



Income Tax Act 2007

2007 CHAPTER 3

PART 4

LOSS RELIEF

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 (see sections 75 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).

Status: Point in time view as at 19/07/2007.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2. (See end of Document for details)

- (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).

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.
- (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).

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.

Status: Point in time view as at 19/07/2007.

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

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.

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),
 - (c) sections 75 to 79 (restrictions on the relief and early trade losses relief in relation to capital allowances),
 - (d) section 80 (restrictions on those reliefs in relation to ring fence income),

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- (e) section 81 (restrictions on those reliefs in relation to dealings in commodity futures), and
- (f) section 734 of ICTA (restrictions on those reliefs in relation to bond-washing).

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—
- (a) makes a claim for trade 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 trade loss relief against general income, or
 - (b) a claim for employment loss relief against general income under section 128.

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.

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- (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.

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).

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.

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- (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.

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
 - (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” has the same meaning as in Part 11 of ICTA (see section 416 of that Act).

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,

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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.

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),
 - (c) sections 75 to 79 (restrictions on the relief and trade loss relief against general income in relation to capital allowances),
 - (d) section 80 (restrictions on those reliefs in relation to ring fence income),
 - (e) section 81 (restrictions on those reliefs in relation to dealings in commodity futures), and
 - (f) section 734 of ICTA (restrictions on those reliefs in relation to bond-washing).

Status: Point in time view as at 19/07/2007.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2. (See end of Document for details)

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
 - (b) the next 3 tax years.
- (6) This section applies to professions and vocations as it applies to trades.

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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”).
- (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).

76 First-year allowances: introduction

Sideways relief is not available to an individual for so much of a loss as derives from a first-year allowance under Part 2 of CAA 2001 if either section 77 or 78 applies.

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

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- (b) references to making arrangements include effecting schemes.

78 First-year allowances: arrangements to reduce tax liabilities

- (1) This section applies if—
- (a) the 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.

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.

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.

Status: Point in time view as at 19/07/2007.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2. (See end of Document for details)

- (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 same meaning as in Chapter 5 of Part 12 of ICTA (see section 502 of that Act).

81 Dealings in commodity futures

- (1) This section applies if—
 - (a) a person makes a loss in a trade of dealing in commodity futures,
 - (b) the person carried on the trade as a partner in a firm,
 - (c) the person or one or more of the other partners in the firm was a company, and
 - (d) arrangements within subsection (3) have been made.
- (2) Sideways relief is not available for the loss.
- (3) 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 person from the person's interest in the firm is the obtaining of a reduction in tax liability by means of sideways relief.
- (4) It does not matter whether the arrangements were made in the partnership agreement or in any other way.
- (5) References to making arrangements include effecting schemes.
- (6) If relief is given in a case to which this section applies, the relief is withdrawn by the making of an assessment to income tax under this section.
- (7) “Commodity futures” means commodity futures that are for the time being dealt in on a recognised futures exchange (within the meaning of ITTOIA 2005, see section 558(3) of that Act).

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 [F1section 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.

Textual Amendments

- F1** Words in s. 82(a) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 6, 21](#)

Status: Point in time view as at 19/07/2007.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2. (See end of Document for details)

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

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

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

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2. (See end of Document for details)

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),
 - (b) section 92 (use of trade-related interest and dividends if trade profits insufficient),

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- (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

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

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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),
 - (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

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

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- (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),
 - (c) section 99 (reduction of relief for unpaid trade expenses), and
 - (d) section 100 (prohibition against double counting).

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
 - (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.

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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.

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

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- (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.

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.

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 2.