

SCHEDULES

SCHEDULE 17

PARTNERSHIPS

PART 2

PARTNERSHIPS WITH MIXED MEMBERSHIP

Main provision

- 7 (1) Part 9 of ITTOIA 2005 (partnerships) is amended as follows.
- (2) In section 850 (allocation of firm's profits and losses between partners) in subsection (1) for "and 850B" substitute "to 850D".
- (3) After section 850B insert—

"850C Excess profit allocation to non-individual partners

- (1) Subsections (4) and (5) apply if—
- (a) for a period of account ("the relevant period of account")—
 - (i) the calculation under section 849 in relation to an individual partner ("A") (see subsection (6)) produces a profit for the firm, and
 - (ii) A's share of that profit determined under section 850 or 850A ("A's profit share") is a profit or is neither a profit nor a loss,
 - (b) a non-individual partner ("B") (see subsection (6)) has a share of the profit for the firm mentioned in paragraph (a)(i) ("B's profit share") which is a profit (see subsection (7)), and
 - (c) condition X or Y is met.
- (2) Condition X is that it is reasonable to suppose that—
- (a) amounts representing A's deferred profit (see subsection (8)) are included in B's profit share, and
 - (b) in consequence, both A's profit share and the relevant tax amount (see subsection (9)) are lower than they would otherwise have been.
- (3) Condition Y is that—
- (a) B's profit share exceeds the appropriate notional profit (see subsections (10) to (17)),
 - (b) A has the power to enjoy B's profit share ("A's power to enjoy") (see subsections (18) to (21)), and
 - (c) it is reasonable to suppose that—

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- (i) the whole or any part of B's profit share is attributable to A's power to enjoy, and
 - (ii) both A's profit share and the relevant tax amount (see subsection (9)) are lower than they would have been in the absence of A's power to enjoy.
- (4) A's profit share is increased by so much of the amount of B's profit share as, it is reasonable to suppose, is attributable to—
- (a) A's deferred profit, or
 - (b) A's power to enjoy,
- as determined on a just and reasonable basis.

But any increase by virtue of paragraph (b) is not to exceed the amount of the excess mentioned in subsection (3)(a) after deducting from that amount any increase by virtue of paragraph (a).

- (5) If B is chargeable to income tax, in applying sections 850 to 850B in relation to B for the relevant period of account, such adjustments are to be made as are just and reasonable to take account of the increase in A's profit share under subsection (4).

(This subsection does not apply for the purposes of subsection (7) or section 850D(7).)

- (6) A partner in a firm is an "individual partner" if the partner is an individual and "non-individual partner" is to be read accordingly; but "non-individual partner" does not include the firm itself where it is treated as a partner under section 863I (allocation of profit to AIFM firm).
- (7) B's profit share is to be determined by applying section 850 and, if relevant, section 850A in relation to B for the relevant period of account (whether or not B is chargeable to income tax) on the assumption that the calculation under section 849 in relation to B produces the profit for the firm mentioned in subsection (1)(a)(i).
- (8) "A's deferred profit"—
- (a) is any remuneration or other benefits or returns the provision of which to A has been deferred (whether pending the meeting of any conditions (including conditions which may never be met) or otherwise), and
 - (b) includes A's share (as determined on a just and reasonable basis) of any remuneration or other benefits or returns the provision of which to A and one or more other persons, taken together, has been deferred (whether pending the meeting of any conditions (including conditions which may never be met) or otherwise).
- (9) "The relevant tax amount" is the total amount of tax which, apart from this section, would be chargeable in respect of A and B's income as partners in the firm.
- (10) "The appropriate notional profit" is the sum of the appropriate notional return on capital and the appropriate notional consideration for services.
- (11) "The appropriate notional return on capital" is—

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- (a) the return which B would receive for the relevant period of account in respect of B's contribution to the firm were the return to be calculated on the basis mentioned in subsection (12), less
 - (b) any return actually received for the relevant period of account in respect of B's contribution to the firm which is not included in B's profit share.
- (12) The return mentioned in subsection (11)(a) is to be calculated on the basis that it is a return which is—
 - (a) by reference to the time value of an amount of money equal to B's contribution to the firm, and
 - (b) at a rate which (in all the circumstances) is a commercial rate of interest.
- (13) For the purposes of subsections (11) and (12) B's contribution to the firm is amount A determined under section 108 of ITA 2007 (meaning of "contribution to the LLP").
- (14) That section is to be applied—
 - (a) reading references to the individual as references to B and references to the LLP as references to the firm, and
 - (b) with the omission of—
 - (i) subsections (5)(b) and (9), and
 - (ii) in subsection (6) the words from "but" to the end.
- (15) "The appropriate notional consideration for services" is—
 - (a) the amount which B would receive in consideration for any services provided to the firm by B during the relevant period of account were the consideration to be calculated on the basis mentioned in subsection (16), less
 - (b) any amount actually received in consideration for any such services which is not included in B's profit share.
- (16) The consideration mentioned in subsection (15)(a) is to be calculated on the basis that B is not a partner in the firm and is acting at arm's length from the firm.
- (17) Any services, the provision of which involves any partner in the firm in addition to B, are to be ignored for the purposes of subsection (15).
- (18) A has the power to enjoy B's profit share if—
 - (a) A is connected with B by virtue of a provision of section 993 of ITA 2007 (meaning of "connected" persons) other than subsection (4) of that section,
 - (b) A is a party to arrangements the main purpose, or one of the main purposes, of which is to secure that an amount included in B's profit share—
 - (i) is charged to corporation tax rather than income tax, or
 - (ii) is otherwise subject to the provisions of the Corporation Tax Acts rather than the provisions of the Income Tax Acts, or
 - (c) any of the enjoyment conditions (see subsection (20)) is met in relation to B's profit share or any part of B's profit share.

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- (19) In subsection (18)(b) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (20) The enjoyment conditions are—
- (a) B’s profit share, or the part, is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of A, whether in the form of income or not;
 - (b) the receipt or accrual of B’s profit share, or the part, by or to B operates to increase the value to A of any assets held by, or for the benefit of, A;
 - (c) A receives or is entitled to receive at any time any benefit provided or to be provided (directly or indirectly) out of B’s profit share or the part;
 - (d) A may become entitled to the beneficial enjoyment of B’s profit share, or the part, if one or more powers are exercised or successively exercised by any person;
 - (e) A is able in any manner to control (directly or indirectly) the application of B’s profit share or the part.
- (21) In subsection (20) references to A include any person connected with A apart from B.
- (22) Subsection (23) applies if—
- (a) the increase under subsection (4), or any part of it, is allocated by A to the firm itself under section 863I (allocation of profit to AIFM firm), and
 - (b) B makes a payment to the firm representing any income tax for which the firm is liable by virtue of section 863I in respect of the amount of the increase allocated to it.
- (23) For income tax purposes, the payment—
- (a) is not to be income of any partner in the firm, and
 - (b) is not to be taken into account in calculating any profits or losses of B or otherwise deducted from any income of B.

850D Excess profit allocation: cases involving individuals who are not partners

- (1) Subsections (4) and (5) apply if—
- (a) at a time during a period of account (“the relevant period of account”) in respect of a firm, an individual (“A”) personally performs services for the firm,
 - (b) if A had been a partner in the firm throughout the relevant period of account, the calculation under section 849 in relation to A for the relevant period of account would have produced a profit for the firm,
 - (c) a non-individual partner (“B”) in the firm (see subsection (6)) has a share of that profit (“B’s profit share”) which is a profit (see subsection (7)),
 - (d) it is reasonable to suppose that A would have been a partner in the firm at a time during the relevant period of account or any earlier

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- period of account but for the provision contained in section 850C (see also subsections (8) to (10)), and
- (e) condition X or Y is met.
- (2) Condition X is that it is reasonable to suppose that amounts representing A's deferred profit (see subsection (11)) are included in B's profit share.
- (3) Condition Y is that—
- (a) B's profit share exceeds the appropriate notional profit (see subsection (12)),
 - (b) A has the power to enjoy B's profit share ("A's power to enjoy") (see subsection (13)), and
 - (c) it is reasonable to suppose that the whole or any part of B's profit share is attributable to A's power to enjoy.
- (4) A is to be treated on the following basis—
- (a) A is a partner in the firm throughout the relevant period of account (but not for the purposes of section 863I (allocation of profit to AIFM firm)),
 - (b) A's share of the firm's profit for the relevant period of account is so much of the amount of B's profit share as, it is reasonable to suppose, is attributable to—
 - (i) A's deferred profit, or
 - (ii) A's power to enjoy,as determined on a just and reasonable basis, and
 - (c) A's share of the firm's profit is chargeable to income tax under the applicable provisions of the Income Tax Acts for the tax year in which the relevant period of account ends.

But A's share of the firm's profit by virtue of paragraph (b)(ii) is not to exceed the amount of the excess mentioned in subsection (3)(a) after deducting from that amount A's share of the firm's profit (if any) by virtue of paragraph (b)(i).

- (5) If B is chargeable to income tax, in applying sections 850 to 850B in relation to B for the relevant period of account, such adjustments are to be made as are just and reasonable to take account of A's share of the firm's profit under subsection (4).
- (This subsection does not apply for the purposes of subsection (7) or section 850C(7).)
- (6) "Non-individual partner" is to be read in accordance with section 850C(6).
- (7) B's profit share is to be determined by applying section 850 and, if relevant, section 850A in relation to B for the relevant period of account (whether or not B is chargeable to income tax) on the assumption that the calculation under section 849 in relation to B produces the profit for the firm mentioned in subsection (1)(b).
- (8) The requirement of subsection (1)(d) is to be assumed to be met if, at a time during the relevant period of account, A is a member of a partnership which is associated with the firm.

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- (9) A partnership is “associated” with the firm if—
- (a) it is a member of the firm, or
 - (b) it is a member of a partnership which is associated with the firm (whether by virtue of paragraph (a) or this paragraph).
- (10) In subsections (8) and (9) “partnership” includes a limited liability partnership whether or not section 863(1) applies in relation to it.
- (11) “A’s deferred profit” is to be read in accordance with section 850C(8).
- (12) Section 850C(10) to (17) applies for the purpose of determining “the appropriate notional profit”; and A is to be treated as a partner in the firm for the purposes of section 850C(17).
- (13) Section 850C(18) to (21) applies for the purpose of determining if A has the power to enjoy B’s profit share.

850E Payments by B out of the excess part of B’s profit share

- (1) Subsection (2) applies in a case in which section 850C(4) or section 850D(4) applies if—
- (a) there is an agreement in place in relation to the excess part of B’s profit share,
 - (b) as a result of the agreement, B makes a payment to another person out of the excess part of B’s profit share, and
 - (c) the payment is not made under any arrangements the main purpose, or one of the main purposes, of which is the obtaining of a tax advantage for any person.
- (2) For income tax purposes, the payment—
- (a) is not to be income of the recipient,
 - (b) is not to be taken into account in calculating any profits or losses of B or otherwise deducted from any income of B, and
 - (c) is not to be regarded as a distribution.
- (3) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
- “B’s profit share” has the same meaning as in section 850C or 850D (as the case may be),
- “the excess part of B’s profit share” means so much of the amount of B’s profit share as is represented by the amount of, as the case may be—
- (a) the increase under section 850C(4), or
 - (b) A’s share of the firm’s profit under section 850D(4), and
- “tax advantage” has the meaning given by section 1139 of CTA 2010.”