Overview of Chapter**

- (1) This Chapter—
  - (a) provides for losses made in a UK property business or overseas property business in a tax year to be carried forward for deduction from profits in subsequent tax years (see sections 118 and 119),

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- (b) provides in limited circumstances for relief against general income for losses made in a UK property business or overseas property business (see sections 120 to 124), and
  - (c) provides for relief for certain post-cessation payments and events in connection with a UK property business (see section 125).
- (2) This Chapter also makes provision for a UK property business which consists of, or so far as it includes, the commercial letting of furnished holiday accommodation to be treated as a trade for the purposes of this Part (see section 127).
- [<sup>F53</sup>(2A) This Chapter also makes provision for an overseas property business which consists of, or so far as it includes, the commercial letting of furnished holiday accommodation in one or more EEA states to be treated as a trade for the purposes of this Part (see section 127ZA).]
- [<sup>F54</sup>(3) This Chapter also contains provision restricting relief under this Chapter (see [<sup>F55</sup>sections 127A and 127B]).]

#### **Textual Amendments**

- F53** S. 117(2A) inserted (19.7.2011) (with effect in accordance with Sch. 14 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 3\(2\)](#)
- F54** S. 117(3) inserted (8.4.2010 with effect in accordance with s. 25(5)-(7) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [s. 25\(2\)](#)
- F55** Words in s. 117(3) substituted (17.7.2012) (with effect in accordance with s. 10(5)-(7) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 10\(2\)](#)

### *Carry-forward property loss relief*

#### **118 Carry forward against subsequent property business profits**

- (1) Relief is given to a person under this section if the person—
  - (a) carries on a UK property business or overseas property business (alone or in partnership) in a tax year, and
  - (b) makes a loss in the business in the tax year.
- (2) The relief is given by deducting the loss in calculating the person's net income for subsequent tax years (see Step 2 of the calculation in section 23).
- (3) But a deduction for that purpose is to be made only from profits of the business.
- (4) In calculating a person's net income for a tax year, deductions under this section from the profits of a business are to be made before deductions of any other reliefs from those profits.
- (5) No relief is to be given under this section so far as relief for the loss is given under section 120.
- (6) This section needs to be read with section 119 (how relief works).

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## 119 How relief works

This section explains how the deductions are to be made. The amount of the loss to be deducted at any step is limited in accordance with section 25(4) and (5).

### *Step 1*

Deduct the loss from the profits of the business for the next tax year.

### *Step 2*

Deduct from the profits of the business for the following tax year the amount of the loss not previously deducted.

### *Step 3*

Continue to apply Step 2 in relation to the profits of the business for subsequent tax years until all the loss is deducted.

### *Property loss relief against general income*

## 120 Deduction of property losses from general income

- (1) A person may make a claim for property loss relief against general income if—
  - (a) in a tax year (“the loss-making year”) the person makes a loss in a UK property business or overseas property business (whether carried on alone or in partnership), and
  - (b) the loss has a capital allowances connection or the business has a relevant agricultural connection.
- (2) The claim is for the applicable amount of the loss to be deducted in calculating the person's net income—
  - (a) for the loss-making year, or
  - (b) for the next tax year.

(See Step 2 of the calculation in section 23.)
- (3) The claim must specify the tax year for which the deduction is to be made.
- (4) But if the applicable amount of the loss is not deducted in full in giving effect to a claim for the specified tax year, the person may make a separate claim for property loss relief against general income for the other tax year.
- (5) For this purpose “the other tax year” means the tax year which was not specified in the claim already made, but which could have been specified.
- (6) This section needs to be read with—
  - (a) section 121 (how relief works),
  - (b) section 122 (meaning of “the applicable amount of the loss”),
  - (c) section 123 (meaning of “the loss has a capital allowances connection” and “the business has a relevant agricultural connection”), and
  - (d) section 124 (supplementary).

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[<sup>F56</sup>(7) See also section 127A (no relief for tax-generated losses attributable to annual investment allowance) [<sup>F57</sup>and section 127B (no relief for tax-generated agricultural expenses)].]

#### Textual Amendments

- F56** S. 120(7) inserted (8.4.2010 with effect in accordance with s. 25(5)-(7) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 25\(3\)](#)
- F57** Words in s. 120(7) inserted (17.7.2012) (with effect in accordance with s. 10(5)-(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 10\(3\)](#)

## 121 How relief works

- (1) This subsection explains how the deductions are to be made.

The amount of the applicable amount of the loss to be deducted at any step is limited in accordance with section 25(4) and (5).

#### *Step 1*

Deduct the applicable amount of the loss in calculating the person's net income for the specified tax year.

#### *Step 2*

This step applies if the applicable amount of the loss has not been deducted in full and the person makes a separate claim for the other tax year.

Deduct the part of the applicable amount of the loss not deducted at Step 1 in calculating the person's net income for the other tax year.

#### *Other relief*

If the applicable amount of the loss has not been deducted in full at Steps 1 and 2, relief is given under section 118 for the part not so deducted.

- (2) There is a priority rule if—
- (a) a person makes a claim for property loss relief against general income (“the prior claim”) in respect of a loss made in a tax year,
  - (b) the prior claim specifies the next tax year as the one for which the deduction is to be made (“the relevant tax year”),
  - (c) the person makes another claim for property loss relief against general income in respect of a loss made in the relevant tax year, and
  - (d) that other claim also specifies the relevant tax year as the one for which the deduction is to be made.
- (3) The rule is that priority is given to making deductions under the prior claim.

## 122 Meaning of “the applicable amount of the loss”

- (1) This section defines “the applicable amount of the loss” for the purposes of sections 120 and 121.
- (2) “The applicable amount of the loss” is—

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- (a) the amount of the loss, or
  - (b) if less, the amount arising from the relevant connection (see subsections (3) to (5)).
- (3) If—
- (a) the loss has a capital allowances connection, but
  - (b) the business does not have a relevant agricultural connection,
- the amount arising from the relevant connection is the amount (“the net capital allowances”) by which the capital allowances exceed the charges under CAA 2001.
- (4) If—
- (a) the business has a relevant agricultural connection, but
  - (b) the loss does not have a capital allowances connection,
- the amount arising from the relevant connection is the amount of the allowable agricultural expenses.
- (5) If—
- (a) the loss has a capital allowances connection, and
  - (b) the business has a relevant agricultural connection,
- the amount arising from the relevant connection is the sum of the net capital allowances and the amount of the allowable agricultural expenses.

### **123 Meaning of “the loss has a capital allowances connection” and “the business has a relevant agricultural connection”**

- (1) This section applies for the purposes of sections 120 and 122.
- (2) The loss has a capital allowances connection if, in calculating the loss—
  - (a) the amount of the capital allowances treated as expenses of the business, exceeds
  - (b) the amount of any charges under CAA 2001 treated as receipts of the business.
- (3) The business has a relevant agricultural connection if—
  - (a) the business is carried on in relation to land that consists of or includes an agricultural estate, and
  - (b) allowable agricultural expenses deducted in calculating the loss are attributable to the estate.
- (4) “Agricultural estate” means land—
  - (a) which is managed as one estate, and
  - (b) which consists of or includes land occupied wholly or mainly for purposes of husbandry.
- (5) “Allowable agricultural expenses”, in relation to an agricultural estate, means any expenses attributable to the estate which are deductible—
  - (a) in respect of maintenance, repairs, insurance or management of the estate, and
  - (b) otherwise than in respect of interest payable on a loan.
- (6) But expenses attributable to the parts of the estate used wholly for purposes other than those of husbandry are to be ignored.
- (7) And if parts of the estate are used both—

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- (a) for purposes of husbandry, and
- (b) for other purposes,

the expenses in respect of those parts are to be reduced so far as those parts are used for the other purposes.

## 124 Supplementary

- (1) A claim for property loss relief against general income must be made on or before the first anniversary of the normal self-assessment filing date for the tax year specified in the claim.
- (2) If a loss has previously been carried forward under section 118, the claim must be accompanied by the amendments of any return made under—
  - (a) section 8 of TMA 1970, or
  - (b) section 8A of TMA 1970,
 that are necessary to give effect to section 118(5) (reducing the amount of the loss carried forward (if necessary, to nil)).

### *Post-cessation property relief*

## 125 Post-cessation property relief

- (1) A person may make a claim for post-cessation property relief if, after permanently ceasing to carry on a UK property business (whether carried on alone or in partnership) —
  - (a) the person makes a qualifying payment, or
  - (b) a qualifying event occurs in relation to a debt owed to the person,
 and the payment is made, or the event occurs, within 7 years of that cessation.
- (2) If the claim is made in respect of a payment, the claim is for the payment to be deducted in calculating the person's net income for the tax year in which the payment is made (see Step 2 of the calculation in section 23).
- (3) If the claim is made in respect of an event, the claim is for the appropriate amount of the debt to be deducted in calculating the person's net income for the relevant tax year (see Step 2 of the calculation in section 23).
- (4) The claim must be made on or before the first anniversary of the normal self-assessment filing date for the tax year for which the deduction is to be made.
- (5) If—
  - (a) the person is a company within the charge to income tax under Chapter 3 of Part 3 of ITTOIA 2005 in respect of a UK property business, and
  - (b) the company ceases at any time to be within that tax charge in respect of the business,
 the company is treated for the purposes of this section as permanently ceasing to carry on the business at that time.
- (6) The following provisions apply for the purposes of post-cessation property relief as they apply for the purposes of post-cessation trade relief (but as if any reference to a trade were to a UK property business)—

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

- (a) section 97 (meaning of “qualifying payment”),
- (b) section 98 (meaning of “qualifying event” etc),
- [<sup>F58</sup>(ba) section 98A (denial of relief for tax-generated payments or events),]
- (c) section 99 (reduction of relief for unpaid trade expenses), and
- (d) section 100 (prohibition against double counting).

#### Textual Amendments

**F58** S. 125(6)(ba) inserted (17.7.2012) (with effect in accordance with s. 9(6)-(8) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 9\(4\)](#)

### 126 Treating excess post-cessation property relief as CGT loss

A person who cannot deduct all of an amount under a claim for post-cessation property relief may be able to treat the unused part as an allowable loss for capital gains tax purposes: see sections 261D and 261E of TCGA 1992.

#### *Furnished holiday accommodation*

### 127 UK furnished holiday lettings business treated as trade

- (1) This section applies if, in a tax year, a person carries on a UK furnished holiday lettings business.
- (2) “UK furnished holiday lettings business” means a UK property business which consists of, or so far as it includes, the commercial letting of furnished holiday accommodation (within the meaning of Chapter 6 of Part 3 of ITTOIA 2005).
- (3) For the purposes of this Part (but as modified below) the person is treated instead as carrying on in the tax year a single trade—
  - (a) which consists of every commercial letting of furnished holiday accommodation comprised in the person's UK furnished holiday lettings business, and
  - (b) the profits of which are chargeable to income tax.

[<sup>F59</sup>(3A) Chapter 2 applies as if sections 64 to 82 and 89 to 95 were omitted.]

- (7) If there is a letting of accommodation only part of which is furnished holiday accommodation, just and reasonable apportionments are to be made for the purpose of determining what is comprised in the trade treated as carried on.

#### Textual Amendments

**F59** S. 127(3A) substituted (19.7.2011) for s. 127(4)-(6) (with effect in accordance with Sch. 14 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 14 para. 3\(3\)](#)

#### Modifications etc. (not altering text)

**C9** S. 127(1)-(3) modified (21.7.2009) by [Finance Act 2009 \(c. 10\), Sch. 6 para. 2\(5\)](#)

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

## **[<sup>F60</sup>127Z~~EA~~ EEA furnished holiday lettings business treated as trade**

- (1) This section applies if, in a tax year, a person carries on an EEA furnished holiday lettings business.
- (2) “EEA furnished holiday lettings business” means an overseas property business which consists of, or so far as it includes, the commercial letting of furnished holiday accommodation (within the meaning of Chapter 6 of Part 3 of ITTOIA 2005) in one or more EEA states.
- (3) For the purposes of this Part (but as modified below) the person is treated instead as carrying on in the tax year a single trade—
  - (a) which consists of every commercial letting of furnished holiday accommodation comprised in the person's EEA furnished holiday lettings business, and
  - (b) the profits of which are chargeable to income tax.
- (4) Chapter 2 applies as if sections 64 to 82 and 89 to 95 were omitted.
- (5) If there is a letting of accommodation only part of which is furnished holiday accommodation, just and reasonable apportionments are to be made for the purpose of determining what is comprised in the trade treated as carried on.]

### **Textual Amendments**

**F60** S. 127ZA inserted (19.7.2011) (with effect in accordance with Sch. 14 para. 4 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 14 para. 3\(4\)](#)

## *[<sup>F61</sup>Restrictions on relief*

### **Textual Amendments**

**F61** S. 127A and cross-heading inserted (8.4.2010 with effect in accordance with s. 25(5)-(7) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [s. 25\(4\)](#)

## **127A No relief for tax-generated losses attributable to annual investment allowance**

- (1) This section applies if—
  - (a) in a tax year a person makes a loss in a UK property business or overseas property business (whether carried on alone or in partnership),
  - (b) the loss has a capital allowances connection (see section 123(2)), and
  - (c) the loss arises directly or indirectly in consequence of, or otherwise in connection with, relevant tax avoidance arrangements.
- (2) No property loss relief against general income may be given to the person for so much of the applicable amount of the loss as is attributable to an annual investment allowance.
- (3) For the purposes of subsection (2), the applicable amount of the loss is to be treated as attributable to capital allowances before anything else and to an annual investment allowance before any other capital allowance.



*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

- (4) In subsection (1) “relevant tax avoidance arrangements” means arrangements—
  - (a) to which the person is a party, and
  - (b) the main purpose, or one of the main purposes, of which is being in a position to make use of an annual investment allowance in the obtaining of a reduction in tax liability by means of property loss relief against general income.
- (5) In subsection (4) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (6) In this section “the applicable amount of the loss” has the meaning given by section 122.]

### [<sup>F62</sup>127B No relief for tax-generated agricultural expenses

- (1) This section applies if—
  - (a) in a tax year a person makes a loss in a UK property business or overseas property business (whether carried on alone or in partnership),
  - (b) the business has a relevant agricultural connection for the purposes of section 120 (see section 123(3) to (7)), and
  - (c) any allowable agricultural expenses deducted in calculating the loss arise directly or indirectly in consequence of, or otherwise in connection with, relevant tax avoidance arrangements.
- (2) No property loss relief against general income may be given to the person for so much of the applicable amount of the loss as is attributable to expenses falling within subsection (1)(c).
- (3) For the purposes of subsection (2), the applicable amount of the loss is to be treated as attributable to expenses falling within subsection (1)(c) before anything else.
- (4) In subsection (1) “relevant tax avoidance arrangements” means arrangements—
  - (a) to which the person is a party, and
  - (b) the main purpose, or one of the main purposes, of which is the obtaining of a reduction in tax liability by means of property loss relief against general income.
- (5) In subsection (4) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (6) In this section “the applicable amount of the loss” has the meaning given by section 122 and “allowable agricultural expenses” has the meaning given by section 123.]

#### Textual Amendments

**F62** S. 127B inserted (17.7.2012) (with effect in accordance with s. 10(5)-(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 10\(4\)](#)

*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

## CHAPTER 5

### LOSSES IN AN EMPLOYMENT OR OFFICE

#### 128 Employment loss relief against general income

- (1) A person may make a claim for employment loss relief against general income if the person—
  - (a) is in employment or holds an office in a tax year, and
  - (b) makes a loss in the employment or office in the tax year (“the loss-making year”).
- (2) The claim is for the loss to be deducted in calculating the person's net income—
  - (a) for the loss-making year,
  - (b) for the previous tax year, or
  - (c) for both tax years.

(See Step 2 of the calculation in section 23.)

- (3) If the claim is made in relation to both tax years, the claim must specify the year for which a deduction is to be made first.
- (4) Otherwise the claim must specify either the loss-making year or the previous tax year.
- (5) The claim must be made on or before the first anniversary of the normal self-assessment filing date for the loss-making year.
- [<sup>F63</sup>(5A) No claim may be made in respect of the loss if and to the extent that it is made as a result of anything done in pursuance of arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.]
- (6) Nothing in this section prevents a person who makes a claim specifying a particular tax year in respect of a loss from making a further claim specifying the other tax year in respect of the unused part of the loss.
- (7) This Chapter is subject to paragraph 2 of Schedule 1B to TMA 1970 (claims for loss relief involving two or more years).
- (8) This section needs to be read with section 129 (how relief works).

#### Textual Amendments

**F63** S. 128(5A) inserted (with effect in accordance with s. 68(2) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 68\(1\)](#) (with s. 68(3))

#### 129 How relief works

- (1) This subsection explains how the deductions are to be made.

The amount of the loss to be deducted at any step is limited in accordance with section 25(4) and (5).

##### *Step 1*

Deduct the loss in calculating the person's net income for the specified tax year.

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*Status: Point in time view as at 31/01/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

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### *Step 2*

This step applies only if the claim is made in relation to both tax years.

Deduct the part of the loss not deducted at Step 1 in calculating the person's net income for the other tax year.

- (2) There is a priority rule if a person—
  - (a) makes a claim for employment loss relief against general income (“the first claim”) in relation to the loss-making year, and
  - (b) makes a separate claim in respect of a loss made in the following tax year in relation to the same tax year as the first claim.
- (3) The rule is that priority is given to making deductions under the first claim.
- (4) For this purpose a “separate claim” means—
  - (a) a claim for employment loss relief against general income, or
  - (b) a claim for trade loss relief against general income (see sections 64 to 70).

## **130 Treating loss in employment or office as CGT loss**

A person who cannot deduct all of a loss in an employment or office under a claim for employment loss relief against general income may be able to treat the unused part as an allowable loss for capital gains tax purposes: see sections 261B and 261C of TCGA 1992.

## **CHAPTER 6**

### LOSSES ON DISPOSAL OF SHARES

#### *Share loss relief against general income*

## **131 Share loss relief**

- (1) An individual is eligible for relief under this Chapter (“share loss relief”) if—
  - (a) the individual incurs an allowable loss for capital gains tax purposes on the disposal of any shares in any tax year (“the year of the loss”), and
  - (b) the shares are qualifying shares.

This is subject to subsections (3) and (4) and section 136(2).

- (2) Shares are qualifying shares for the purposes of this Chapter if—
  - (a) EIS relief is attributable to them, or
  - (b) if EIS relief is not attributable to them, they are shares in a qualifying trading company which have been subscribed for by the individual.
- (3) Subsection (1) applies only if the disposal of the shares is—
  - (a) by way of a bargain made at arm's length,
  - (b) by way of a distribution in the course of dissolving or winding up the company,
  - (c) a disposal within section 24(1) of TCGA 1992 (entire loss, destruction dissipation or extinction of asset), or

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- (d) a deemed disposal under section 24(2) of that Act (claim that value of the asset has become negligible).
- (4) Subsection (1) does not apply to any allowable loss incurred on the disposal if—
- (a) the shares are the subject of an exchange or arrangement of the kind mentioned in section 135 or 136 of TCGA 1992 (company reconstructions etc), and
  - (b) because of section 137 of that Act, the exchange or arrangement involves a disposal of the shares.

### **132 Entitlement to claim**

- (1) An individual who is eligible for share loss relief may make a claim for the loss to be deducted in calculating the individual's net income—
- (a) for the year of the loss,
  - (b) for the previous tax year, or
  - (c) for both tax years.

(See Step 2 of the calculation in section 23.)

- (2) If the claim is made in relation to both tax years, the claim must specify the year for which a deduction is to be made first.
- (3) Otherwise the claim must specify either the year of the loss or the previous tax year.
- (4) The claim must be made on or before the first anniversary of the normal self-assessment filing date for the year of the loss.

### **133 How relief works**

- (1) This subsection explains how the deductions are to be made.

The amount of the loss to be deducted at any step is limited in accordance with section 25(4) and (5).

#### *Step 1*

Deduct the loss in calculating the individual's net income for the specified tax year.

#### *Step 2*

This step applies only if the claim is made in relation to both tax years.

Deduct the part of the loss not deducted at Step 1 in calculating the individual's net income for the other tax year.

- (2) Subsection (1) is subject to sections 136(5) and 147 (which set limits on the amounts of share loss relief that may be obtained in particular cases).
- (3) If an individual—
  - (a) makes a claim for share loss relief against income (“the first claim”) in relation to the year of the loss, and
  - (b) makes a separate claim for share loss relief against income in respect of a loss made in the following tax year in relation to the same tax year as the first claim, priority is to be given to making deductions under the first claim.

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- (4) Any share loss relief claimed in respect of any income has priority over any relief claimed in respect of that income under section 64 (deduction of losses from general income) or 72 (early trade losses relief).
- (5) A claim for share loss relief does not affect any claim for a deduction under TCGA 1992 for so much of the allowable loss as is not deducted under subsection (1).

*Shares to which EIS relief is not attributable*

**134 Qualifying trading companies**

- (1) In relation to shares to which EIS relief is not attributable (see section 131(2)(b)), a qualifying trading company is a company which meets each of conditions A to D.
- (2) Condition A is that the company either—
  - (a) meets each of the following requirements on the date of the disposal—
    - (i) the trading requirement (see section 137),
    - (ii) the control and independence requirement (see section 139),
    - (iii) the qualifying subsidiaries requirement (see section 140), and
    - (iv) the property managing subsidiaries requirement (see section 141), or
  - (b) has ceased to meet any of those requirements at a time which is not more than 3 years before that date and has not since that time been an excluded company, an investment company or a trading company.
- (3) Condition B is that the company either—
  - (a) has met each of the requirements mentioned in condition A for a continuous period of 6 years ending on that date or at that time, or
  - (b) has met each of those requirements for a shorter continuous period ending on that date or at that time and has not before the beginning of that period been an excluded company, an investment company or a trading company.
- (4) Condition C is that the company—
  - (a) met the gross assets requirement (see section 142) both immediately before and immediately after the issue of the shares in respect of which the share loss relief is claimed, and
  - (b) met the unquoted status requirement (see section 143) at the relevant time within the meaning of that section.
- (5) Condition D is that the company has carried on its business wholly or mainly in the United Kingdom throughout the period—
  - (a) beginning with the incorporation of the company or, if later, 12 months before the shares in question were issued, and
  - (b) ending with the date of the disposal.

**135 Subscriptions for shares**

- (1) This section has effect in relation to shares to which EIS relief is not attributable.
- (2) An individual subscribes for shares in a company if they are issued to the individual by the company in consideration of money or money's worth.
- (3) If—

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- (a) an individual (“A”) subscribed for, or is treated under subsection (4) or this subsection as having subscribed for, any shares,
  - (b) A transferred the shares to another individual (“B”) during their lives, and
  - (c) A was B's spouse or civil partner at the time of the transfer,
- B is treated as having subscribed for the shares.
- (4) If—
- (a) an individual has subscribed for, or is treated under subsection (3) or this subsection as having subscribed for, any shares, and
  - (b) any corresponding bonus shares are subsequently issued to the individual, the individual is treated as having subscribed for the bonus shares.

### 136 Disposals of new shares

- (1) This section has effect in relation to shares to which EIS relief is not attributable.
- (2) If—
- (a) an individual disposes of shares (“the new shares”), and
  - (b) the new shares are, by virtue of section 127 of TCGA 1992 (reorganisation etc treated as not involving disposal), identified with other shares (“the old shares”) previously held by the individual,
- the individual is not eligible for share loss relief on the disposal of the new shares unless [<sup>F64</sup>condition A or B] is met.
- This is subject to section 145(3).
- (3) Condition A is that the individual would have been eligible for share loss relief on a disposal of the old shares—
- (a) if the individual had incurred an allowable loss in disposing of them by way of a bargain made at arm's length on the occasion of the disposal that would have occurred but for section 127 of TCGA 1992, and
  - (b) where applicable, if this Chapter had then been in force.
- (4) Condition B is that the individual gave for the new shares consideration in money or money's worth other than consideration of the kind mentioned in paragraph (a) or (b) of section 128(2) of TCGA 1992 (“new consideration”).
- (5) If the individual relies on condition B, the amount of share loss relief on the disposal of the new shares must not exceed the amount or value of the new consideration taken into account as a deduction in calculating the amount of the loss incurred on the disposal.

#### Textual Amendments

**F64** Words in s. 136(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 496** (with Sch. 2)

### *Qualifying trading companies: the requirements*

### 137 The trading requirement

- (1) The trading requirement is that—

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- (a) the company, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, or
  - (b) the company is a parent company and the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities.
- (2) If the company intends that one or more other companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades—
- (a) the company is treated as a parent company for the purposes of subsection (1)(b), and
  - (b) the reference in subsection (1)(b) to the group includes the company and any existing or future company that will be its qualifying subsidiary after the intention in question is carried into effect.

This subsection does not apply at any time after the abandonment of that intention.

- (3) For the purpose of subsection (1)(b) the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (4) For the purpose of determining the business of a group, activities are ignored so far as they are activities carried on by a mainly trading subsidiary otherwise than for its main purpose.
- (5) For the purposes of determining the business of a group, activities of a group company are ignored so far as they consist in—
- (a) the holding of shares in or securities of a qualifying subsidiary of the parent company,
  - (b) the making of loans to another group company,
  - (c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company, or
  - (d) the holding and managing of property used by a group company for the purpose of research and development from which it is intended—
    - (i) that a qualifying trade to be carried on by a group company will be derived, or
    - (ii) that a qualifying trade carried on or to be carried on by a group company will benefit.
- (6) Any reference in subsection (5)(d)(i) or (ii) to a group company includes a reference to any existing or future company which will be a group company at any future time.
- (7) In this section—

“excluded activities” has the meaning given by section 192 read with sections 193 to 199,

“group” means a parent company and its qualifying subsidiaries,

“group company”, in relation to a group, means the parent company or any of its qualifying subsidiaries,

“incidental purposes” means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question,

“mainly trading subsidiary” means a subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one or more

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qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly,

“non-qualifying activities” means—

- (a) excluded activities, and
- (b) activities (other than research and development) carried on otherwise than in the course of a trade,

“parent company” means a company that has one or more qualifying subsidiaries,

“qualifying subsidiary” is to be read in accordance with section 191,

“qualifying trade” has the meaning given by section 189, and

“research and development” has the meaning given by section 1006.

- (8) In sections 189(1)(b) and 194(4)(c) (as applied by subsection (7) for the purposes of the definitions of “excluded activities” and “qualifying trade”) “period B” means the continuous period that is relevant for the purposes of section 134(3).

[<sup>F65</sup>(9) In section 195 as applied by subsection (7) for the purposes mentioned in subsection (8), references to the issuing company are to be read as references to the company mentioned in subsection (1).]

#### **Textual Amendments**

**F65** S. 137(9) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(5\), 13](#)

### **138 Ceasing to meet trading requirement because of administration or receivership**

- (1) A company is not regarded as ceasing to meet the trading requirement merely because of anything done in consequence of the company or any of its subsidiaries being in administration or receivership.

This has effect subject to subsections (2) and (3).

- (2) Subsection (1) applies only if—
- (a) the entry into administration or receivership, and
  - (b) everything done as a result of the company concerned being in administration or receivership,

is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

- (3) A company ceases to meet the trading requirement if before the time that is relevant for the purposes of section 134(2)—
- (a) a resolution is passed, or an order is made, for the winding up of the company or any of its subsidiaries (or, in the case of a winding up otherwise than under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989, any other act is done for the like purpose), or
  - (b) the company or any of its subsidiaries is dissolved without winding up.

This is subject to subsection (4).

- (4) Subsection (3) does not apply if—



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- (a) the winding up is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and
  - (b) the company continues, during the winding up, to be a trading company.
- (5) References in this section to a company being “in administration” or “in receivership” are to be read in accordance with section 252.

### **139 The control and independence requirement**

- (1) The control element of the requirement is that—
- (a) the company must not control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the company, and
  - (b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a) (whether at a time during the continuous period that is relevant for the purposes of section 134(3) or otherwise).
- (2) The independence element of the requirement is that—
- (a) the company must not—
    - (i) be a 51% subsidiary of another company, or
    - (ii) be under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company, and
  - (b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a) (whether at a time during the continuous period that is relevant for the purposes of section 134(3) or otherwise).
- (3) This section is subject to section 145(3).
- (4) In this section—
- “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable,
  - “control”, in subsection (1)(a), is to be read in accordance with [F66sections 450 and 451 of CTA 2010],
  - “qualifying subsidiary” is to be read in accordance with section 191.

#### **Textual Amendments**

**F66** Words in s. 139(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 497** (with **Sch. 2**)

### **140 The qualifying subsidiaries requirement**

- (1) The qualifying subsidiaries requirement is that any subsidiary that the company has must be a qualifying subsidiary of the company.
- (2) In this section “qualifying subsidiary” is to be read in accordance with section 191.

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## **141 The property managing subsidiaries requirement**

- (1) The property managing subsidiaries requirement is that any property managing subsidiary that the company has must be a qualifying 90% subsidiary of the company.
- (2) In this section—
  - “property managing subsidiary” has the meaning given by section 188(2),
  - “qualifying 90% subsidiary” has the meaning given by section 190.

## **142 The gross assets requirement**

- (1) The gross assets requirement in the case of a single company is that the value of the company's gross assets—
  - (a) must not exceed £7 million immediately before the shares in respect of which the share loss relief is claimed are issued, and
  - (b) must not exceed £8 million immediately afterwards.
- (2) The gross assets requirement in the case of a parent company is that the value of the group assets—
  - (a) must not exceed £7 million immediately before the shares in respect of which the share loss relief is claimed are issued, and
  - (b) must not exceed £8 million immediately afterwards.
- (3) The value of the group assets means the sum of the values of the gross assets of each of the members of the group, ignoring any that consist in rights against, or shares in or securities of, another member of the group.
- (4) In this section—
  - “group” means a parent company and its qualifying subsidiaries,
  - “parent company” means a company that has one or more qualifying subsidiaries,
  - “qualifying subsidiary” is to be read in accordance with section 191, and
  - “single company” means a company that does not have one or more qualifying subsidiaries.

## **143 The unquoted status requirement**

- (1) The unquoted status requirement is that, at the time (“the relevant time”) at which the shares in respect of which the share loss relief is claimed are issued—
  - (a) the company must be an unquoted company,
  - (b) there must be no arrangements in existence for the company to cease to be an unquoted company, and
  - (c) there must be no arrangements in existence for the company to become a subsidiary of another company (“the new company”) by virtue of an exchange of shares, or shares and securities, if—
    - (i) section 145 applies in relation to the exchange, and
    - (ii) arrangements have been made with a view to the new company ceasing to be an unquoted company.
- (2) The arrangements referred to in subsection (1)(b) and (c)(ii) do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the company or the new company are at any subsequent time—

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- (a) listed on a stock exchange that is a recognised stock exchange by virtue of an order made under section [F671005(1)(b)], or
  - (b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of section 184(3)(b) or (c),
- if the order was made after the relevant time.

(3) In this section—

“arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable, and

“unquoted company” has the meaning given by section 184(2).

#### Textual Amendments

**F67** Word in s. 143(2)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(2\)](#)

### 144 Power to amend requirements by Treasury order

The Treasury may by order make such amendments of sections 137 to 143 as they consider appropriate.

*Qualifying trading companies: supplementary*

### 145 Relief after an exchange of shares for shares in another company

- (1) This section and section 146 apply in relation to shares to which EIS relief is not attributable if—
- (a) a company (“the new company”) in which the only issued shares are subscriber shares acquires all the shares (“old shares”) in another company (“the old company”),
  - (b) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company,
  - (c) the consideration for the new shares of each description consists wholly of old shares of the corresponding description,
  - (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings, and
  - (e) by virtue of section 127 of TCGA 1992 as applied by section 135(3) of that Act (company reconstructions etc), the exchange of shares is not to be treated as involving a disposal of the old shares or an acquisition of the new shares.

In this subsection references to shares, except in the expressions “shares to which EIS relief is not attributable” and “subscriber shares”, include securities.

- (2) For the purposes of this Chapter the exchange of shares is not regarded as involving any disposal of the old shares or any acquisition of the new shares.
- (3) Nothing in—
- (a) section 136(2) (disposals of new shares), and
  - (b) section 139 (the control and independence requirement),

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applies in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1) or, in the case of section 139, arrangements with a view to such an exchange.

- (4) For the purposes of this section old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights.
- (5) References in section 146 to “old shares”, “new shares”, “the old company” and “the new company” are to be read in accordance with this section.

#### **146 Substitution of new shares for old shares**

- (1) Subsection (2) applies if, in the case of any new shares held by an individual or by a nominee for an individual, the old shares for which they were exchanged were shares—
  - (a) to which EIS relief was not attributable, and
  - (b) which had been subscribed for by the individual.
- (2) This Chapter has effect in relation to any subsequent disposal or other event as if—
  - (a) the new shares had been subscribed for by the individual at the time when, and for the amount for which, the old shares were subscribed for by the individual,
  - (b) the new shares had been issued by the new company at the time when the old shares were issued to the individual by the old company, and
  - (c) any requirements of this Chapter which were met at any time before the exchange by the old company had been met at that time by the new company.

[<sup>F68</sup>(3) Nothing in subsection (2) applies in relation to section 195(7) as applied by section 137(7) for the purposes mentioned in section 137(8).]

#### **Textual Amendments**

**F68** S. 146(3) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(6\), 13](#)

#### *Limits on share loss relief and mixed holdings*

#### **147 Limits on share loss relief**

- (1) Subsection (2) applies if—
  - (a) an individual disposes of any qualifying shares,
  - (b) those shares either—
    - (i) form part of a section 104 holding <sup>F69</sup>... at the time of the disposal, <sup>F70</sup>...
    - [<sup>F71</sup>(ii) at a time earlier than the time of the disposal but after 5 April 2008 formed part of a section 104 holding, or
    - (iii) at a time earlier than that time and than 6 April 2008 formed part of an old section 104 holding or a 1982 holding, and]
  - (c) the individual makes a claim under section 132 in respect of a loss incurred on the disposal.

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- (2) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if the qualifying shares had not formed part of the holding.
- (3) Subsection (4) applies if—
- (a) an individual disposes of any qualifying shares,
  - (b) the qualifying shares, and other shares that are not capable of being qualifying shares, are for the purposes of TCGA 1992 to be treated as acquired by a single transaction by virtue of section 105(1)(a) of that Act (disposal of shares acquired on same day etc), and
  - (c) the individual makes a claim under section 132 in respect of a loss incurred on the disposal.
- (4) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if—
- (a) the qualifying shares were to be treated as acquired by a single transaction, and
  - (b) the other shares were not to be so treated.
- (5) Subsection (6) applies if—
- (a) an individual disposes of any qualifying shares,
  - (b) the qualifying shares (taken as a single asset), and other shares in the same company that are not capable of being qualifying shares (taken as a single asset), are for the purposes of TCGA 1992 to be treated as the same asset by virtue of section 127 of that Act (reorganisation etc treated as not involving disposal), and
  - (c) the individual makes a claim under section 132 in respect of a loss incurred on the disposal,
- References in this subsection and subsection (6) to other shares in the same company include debentures of the same company.
- (6) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if the qualifying shares and the other shares in the same company were not to be treated as the same asset.
- (7) In this section—
- “section 104 holding” has the meaning given by section 104(3) of TCGA 1992 [<sup>F72</sup>and “old section 104 holding” is a holding that was a section 104 holding within the meaning of that provision as it applied in relation to disposals before 6 April 2008], and
  - “1982 holding” has the meaning given by section 109(1) of that Act [<sup>F73</sup>as it applied in relation to disposals before 6 April 2008].
- (8) For the purposes of this section and section 148, shares to which EIS relief is not attributable are not capable of being qualifying shares at any time if—
- (a) the individual acquired the shares otherwise than by subscription,
  - (b) condition C in section 134(4) was not met in relation to the issue of the shares, or
  - (c) condition D in section 134(5) would not be met if the shares were disposed of at that time.

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- (9) For the purposes of subsection (5), shares to which EIS relief is not attributable are not capable of being qualifying shares at any time if they are shares of a different class from the shares mentioned in paragraph (a) of that subsection.

#### Textual Amendments

- F69** Words in s. 147(1)(b)(i) omitted (21.7.2008 with effect in accordance with Sch. 2 para. 100 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 98\(2\)\(a\)](#)
- F70** Word in s. 147(1)(b)(i) omitted (21.7.2008 with effect in accordance with Sch. 2 para. 100 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 98\(2\)\(a\)](#)
- F71** S. 147(1)(b)(ii)(iii) substituted (21.7.2008 with effect in accordance with Sch. 2 para. 100 of the amending Act) for s. 147(1)(b)(ii) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 98\(2\)\(b\)](#)
- F72** Words in s. 147(7) inserted (21.7.2008 with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 98\(3\)\(a\)](#)
- F73** Words in s. 147(7) inserted (21.7.2008 with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 98\(3\)\(b\)](#)

### 148 Disposal of shares forming part of mixed holding

- (1) This section applies if an individual disposes of shares forming part of a mixed holding of shares, that is, a holding of shares in a company which includes—
- (a) shares that are not capable of being qualifying shares, and
  - (b) other shares.
- (2) Any question—
- (a) whether a disposal by the individual of shares forming part of the mixed holding is of qualifying shares, or
  - (b) as to which of any qualifying shares acquired by the individual at different times such a disposal relates to,
- is to be determined as provided by the following provisions of this section.
- (3) Any such question as is mentioned in subsection (2) is to be determined—
- (a) except in a case falling within paragraph (b)—
    - (i) in accordance with subsection (4), and
    - (ii) in the case of shares which under that subsection are identified with the whole or any part of a section 104 holding<sup>F74</sup>..., in accordance with subsection (5),
  - (b) in the case of a mixed holding which includes any of the following—
    - (i) shares issued before 1 January 1994 in respect of which relief has been given under Chapter 3 of Part 7 of ICTA (business expansion scheme) and has not been withdrawn,
    - (ii) shares to which EIS relief is attributable, and
    - (iii) shares to which deferral relief (within the meaning of Schedule 5B to TCGA 1992) is attributable,

in accordance with subsection (6).
- (4) For the purposes of subsection (3)(a)(i), the question is to be determined by identifying the shares disposed of in accordance with sections 105 to 105B and 106A of TCGA 1992.

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- (5) For the purposes of subsection (3)(a)(ii), the question is to be determined by treating the disposal and any previous disposal by the individual out of the section 104 <sup>F75</sup>... holding as relating to shares acquired later rather than earlier.
- (6) For the purposes of subsection (3)(b), the question is to be determined—
- (a) in relation to shares issued before 1 January 1994, as provided by subsections (3) to (4C) of section 299 of ICTA (as that section has effect in relation to shares so issued),
  - (b) in relation to shares issued on or after that date and before 6 April 2007, as provided by subsections (6) to (6D) of that section (as that section has effect in relation to shares so issued), and
  - (c) in relation to shares issued on or after 6 April 2007, as provided by section 246 of this Act.
- (7) Any such question as is mentioned in subsection (2) which cannot be determined as provided by subsections (3) to (6) is to be determined on a just and reasonable basis.
- (8) In this section “holding” means any number of shares of the same class held by one individual in the same capacity, growing or diminishing as shares of that class are acquired or disposed of.
- For this purpose—
- (a) shares are not to be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt in on such an exchange, and
  - (b) subsection (4) of section 104 of TCGA 1992 applies as it applies for the purposes of subsection (1) of that section.
- (9) In this section “section 104 holding” [<sup>F76</sup>has] the same meaning as in section 147.

#### Textual Amendments

- F74** Words in s. 148(3)(a)(ii) omitted (21.7.2008 with effect in accordance with Sch. 2 para. 100 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 99\(2\)](#)
- F75** Words in s. 148(5) omitted (21.7.2008 with effect in accordance with Sch. 2 para. 100 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 99\(3\)](#)
- F76** Word in s. 148(9) substituted (21.7.2008 with effect in accordance with Sch. 2 para. 100 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 99\(4\)](#)

## 149 Section 148: supplementary

- (1) In the case of a disposal of shares within section 148(3)(b)(ii) or (iii) to which section 105A of TCGA 1992 (election for alternative treatment: approved-scheme shares) applies—
- (a) section 299 of ICTA (identification of shares) has effect for the purposes of section 148(6)(b), and
  - (b) section 246 of this Act has effect for the purposes of section 148(6)(c), with the same modifications as those with which they have effect for the purposes of section 150A(4) of TCGA 1992 (enterprise investment schemes).
- (2) In a case to which section 127 of TCGA 1992 (reorganisation etc treated as not involving disposal) applies (including a case where that section applies by virtue of an

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enactment relating to chargeable gains), shares included in the new holding are treated for the purposes of section 148 as acquired when the original shares were acquired.

- (3) Any shares held or disposed of by a nominee or bare trustee for an individual are treated for the purposes of section 148 as held or disposed of by that individual.
- (4) In this section “new holding” and “original shares” have the same meaning as in section 127 of TCGA 1992 (or, as the case may be, that section as applied by the enactment concerned).

*Miscellaneous and supplementary*

**150 Deemed time of issue for certain shares**

- (1) In this section “the relevant provisions” means—  
 section 134(5)(a),  
 section 142(1)(a) and (2)(a),  
 section 143(1), and  
 section 146(2)(b).
- (2) If—  
 (a) any shares were issued to an individual (“A”) or are treated under subsection (3) or this subsection as having been issued to A at a particular time,  
 (b) the shares are transferred by A to another individual (“B”) during their lives, and  
 (c) A was B's spouse or civil partner at the time of the transfer,  
 the shares are treated for the purposes of the relevant provisions as having been issued to B at the time they were issued to A or are treated as having been so issued.
- (3) If—  
 (a) any shares (“the original shares”) have been issued to an individual, or are treated under subsection (2) or this subsection as having been issued to an individual at a particular time, and  
 (b) any corresponding bonus shares are subsequently issued to the individual,  
 the bonus shares are treated for the purposes of the relevant provisions as having been issued at the time the original shares were issued to the individual or are treated as having been so issued.

**151 Interpretation of Chapter**

- (1) In this Chapter (subject to subsections (2) to (8))—  
 “bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise),  
 “civil partner” refers to one of two civil partners who are living together,  
 “corresponding bonus shares”, in relation to any shares, means bonus shares which—  
 (a) are issued in respect of those shares, and  
 (b) are in the same company, are of the same class, and carry the same rights, as those shares,



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“EIS relief” means—

- (a) EIS income tax relief under Part 5 of this Act, and
- (b) in relation to shares issued after 31 December 1993 and before 6 April 2007, relief under Chapter 3 of Part 7 of ICTA (enterprise investment scheme),

“excluded company” means a company which—

- (a) has a trade which consists wholly or mainly of dealing in land, in commodities or futures or in shares, securities or other financial instruments,
- (b) has a trade which is not carried on on a commercial basis and in such a way that profits in the trade can reasonably be expected to be realised,
- (c) is a holding company of a group other than a trading group, or
- (d) is a building society or a registered industrial and provident society,

“group” (except in sections 137 and 142) means a company which has one or more 51% subsidiaries together with that or those subsidiaries,

“holding company” means a company whose business consists wholly or mainly in the holding of shares or securities of companies which are its 51% subsidiaries,

[<sup>F77</sup>“investment company” means a company—

- (a) whose business consists wholly or mainly in the making of investments, and
- (b) which derives the principal part of its income from the making of investments,

but does not include the holding company of a trading group.]

“qualifying shares” has the meaning given by section 131(2),

“registered industrial and provident society” means a society registered or treated as registered under the Industrial and Provident Societies Act 1965 (c. 12) or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)),

“shares”—

- (a) includes stock, but
- (b) does not include shares or stock not forming part of a company's ordinary share capital,

“share loss relief” has the meaning given by section 131(1),

“spouse” refers to one of two spouses who are living together,

“trading company” means a company other than an excluded company which is—

- (a) a company whose business consists wholly or mainly of the carrying on of a trade or trades, or
- (b) the holding company of a trading group,

“trading group” means a group the business of whose members, when taken together, consists wholly or mainly in the carrying on of a trade or trades, and

“the year of the loss” has the meaning given by section 131(1).

- (2) For the purposes of the definition of “corresponding bonus shares” in subsection (1), shares are not treated as being of the same class unless they would be so treated if dealt in on [<sup>F78</sup>a recognised stock exchange].
- (3) In section 148(3)(b) and (6) “shares” does not include stock.

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- (4) Except as provided by subsection (5), paragraph (b) of [F79 the definition of shares in subsection (1)] does not apply in the definition of “excluded company” in subsection (1) or in sections 145(1) to (4) and 147(3) to (6), (8) and (9).
- (5) Paragraph (b) of that definition applies in relation to the expression “shares to which EIS relief is not attributable” in section 145(1).
- (6) The definition of “shares” in subsection (1) does not apply in sections 137(5)(a), 142(3) and 143(1)(c) and (2).
- (7) For the purposes of the definition of “trading group” in subsection (1), any trade carried on by a subsidiary which is an excluded company is treated as not constituting a trade.
- (8) For the purposes of this Chapter a disposal of shares which results in an allowable loss for capital gains tax purposes is treated as made at the time when the disposal is made or treated as made for the purposes of TCGA 1992.

#### **Textual Amendments**

- F77** Words in s. 151(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 498\(2\)](#) (with [Sch. 2](#))
- F78** Words in s. 151(2) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\), Sch. 26 para. 12\(3\)](#)
- F79** Words in s. 151(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 498\(3\)](#) (with [Sch. 2](#))

## **CHAPTER 7**

### LOSSES FROM MISCELLANEOUS TRANSACTIONS

#### *Loss relief against miscellaneous income*

#### **152 Losses from miscellaneous transactions**

- (1) A person may make a claim for loss relief against miscellaneous income if in a tax year (“the loss-making year”) the person makes a loss in any relevant transaction.
- (2) A transaction is a relevant one if, assuming there were profits or other income arising from it—
  - (a) those profits or that other income would be section 1016 income, and
  - (b) the person would be liable for income tax charged on those profits or that other income.
- (3) The claim is for the loss to be deducted in calculating the person's net income for the loss-making year and subsequent tax years (see Step 2 of the calculation in section 23).
- (4) But a deduction for that purpose is to be made only from the person's miscellaneous income.
- (5) A person's miscellaneous income is so much of the person's total income as is—
  - (a) income or gains arising from transactions, and
  - (b) section 1016 income.

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This is subject to subsection (6).

- (6) If the loss was made by the person as a partner in a partnership, the transactions covered by subsection (5)(a) are limited to transactions entered into by the partnership.
- (7) In calculating a person's net income for a tax year, deductions under this section from the person's miscellaneous income are to be made before deductions of any other reliefs from that miscellaneous income.
- (8) In this section “section 1016 income” means income on which income tax is charged under or by virtue of any provision to which section 1016 applies [<sup>F80</sup>except that income on which income tax is charged under [<sup>F81</sup>regulation 17 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001)] [<sup>F82</sup>or Chapter 9 of Part 4 of ITTOIA 2005] is not “section 1016 income” for the purposes of subsection (2)(a)].
- (9) This section needs to be read with—
  - (a) section 153 (how relief works),
  - (b) section 154 (transactions in deposit rights), and
  - (c) section 155 (claims).

#### Textual Amendments

**F80** Words in s. 152(8) inserted (with effect in accordance with s. 57(9) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 57\(5\)](#)

**F81** Words in s. 152(8) substituted (with effect in accordance with art. 1(2)(3) Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 129\(2\)](#)

**F82** Words in s. 152(8) inserted (with effect in accordance with s. 69(2)(3) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 69\(1\)](#)

## 153 How relief works

This section explains how the deductions are to be made. The amount of the loss to be deducted at any step is limited in accordance with section 25(4) and (5).

### Step 1

Deduct the loss from the miscellaneous income for the loss-making year.

### Step 2

Deduct from the miscellaneous income for the next tax year the amount of the loss not previously deducted.

### Step 3

Continue to apply Step 2 in relation to miscellaneous income for subsequent tax years until all the loss is deducted.

#### Modifications etc. (not altering text)

**C10** S. 153 modified (21.7.2009) by [Finance Act 2009 \(c. 10\), s. 69\(4\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 4. (See end of Document for details)*

### *Deposit rights*

#### **154 Transactions in deposit rights**

- (1) This section applies if—
  - (a) a person makes a loss from the disposal or exercise of a right to receive an amount,
  - (b) the disposal or exercise is a transaction in a deposit under Chapter 11 of Part 4 of ITTOIA 2005 (see subsection (2)), and
  - (c) the person's total income for a tax year includes interest payable on the amount.
- (2) The disposal or exercise is a transaction in a deposit under Chapter 11 of Part 4 of ITTOIA 2005 if, assuming there were a profit or gain from it, the profit or gain would be charged to tax under that Chapter.
- (3) For the purposes of the giving of loss relief against miscellaneous income for the loss mentioned in subsection (1)(a), the interest mentioned in subsection (1)(c) is treated as miscellaneous income for the tax year.

### *Supplementary*

#### **155 Time limit for claiming relief**

- (1) So far as a claim for loss relief against miscellaneous income concerns the amount of the loss for a tax year, it must be made [<sup>F83</sup>not more than 4 years after the end of] the tax year.
- (2) But—
  - (a) the question whether, and
  - (b) if so, how much,
 loss relief against miscellaneous income should be given for a tax year may be the subject of a separate claim made [<sup>F84</sup>not more than 4 years after the end of] the tax year.

#### **Textual Amendments**

**F83** Words in s. 155(1) substituted (1.4.2010) by [Finance Act 2008 \(c. 9\)](#), s. 118(2), [Sch. 39 para. 58](#); S.I. 2009/403, art. 2(2) (with art. 10)

**F84** Words in s. 155(2) substituted (1.4.2010) by [Finance Act 2008 \(c. 9\)](#), s. 118(2), [Sch. 39 para. 58](#); S.I. 2009/403, art. 2(2) (with art. 10)

**Status:**

Point in time view as at 31/01/2013.

**Changes to legislation:**

There are currently no known outstanding effects for the Income Tax Act 2007, Part 4.