

Status: Point in time view as at 21/07/2008.

Changes to legislation: Finance Act 2008, Cross Heading: Main provisions is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 21

RESTRICTION ON LOSS RELIEF FOR NON-ACTIVE TRADERS

Main provisions

2 After section 74 insert—

“General restrictions on sideways relief and capital gains relief

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
 - (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.

Status: Point in time view as at 21/07/2008.

Changes to legislation: Finance Act 2008, Cross Heading: Main provisions is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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.

74B No relief for tax-generated losses

- (1) This section applies if—
- (a) during a tax year an individual carries on a trade, otherwise than as a partner in a firm, in a non-active capacity (see section 74C),
 - (b) the individual makes a loss in the trade 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 individual for the loss (but subject to subsection (5)).
- (3) In subsection (1) “relevant tax avoidance arrangements” means arrangements made by the individual 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) Subsection (10) of section 74A (capital gains relief) applies for the purposes of this section.

74C Meaning of “non-active capacity” for purposes of sections 74A and 74B etc

- (1) For the purposes of sections 74A and 74B 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
 - (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.

Status: Point in time view as at 21/07/2008.

Changes to legislation: Finance Act 2008, Cross Heading: Main provisions is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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.

74D Meaning of “qualifying film expenditure” for purposes of sections 74A and 74B

- (1) For the purposes of sections 74A and 74B 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.
- (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 74A and 74B 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).”

Status:

Point in time view as at 21/07/2008.

Changes to legislation:

Finance Act 2008, Cross Heading: Main provisions is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.